



# **AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS**

**AIFC REGULATIONS NO. 18 OF 2017  
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Astana, Kazakhstan



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## PART 1: INTRODUCTION

### 1. Title

These Regulations may be cited as the Framework Regulations.

### 2. Legislative Authority

These Regulations are enacted by the Governor in exercise of the powers conferred on the AIFC Bodies, including the Governor by the Constitutional Statute, and specifically by Article 4(3) of the Constitutional Statute.

### 3. Application of these Regulations

- (1) These Regulations apply in the AIFC.
- (2) Without limiting subsection (1), these Regulations apply to any Person who conducts business in or from the AIFC.

### 4. Commencement

These Regulations will commence on 1 January 2018.

### 5. Interpretation

Words and expressions used in these Regulations and interpretative provisions applying to these Regulations are set out in the Glossary.

### 6. Meaning of “in or from the AIFC”

- (1) A Person will be deemed to be carrying on activities in or from the AIFC for the purposes of these Regulations if:
  - (a) that Person is a Centre Participant and the day-to-day management of those activities (even if those activities are undertaken in whole or in part from outside the AIFC) is the responsibility of the Centre Participant in its capacity as such; or
  - (b) that Person’s head office is outside the AIFC but the activity is carried on from a branch maintained by it in the AIFC; or
  - (c) the activities are conducted in circumstances that are deemed to amount to activities carried on in or from the AIFC under Rules made by the AFSA.
- (2) The AFSA may make Rules and give guidance as to the circumstances in which activities capable of having an effect in the AIFC are or are not to be regarded as conducted in or from the AIFC.





**PART 2: THE FRAMEWORK OF REGULATION**

**CHAPTER 1–The AFSA**

**7. Main functions, powers and objectives of the AFSA**

- (1) The AFSA has such functions and powers as are conferred, or expressed to be conferred, on it:
    - (a) by or under the Constitutional Statute of the Republic of Kazakhstan “On the Astana International Financial Centre” (“the Constitutional Statute”); and
    - (b) by or under any other law made by the Governor or the Management Council.
  - (2) The AFSA has power to do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred in accordance with (1).
  - (3) In performing its functions and exercising its powers, the AFSA will pursue the following objectives (“the Regulatory Objectives”):
    - (a) the regulation, control and supervision of financial activities in the AIFC by Centre Participants with a view to the maintenance of the safety and soundness of the financial system within the AIFC;
    - (b) ensuring that financial markets in the AIFC are fair, efficient, transparent and orderly;
    - (c) creating fair, transparent and non-discriminatory conditions for Centre Participants;
    - (d) fostering and maintaining confidence in the AIFC’s financial system and regulatory regime;
    - (e) fostering and maintaining the financial stability of the AIFC’s financial services industry and capital markets, including the reduction of systemic risks;
    - (f) preventing, detecting and restraining actions, including Financial Crime, that may cause damage to the reputation of the AIFC or to the financial activities carried out in the AIFC by taking appropriate measures, including by imposing sanctions;
    - (g) protecting interests of investors and users of financial services;
    - (h) implementing in the AIFC a regulatory regime that complies with international standards in the sphere of regulation of financial services and facilitates the growth of the financial services industry and capital markets in Kazakhstan;
    - (i) fostering the development of financial technologies in the AIFC; and
    - (j) pursuing such other objectives as may be specified by AIFC’s Regulations from time to time.
- (3-1) In pursuing the objective referred to in (3)(f) in the context of anti-money laundering, countering the financing of terrorism and proliferation of weapons of mass destruction the AFSA shall exercise control and supervision over the compliance of Centre Participants with the relevant AIFC Acts by conducting inspections, taking appropriate enforcement actions and imposing sanctions.



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- (3-2) In pursuing the objective referred to in (3)(e) in the context of Recovery, the AFSA will aim:
- (a) to ensure the continuity of systemically important financial services; and
  - (b) to avoid unnecessary destruction of value and losses to creditors.
- (3-3) In pursuing the objective referred to in (3)(e) in the context of Resolution, the AFSA will aim:
- (a) to ensure the continuity of systemically important financial services;
  - (b) to avoid unnecessary erosion of value and losses to creditors;
  - (c) to minimise the overall costs of Resolution, in home and host jurisdictions; and
  - (d) to consider the potential impact of its Resolution Actions on financial stability in other jurisdictions.
- (3-4) In pursuing the objective referred to in (3)(g) in the context of Resolution of an Authorised Person, the AFSA will aim:
- (a) to protect Clients (including depositors and Policyholders); and
  - (b) to protect Client Assets by providing prompt access to assets through:
    - (i) the continued functioning of the Authorised Person following Resolution;
    - (ii) the rapid return to the Clients of identifiable and segregated Client Assets;  
or
    - (iii) the transfer of the Client Assets to a performing third party.
- (3-5) In pursuing the objective referred to in (3)(g) in the context of Resolution of an Authorised Market Institution, the AFSA will also aim to:
- (a) achieve continuity and timely completion of critical payment, clearing, settlement and recording functions;
  - (b) facilitate the timely settlement of obligations of the Authorised Market Institution;
  - (c) maintain continuous access of participants to:
    - (i) Securities or cash accounts provided by the Authorised Market Institution;  
and
    - (ii) Securities or cash collateral posted to and held by the Authorised Market Institution that is owed to such participants;



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- (d) avoid any disruption in the operation of links between the Authorised Market Institution in Resolution and other Authorised Market Institutions that would have a material negative effect on financial stability or the functioning of markets; and
  - (e) safeguard, preserve and enable continuous processing of, and access to, data stored in a trade repository.
- (3-6) In pursuing the objectives referred to in (3), the AFSA may enter into arrangements or instruments (including orders, agreements, or memoranda of understanding, on mutual recognition or cooperation) with other regulators.
- (4) The AFSA may prepare and make available forms for any purpose under these Regulations or Rules made thereunder and may give instructions for their completion.

### 7-1. Principles of good regulation

In performing its functions and exercising its powers under the Acting Law of the AIFC and these Regulations, the AFSA must have regard to:

- (a) the need to act in accordance with all laws and Regulations to which it is subject;
- (b) the principle that the AFSA should exercise its powers and functions in a fair and transparent manner;
- (c) the need to comply with such generally accepted principles of good governance as it is reasonable to regard as applicable to it;
- (d) the need to use its resources in the most economic and efficient way;
- (e) the need to balance the burdens and restrictions on firms with the benefit of regulation;
- (f) the desirability of facilitating innovation and fostering the international competitiveness of the AIFC; and
- (g) the desirability of fostering competition between those who are subject to regulation by the AFSA;
- (h) the desirability of sustainable growth; and
- (i) the principle of a Centre Participant's senior management responsibility for the Centre Participant's activities and for ensuring its business complies with regulatory requirements.

### 8. AFSA rulemaking powers

- (1) The AFSA may make Rules on a particular issue without prejudice to the general rulemaking power of the AFSA and other Centre Bodies under Article 4(3) of the Constitutional Statute.
- (2) The Rules, in such cases or classes of cases as may be prescribed by them, may extend, exclude, waive or modify the application of provisions of these Regulations, the Rules or any other legislation administered by the AFSA, with the exception of Part 9 (Enforcement) of these Regulations, if the Board of Directors of the AFSA considers it necessary or desirable order to facilitate the pursuit of the Regulatory Objectives.



- (3) The Rules made under this section may enable instruments to carry out their own purpose.

### **8-1. Power of the AFSA to give Guidance**

- (1) The AFSA may, on the application of a Person or on its own initiative, give Guidance consisting of such information and advice as it considers appropriate:
- (a) with respect to the operation of specified parts of these Regulations, any Regulations and any Rules which the AFSA administers;
  - (b) with respect to any matter relating to functions of the AFSA within its competence;
  - (c) for the purpose of meeting the Regulatory Objectives; and
  - (d) with respect to any matters about which it appears to the AFSA to be desirable to give the relevant information or advice.
- (2) Guidance issued by the AFSA may be given to Persons generally or to a class of Authorised Persons or Ancillary Service Providers.
- (3) Before the AFSA gives Guidance, the AFSA must ensure that the proposed Guidance is made available for public consultation for a period of at least 30 days.
- (4) Before giving the proposed Guidance, the AFSA must consider the submissions made to it about the proposed Guidance during the public consultation period and must make changes to the Guidance that it considers desirable having regard to the submissions.
- (5) The AFSA may give the proposed Guidance without holding public consultation or shorten the public consultation period for the proposed Guidance if satisfied that it is justified in the interests of the AIFC.
- (6) Unless otherwise indicated by the AFSA, Guidance issued by the AFSA is indicative of the view of the AFSA at the time and in the circumstances in which it was given and is non-binding.
- (7) If the AFSA considers it necessary or desirable, it must publish Guidance in a way the AFSA thinks appropriate for bringing Guidance to the attention of:
- (a) Persons likely to be affected by it; and
  - (b) others who may be likely to become subject to similar guidance.

### **9. AFSA power to modify, waive or grant relief**

- (1) The AFSA may, on the application of a Person or on its own initiative and by written notice, direct that:
- (a) 1 or more relevant provisions:
    - (i) apply to the Person with the modifications mentioned in the notice; or
    - (ii) do not apply in relation to the Person.



- (b) the AFSA does not intend to take regulatory action over a particular state of affairs or particular conduct.
- (2) The AFSA must not give a direction under paragraph (a) of subsection (1) unless it is satisfied that:
  - (a) compliance by the Person with the relevant provisions, or with the relevant provisions as unmodified, would be unduly burdensome or would not achieve the purpose for which the relevant provisions were made, and
  - (b) the direction would not adversely affect the advancement of any of the AFSA's Regulatory Objectives.
- (2-1) The AFSA must make public by way of guidance the criteria applicable to giving directions under paragraph (b) of subsection (1) after the date of publication of the guidance.
- (3) A direction under (1) may be given subject to conditions.
- (4) The AFSA, on the application of the Person or on its own initiative, may:
  - (a) revoke a direction; or
  - (b) vary it.
- (5) In this section:

“Relevant provisions” means any provision (a) of these Regulations, the Rules or any other legislation administered by the AFSA, and (b) of any other Regulations and Rules which (i) relate to the functions of the AFSA and (ii) are declared by Rules adopted by the Board of Directors of the AFSA to be a provision to which this section applies.
- (6) Unless the AFSA is satisfied that it is inappropriate or unnecessary to do so, it must publish a notice under subsection (1) in a way the AFSA considers appropriate for bringing the notice to the attention of:
  - (a) person(s) likely to be affected by it; and
  - (b) others who may be likely to become subject to a similar notice.
- (7) The application for a direction, revocation of a direction or its variation must be accompanied by the filing fee prescribed in the Rules by the AFSA from time to time.

#### **10. AFSA decision making procedure**

- (1) Where a provision in these Regulations or Rules made thereunder requires the AFSA to make a decision, the AFSA will follow the decision making procedures set out in Schedule 1.
- (2) Should it consider it necessary or desirable to do so, the AFSA may establish a mechanism whereby a decision made in accordance with (1) may be reviewed by officers of the AFSA who were not involved in making such decision or an objective independent third party competent to carry out such function.



**11. Appeals against decisions of the AFSA, and the AFSA's statutory immunity**

- (1) A Person aggrieved by a decision of the AFSA may appeal to the AIFC Court against the decision.
- (2) The grounds of an appeal under this section are that:
  - (a) the decision was ultra vires or there was some other error of law;
  - (b) the decision was unreasonable;
  - (c) the decision was made in bad faith;
  - (d) there was a lack of proportionality; or
  - (e) there was a material error as to the procedure.
- (3) The procedure to be adopted by parties to an appeal and by the AIFC Court on such an appeal is set out in Schedule 2.
- (4) Neither the AFSA nor any Person who is, or is acting as, a director, officer or member of staff of the AFSA may be held liable for anything done or omitted to be done in the performance or purported performance of its functions, or in the exercise or purported exercise of its powers, under these Regulations or any other AIFC Regulations or Rules, unless the act or omission is shown to have been done in bad faith.

**CHAPTER 2 – Centre Participants**

**12. Definition of Centre Participant**

A Centre Participant is defined under Article 1(5) of the Constitutional Statute.

**13. Definition of Authorised Firm**

An Authorised Firm is a Centre Participant which has been licensed by the AFSA to carry on one or more Regulated Activities.

**14. Definition of Authorised Market Institution**

An Authorised Market Institution is a Centre Participant which has been licensed by the AFSA to carry on one or more Market Activities.

**15. Definition of Authorised Person**

An Authorised Person is either an Authorised Firm or an Authorised Market Institution.

**16. Definition of Ancillary Service Provider**

An Ancillary Service Provider is a Centre Participant which has been licensed by the AFSA to carry on one or more Ancillary Services.



## CHAPTER 3 – Activities performed by Centre Participants

### 17. Definition of Regulated Activity

The AFSA may make Rules prescribing which kinds of Regulated Activities, with such modifications or limitations as may be specified, may be carried on by an Authorised Firm.

### 18. Definition of Market Activity

- (1) The activities specified in Schedule 4 of AIFC General Rules constitute Market Activities for the purposes of these Regulations and Rules made thereunder.
- (2) The AFSA may make Rules adding to, removing activities from, or otherwise modifying the lists of Market Activities prescribed under section 18(1).

### 19. Definition of Ancillary Service

The AFSA may make Rules prescribing which kinds of Ancillary Services, with such modifications or limitations as may be specified, may be carried on by an Ancillary Service Provider.

## CHAPTER 4 – Controlled and Designated Functions

### 20. Definition of Controlled Function

- (1) The AFSA may make Rules prescribing functions (“Controlled Functions”) of an Authorised Person that may only be carried out by individuals who have been approved by the AFSA to carry out those functions.
- (2) Controlled Functions prescribed under subsection 20(1) may include the functions of senior officers or Employees with material responsibility for both or either:
  - (a) managing an Authorised Person; or
  - (b) the carrying on by an Authorised Person of its Regulated or Market Activities.

### 21. Definition of Approved Individual

An Approved Individual is an individual who is approved by the AFSA to carry out a Controlled Function.

### 22. Definition of Designated Function

The AFSA may make Rules prescribing functions (“Designated Functions”) of an Authorised Person that may only be carried out by individuals who have been appointed by the Authorised Person as a Designated Individual in relation to that function

### 23. Definition of Designated Individual

A Designated Individual is an individual who is appointed by an Authorised Person to carry out a Designated Function.



## CHAPTER 5 – Prohibitions

### 24. The General Prohibition

A Centre Participant must not carry on a Regulated Activity, Market Activity or Ancillary Service unless it is licensed to do so by the AFSA.

### 25. Prohibition relating to Controlled Functions

- (1) A Person must not carry out a Controlled Function for an Authorised Person unless he is approved by the AFSA as an Approved Individual to carry out that Controlled Function for the Authorised Person.
- (2) An Authorised Person must take all reasonable steps to ensure that no Person performs a Controlled Function on its behalf:
  - (a) without being authorised by the AFSA as an Approved Individual in relation to the relevant Controlled Function; or
  - (b) contrary to a restriction imposed by the AFSA; or
  - (c) where Approved Individual status of that individual has been suspended or withdrawn.

### 26. Prohibition relating to Designated Functions

An Authorised Person must take all reasonable steps to ensure that no Person performs a Designated Function on its behalf

- (a) without being appointed by the Authorised Person as a Designated Individual in relation to the relevant Designated Function; or
- (b) contrary to a restriction imposed by the AFSA; or
- (c) where Designated Individual status of that individual has been suspended or withdrawn.

### 27. Prohibition relating to Financial Promotions

- (1) A “Financial Promotion” is any communication (made via any medium including brochures, telephone calls and presentations) the purpose or effect of which is:
  - (a) to promote or advertise (i) Investments or (ii) any Regulated Activity; or
  - (b) to invite or induce any Person (i) to enter into an agreement with any Person in relation to Investments or (ii) to engage in any Regulated Activity.
- (2) A Centre Participant may not make a Financial Promotion except as provided by or under these Regulations.
- (3) The AFSA may make Rules relating to:
  - (a) the circumstances in which a Centre Participant may make, or will be deemed to make, a Financial Promotion; and
  - (b) the form and content of such Financial Promotion.





## 28. Enforceability of Agreements

- (1) Subject to section 28(5), a Centre Participant who makes an agreement whilst acting in breach of the General Prohibition, or who makes an agreement as a result of the making by himself or another Person of a Financial Promotion which is in breach of the Financial Promotions Prohibition, will not be entitled to enforce such agreement against any party (a "relevant party") to the agreement.
- (2) Subject to any agreement that may otherwise be reached between the parties, a relevant party may apply to the AIFC Court to recover:
  - (a) any money paid or property transferred by him under the agreement;
  - (b) compensation reflecting any loss sustained by the relevant party as a direct result of such payment or transfer; and
  - (c) compensation for an amount becoming due that is dependent upon a contingency occurring under the relevant agreement, provided that such contingency has occurred prior to the relevant party being notified by the other party or by the AFSA that the agreement was entered into in breach of the General Prohibition or the Financial Promotions Prohibition.
- (3) If the relevant party chooses not to perform the agreement or, under section 28(2), recovers money paid or property transferred by him under the agreement, he must in turn repay any money or property received under the agreement.
- (4) The compensation recoverable under section 28(2)(b) is the amount agreed between the parties to the agreement or, following an application to the AIFC Court, the amount determined by the AIFC Court.
- (5) If the AIFC Court is satisfied that the Centre Participant:
  - (a) who acted in breach of the General Prohibition reasonably believed that he was not in breach of the General Prohibition by entering into such agreement; or
  - (b) who made the Financial Promotion reasonably believed that he was not in breach of the Financial Promotions Prohibition; or
  - (c) who made an agreement as a result of the making by another Person of a Financial Promotion which was in breach of the Financial Promotions Prohibition, did not know that the relevant Financial Promotion was in breach of the Financial Promotions Prohibition.

and that it is fair and just in the circumstances to make such an order, it may make one or more of the following orders:

- (d) an order that the agreement be enforced between the parties to such extent and under such terms and conditions as the AIFC Court sees fit; or
  - (e) an order that money paid or property transferred under the agreement be retained or dealt with in accordance with the agreement or in such manner as the AIFC Court deems fit.
- (6) For the purposes of (5), it is not relevant that the relevant Centre Participant was unaware of the existence of either the General Prohibition or the Financial Promotion Prohibition.



- (7) Where property transferred under the agreement has been transferred to a third party, a reference in this section to such property will be interpreted as a reference to the value of the property at the time of the transfer under the agreement.
- (8) In this section, "agreement" means an agreement, the making or performance of which constitutes, purports to constitute or is part of, the carrying on of a Regulated Activity, Market Activity or Ancillary Service.

**29. False claims to be a Centre Participant**

- (1) A Person who is not a Centre Participant must not represent that he is a Centre Participant.
- (2) A Centre Participant who is not an Authorised Firm, an Authorised Market Institution or an Ancillary Service Provider must not represent that he is such a Person.



## PART 3: LICENSING OF CENTRE PARTICIPANTS

### CHAPTER 1 – Licensing of Authorised Firms

#### 30. Application for a Licence to carry on Regulated Activities

- (1) A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Regulated Activities.
- (2) An Authorised Firm may apply to the AFSA to extend, vary or withdraw its Licence to carry on Regulated Activities.
- (3) The applicant for a Licence, variation of a Licence or withdrawal of a Licence may withdraw its application by giving the AFSA notice at any time before the AFSA issues, varies or withdraws the Licence or rejects the application.

#### 31. Form and content of application for a Licence

- (1) An application for a Licence or variation or withdrawal of a Licence must be in such form and contain such information as may be prescribed by the AFSA from time to time.
- (2) The AFSA may make Rules providing that certain Centre Participants or types of Centre Participant may not be granted a Licence to carry on particular Regulated Activities.
- (3) The AFSA may make Rules providing for such requirements referred to in 31(1) to be varied in cases where an application is made by or on behalf of a Centre Participant which is, at the time of application, regulated in a jurisdiction other than the AIFC.
- (4) The AFSA may waive all or any part of its generally adopted requirements as to form and contents either in individual cases or generally, provided it is satisfied in either case that:
  - (a) materially similar, up-to-date information is provided in other documentation already issued or completed by the applicant; or
  - (b) such information is not necessary in the light of any registration or authorisation of the applicant in another jurisdiction; or
  - (c) such information is not considered by the AFSA to be relevant in the context of any particular application.
- (5) The AFSA may require the applicant to provide additional information reasonably required for the AFSA to be able to decide the application.
- (6) If at any time between the filing of an application and the grant of a Licence or the grant of an extension to a Licence the applicant becomes aware of a material change reasonably likely to be relevant to the application under consideration, it must inform the AFSA in writing of such change without delay.

#### 32. Financial technology

The AFSA may, on the application of a Person or its own initiative and by written notice, waive or modify the requirements of these Regulations or Rules made thereunder where it considers it necessary or desirable to do so in the field of financial technology.



### 33. Exemption

The AFSA may issue an order or make Rules:

- (a) prescribing certain Centre Participants or categories of Centre Participant to be exempted from
  - (i) the General Prohibition in respect of Regulated Activities; or
  - (ii) the requirements referred to in section 34(1); and
- (b) providing for any such exemptions to be:
  - (i) limited to certain Regulated Activities or specified circumstances; or
  - (ii) subject to certain conditions and restrictions.

### 34. Criteria for the grant of a Licence to carry on Regulated Activities

- (1) The AFSA may only grant a Licence authorising a Centre Participant to carry on one or more Regulated Activities if it is satisfied that the Centre Participant:
  - (a) has adequate and appropriate resources, including financial resources;
  - (b) is fit and proper;
  - (c) is capable of being effectively supervised; and
  - (d) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements.
- (2) The AFSA may make Rules prescribing the matters to which the AFSA will have regard in making the above assessment.

### 35. Grant or rejection of application

- (1) The AFSA may:
  - (a) grant an application for a Licence, variation or withdrawal of a Licence either without conditions, restrictions or requirements or with such conditions, restrictions or requirements as it considers appropriate; or
  - (b) reject the application.
- (2) Where the AFSA grants an application for a Licence or variation or withdrawal of a Licence, the AFSA must inform the applicant of:
  - (a) such decision;
  - (b) the date on which the Licence or extension will be deemed to take effect;
  - (c) the Regulated Activity or Regulated Activities that the applicant is authorised to carry on; and



- (d) any conditions and restrictions applicable to the Licence or the newly extended Licence.
- (3) Where the AFSA rejects an application for a Licence or variation or withdrawal of a Licence, the AFSA must promptly inform the applicant in writing of such rejection and, where requested by the applicant, the reasons for such rejection, and of the applicant's right to appeal that decision to the AIFC Court.
- (4) If an applicant decides to appeal the AFSA's decision to the AIFC Court, the time for instituting an appeal commences from the date when the rejection was given to an applicant.

## **CHAPTER 2 – Licensing of Authorised Market Institutions**

### **36. Application for a Licence to carry on Market Activities**

- (1) A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Market Activities.
- (2) An Authorised Market Institution may apply to the AFSA to extend, vary or withdraw its Licence to carry on Market Activities.
- (3) The applicant for a Licence, variation of a Licence or withdrawal of a Licence may withdraw its application by giving the AFSA notice at any time before the AFSA issues, varies or withdraws the Licence or rejects the application.
- (4) An application under this section must be made in such manner as the AFSA may require.

### **37. Criteria for the grant of a Licence to carry on Market Activities**

- (1) The AFSA may only grant a Licence authorising a Centre Participant to carry on one or more Market Activities if it is satisfied that the Centre Participant:
  - (a) has adequate and appropriate resources, including financial resources and technology resources;
  - (b) is fit and proper;
  - (c) is capable of being effectively supervised; and
  - (d) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements, including the Rules.
- (2) The AFSA may make Rules prescribing the matters to which the AFSA will have regard in making the above assessment.

### **38. Grant or rejection of application**

- (1) The AFSA may:
  - (a) grant an application under section 36, either without conditions, restrictions or requirements or with such conditions, restrictions or requirements as it considers appropriate; or
  - (b) reject the application.



- (2) Where the AFSA grants an application under section 36, the AFSA will notify the applicant of:
  - (a) such decision;
  - (b) the date on which the Licence will be deemed to take effect;
  - (c) the Market Activity or Market Activities that the applicant is authorised to carry on; and
  - (d) any conditions and restrictions applicable to the Licence.
- (3) Where the AFSA rejects an application under section 36, the AFSA must promptly inform the applicant in writing of such rejection and, where requested by the applicant, the reasons for such rejection, and of the applicant's right to appeal that decision to the AIFC Court .
- (4) The AFSA may vary the terms of a Licence granted by it under this section, either on the application of the Authorised Market Institution or on its own initiative.
- (5) If an applicant decides to appeal the AFSA's decision to the AIFC Court, the time for instituting an appeal commences from the date when the rejection was given to an applicant.

### 39. Exemption for Authorised Market Institutions

- (1) An Authorised Investment Exchange is exempt from the General Prohibition in respect of any Regulated Activity:
  - (a) which is carried on as a part of the Authorised Investment Exchange's business as an investment exchange; or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the Authorised Investment Exchange of services designed to facilitate the provision of clearing services by another Person.
- (2) An Authorised Clearing House is exempt from the General Prohibition in respect of any Regulated Activity:
  - (a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the Authorised Clearing House; or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the Authorised Clearing House of services designed to facilitate the provision of clearing services by another Person.
- (3) ***[intentionally omitted]***
  - (a) ***[intentionally omitted]***
  - (b) ***[intentionally omitted]***
- (4) Subject to AMI 7.2, an Authorised Crowdfunding Platform is exempt from the General Prohibition in respect of any Regulated Activity which is carried on as a part of the Authorised Crowdfunding Platform's business as a private crowdfunding platform.



## CHAPTER 3 – Licensing of Ancillary Service Providers

### 40. Application for a License to carry on Ancillary Services

- (1) A Person may apply to the AFSA for a License permitting a Centre Participant to carry on one or more Ancillary Services.
- (2) An Ancillary Service Provider may apply to the AFSA to extend, vary or withdraw its Licence to carry on Ancillary Services.
  - (2-1) The applicant for a Licence or its variation or withdrawal may withdraw its application by giving the AFSA notice at any time before the AFSA issues, varies or withdraws the Licence or rejects the application.
- (3) An application under this section must be made in such manner as the AFSA may by Rules require.

#### 40-1. Grant or rejection of application

- (1) The AFSA may:
  - (a) grant an application under section 40, either without conditions, restrictions or requirements or with such conditions, restrictions or requirements as it considers appropriate; or
  - (b) reject the application.
- (2) If the AFSA grants an application under section 40, the AFSA must inform the applicant in writing of:
  - (a) such decision;
  - (b) the date on which the Licence will be deemed to take effect;
  - (c) the Ancillary Service or Ancillary Services that the applicant is authorised to carry on; and
  - (d) any conditions and restrictions applicable to the Licence.
- (3) Where the AFSA rejects an application under section 40, the AFSA must promptly inform the applicant in writing of such rejection and, where requested by the applicant, the reasons for such rejection, and of the applicant's right to appeal that decision to the AIFC Court.
- (4) The AFSA may vary the terms of a Licence granted by it, either on the application of the Ancillary Service Provider or on its own initiative.
- (5) If an applicant decides to appeal the AFSA's decision to the AIFC Court, the time for instituting an appeal commences from the date when the rejection was given to an applicant.

### 41. Criteria for the grant of a Licence to carry on Ancillary Services

- (1) The AFSA may only grant a Licence permitting a Centre Participant to carry on one or more Ancillary Services if it is satisfied that the Centre Participant is fit and proper.



- (2) The AFSA may prescribe by Rules:
- (a) the Centre Participants or class of Centre Participants who may be permitted to carry on Ancillary Services;
  - (b) the requirements for the grant of such a Licence; and
  - (c) the circumstances in which the AFSA may withdraw such a Licence.





**PART 4: CONTROLLED AND DESIGNATED FUNCTIONS**

**CHAPTER 1 – Controlled Functions**

**42. Applications for Controlled Function approval**

- (1) The AFSA may make Rules detailing:
  - (a) the procedure for application to the AFSA for registration as an Approved Individual including requirements as to the form and content of the application, any fees payable by an Authorised Person in respect of its Approved Individuals and the procedures for modification or withdrawal of an Approved Individual's registration;
  - (b) principles or other requirements to which Approved Individuals are required to adhere in the performance of Controlled Functions;
  - (c) requirements for Approved Individuals to report to the AFSA; and
  - (d) the circumstances in which registration of an Approved Individual may be withdrawn at the instance of the AFSA.
- (2) The AFSA may waive all or any part of its generally adopted requirements as to the form and content of an application under section 42(1) if it is satisfied that such information is not necessary in the light of any registration, authorisation or approval the relevant individual may have in a jurisdiction outside the AIFC.

**43. Criteria for approval**

- (1) The AFSA may only authorise an individual to carry on a Controlled Function if it is satisfied that the individual is fit and proper to be an Approved Individual.
- (2) In making this assessment the AFSA must have regard to:
  - (a) the individual's integrity;
  - (b) the individual's competence and capability;
  - (c) the individual's financial soundness;
  - (d) the individual's proposed role within the Authorised Person; and
  - (e) any other matters that the AFSA considers to be relevant to the application.
- (3) The AFSA will not regard an individual as fit and proper if the individual:
  - (a) is bankrupt; or
  - (b) has been convicted of a serious criminal offence; or
  - (c) is the subject of an administrative or civil finding; or
  - (d) is incapable, through mental or physical incapacity, of managing his affairs.



**44. Grant or rejection of application**

- (1) The AFSA may:
  - (a) grant or vary an approval under section 42 either without conditions restrictions or requirements or with such conditions restrictions or requirements as it considers appropriate; or
  - (b) reject the application.
- (2) If the AFSA grants an application for approval or variation of an approval under section 42, the AFSA will notify the Authorised Person accordingly.
- (3) If the AFSA rejects an application for approval or variation of an approval under section 42, the AFSA must promptly inform the Authorised Person in writing of such rejection and, where requested by the Authorised Person, the reasons for such rejection, and of the Authorised Person's right to appeal that decision to the AIFC Court.
- (4) If an applicant decides to appeal the AFSA's decision to the AIFC Court, the time for instituting an appeal commences from the date when the rejection was given to an applicant.

**45. Residency requirement for Approved Individual**

If the AFSA considers it appropriate, it may require an Authorised Person to ensure that a particular Controlled Function is carried on by an Approved Individual who is resident in the Republic of Kazakhstan.

**45-1. Suspending or withdrawing Approved Individual status**

- (1) If the AFSA reasonably concludes that:
  - (a) an Approved Individual is in breach of, or has been in breach of, an obligation that applies as a result of such individual's Approved Individual status; or
  - (b) an individual is no longer fit and proper to perform the role of an Approved Individual within the Authorised Person;it may either restrict the individual from carrying on a Controlled Function or suspend or withdraw the individual's Approved Individual status.
- (2) The AFSA may withdraw an individual's Approved Individual status if:
  - (a) the individual becomes bankrupt;
  - (b) the individual is convicted of a serious criminal offence;
  - (c) the individual becomes incapable (through mental or physical incapacity) of managing the relevant affairs;
  - (d) the individual or the relevant Authorised Person requests the AFSA to withdraw the relevant status; or
  - (e) the Licence of the relevant Authorised Person is withdrawn.
- (3) If the AFSA:



- (a) conducts an investigation under section 114; and
- (b) in the course of such investigation believes on reasonable grounds that an individual has engaged in serious misconduct that may form grounds for the withdrawal of the individual's Approved Individual status;

it may suspend the individual's Approved Individual status for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the individual.

- (4) An individual commits a contravention if the individual carries on a Controlled Function:
  - (a) in breach of a provision of these Regulations or Rules made thereunder or other legislation administered by the AFSA that applies to that individual;
  - (b) contrary to a restriction imposed under subsection (1); or
  - (c) after the individual's Approved Individual status has been suspended or withdrawn under subsections (1), (2) or (3).
- (5) The AFSA may vary or withdraw a restriction or suspension imposed under this section if it is reasonable to do so.
- (6) The AFSA may act under subsection (5) on its own initiative or at the request of the individual or Authorised Person.
- (7) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

## CHAPTER 2 – Designated Functions

### 46. Criteria for appointment of Designated Individual

- (1) Before appointing an individual to carry on a Designated Function, an Authorised Person must take reasonable steps to satisfy itself that the individual is fit and proper to be a Designated Individual and to carry on the relevant Designated Function.
- (2) In making this assessment the Authorised Person must have regard to:
  - (a) the individual's integrity;
  - (b) the individual's competence and capability;
  - (c) the individual's financial soundness;
  - (d) the individual's proposed role within the Authorised Person; and
  - (e) any other matters that the AFSA may prescribe by Rules.
- (3) An Authorised Person may not regard an individual as fit and proper if the individual:
  - (a) is bankrupt; or
  - (b) has been convicted of a serious criminal offence; or
  - (c) is the subject of an administrative or civil finding; or



(d) is incapable, through mental or physical incapacity, of managing his affairs.

**47. Review of appointments by the AFSA**

- (1) An Authorised Person must maintain records of the assessment process that it conducts in respect of each Designated Individual appointed by it.
- (2) An Authorised Person must make such records available to the AFSA on request.
- (3) If the AFSA considers that a Designated Individual is not fit and proper, it may take such steps as it considers necessary or desirable in the interests of the AIFC.



## PART 5: CONTROL OF AUTHORISED PERSONS

### 48. Requirement for AFSA approval to change in control

A Person must not take any steps to:

- (a) become a Controller of an Authorised Person incorporated in the AIFC ; or
- (b) increase the level of control which that Person has in an Authorised Person incorporated in the AIFC beyond a threshold specified in Rules by the AFSA;

unless that Person has obtained the prior written approval of the AFSA to do so.

### 49. Rules governing Controllers

The AFSA may make Rules in connection with the change of control of Authorised Persons incorporated in the AIFC, including Rules as to:

- (a) when a Person becomes or ceases to be a Controller of an Authorised Person;
- (b) when the acquisition or increase in the level of control of an Authorised Person requires either the prior approval of, or notification to, the AFSA;
- (c) when the AFSA is likely object to an existing Controller;
- (d) the procedures relating to the approval, notification and objections referred to in paragraphs (b) and (c); and
- (e) any other matter necessary or incidental to give effect to the provisions governing Controllers.

### 50. Powers of the AFSA in respect of Controllers

- (1) Without limiting the generality of the AFSA powers, the AFSA may:
  - (a) approve or object to a Person becoming a Controller of an Authorised Person incorporated in the AIFC;
  - (b) approve or object to an increase in the level of control of an existing Controller of an Authorised Person incorporated in the AIFC;
  - (c) object to an existing Controller of an Authorised Person incorporated in the AIFC where it has reasonable grounds to believe that such a Person is no longer an acceptable Controller; and
  - (d) approve a Person as a Controller or approve an increase of control by an existing Controller subject to such conditions as it considers appropriate.
- (2) Where the AFSA considers an existing Controller of an Authorised Person incorporated in the AIFC to be an unacceptable Controller it may:
  - (a) notify the Controller and the Authorised Person in writing that the Controller is no longer an acceptable Controller; and



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- (b) require that the Controller and the Authorised Person take such action as specified by the AFSA.
- (3) Without limiting the generality of the AFSA powers, the AFSA may, for the purposes of section 50(2)(b):
  - (a) require an Authorised Person incorporated in the AIFC to take such action as specified by the AFSA in relation to an unacceptable Controller; or
  - (b) where an Authorised Person has failed to comply with a requirement referred to in section 50(3)(a) to the satisfaction of the AFSA, either withdraw, or impose conditions, on the Authorised Person's licence; or
  - (c) require the unacceptable Controller to take such action as specified by the AFSA.



**PART 6: CAPITAL MARKETS**

**CHAPTER 1 – Authorised Market Institutions**

**51. Requirement to have Business Rules**

An Authorised Market Institution must establish rules (“Business Rules”) governing relations between itself and the participants in the market and dealing with such matters as may be prescribed for this purpose in rules by the AFSA.

**52. Approval and consultation on Business Rules**

- (1) An Authorised Market Institution may only bring its Business Rules and any amendment thereto into effect after such rules have been approved by the AFSA.
- (2) The AFSA may require an Authorised Market Institution to make its Business Rules and any amendment thereto available for public consultation prior to their becoming effective.

**53. Legal effect of Business Rules**

The Business Rules (other than Listing Rules) of an Authorised Market Institution have effect as a contract:

- (a) between the Authorised Market Institution and each participant in the market; and
- (b) between a participant and each other participant;

under which each of those Persons agrees to observe the Business Rules to the extent that they apply to the Person and to engage in conduct that the Person is required by the Business Rules to engage in.

**54. Enforcement of Business Rules**

- (1) If a Person who is under an obligation to comply with or enforce any of an Authorised Market Institution’s Business Rules fails to meet that obligation, an application to the AIFC Court may be made by:
  - (a) the AFSA; or
  - (b) the Authorised Market Institution; or
  - (c) the operator of a clearing and settlement facility with which the Authorised Market Institution has clearing and settlement arrangements; or
  - (d) a Person aggrieved by the failure.
- (2) After giving an opportunity to be heard to the applicant and the Person against whom the order is sought, the AIFC Court may make orders giving directions to:
  - (a) the Person against whom the order is sought; or
  - (b) if that Person is a Body Corporate, the directors of the Body Corporate; or
  - (c) if that Person is a Listed Fund, the Fund Manager of the Listed Fund,



about compliance with, or enforcement of, the Business Rules.

- (3) For the purposes of this section:
  - (a) if a Body Corporate fails to comply with or enforce provisions of the Business Rules of an Authorised Market Institution, a Person who holds Securities of that Body Corporate that are able to be traded on a market operated by the Authorised Market Institution is taken to be a Person aggrieved by the failure;
  - (b) if a Fund Manager of a Listed Fund fails to comply with or enforce provisions of the Business Rules of an Authorised Market Institution in respect of that Listed Fund, a person who holds Units in that Listed Fund is taken to be a Person aggrieved by the failure.
- (4) There may be other circumstances in which a Person may be aggrieved by a failure for the purposes of this section.

#### **55. Persons eligible for Membership**

- (1) Subject to such further admission criteria as the AFSA may prescribe by Rules, an Authorised Market Institution may only admit as a Member:
  - (a) an Authorised Firm;
  - (b) a Recognised Non-AIFC Member;
  - (c) a Person that is a Body Corporate which intends to undertake Commodity Derivative or Environmental Instrument transactions on the relevant Authorised Market Institution by carrying on such activities for its own account or for another Body Corporate which is in the same Group as the Person, provided that any such member of the Group for which the Person intends to act is a wholly-owned Subsidiary of a Holding Company within the Group or is the Holding Company itself; or
  - (d) any Person (whether or not referred to in (c)) by providing that Person with access to the facility, on which Investment Tokens are traded or cleared or both traded and cleared, in respect of only trading or clearing of Investment Tokens.
- (2) An Authorised Person engaged in the activity of Operating a Digital Asset Business may only admit as a Member a Person who satisfies admission criteria set out in its Membership Rules and which is either:
  - (a) an Authorised Firm;
  - (b) a Recognised Non-AIFC Member; or
  - (c) a body corporate or an individual (natural person) that carries on the activity solely as principal.

#### **56. AFSA power to require report from an Authorised Market Institution**

Without prejudice to its powers under section 96 (Power to gather information), the AFSA may require, at such frequency and in such manner and in such form as it may prescribe in Rules, an Authorised Market Institution to provide the AFSA with a report or reports relating





to the conduct of or the performance of the regulatory functions of an Authorised Market Institution, including but not limited to a report or reports addressing:

- (a) ongoing compliance of the Authorised Market Institution with the terms of its Licence; or
- (b) complaints received and dealt with and disciplinary matters arising and dealt with; or
- (c) adequacy and performance of systems and controls; or
- (d) financial matters concerning the operation of the Authorised Market Institution.

### 57. AFSA power to impose requirements on an Authorised Market Institution

Without limiting the powers available to the AFSA under Part 8 (Supervision), the AFSA may direct an Authorised Market Institution to do or not do specified things that the AFSA considers are necessary or desirable or to ensure the integrity of the AIFC financial markets, including but not limited to directions:

- (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution; or
- (b) requiring an Authorised Market Institution to act in a specified manner in relation to a transaction conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or
- (c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made;
- (d) *[intentionally omitted]*
- (e) *[intentionally omitted]*.

### 58. AFSA power to give directions to an Authorised Market Institution

Without limiting the application of section 95 (Exercise of supervisory powers by the AFSA), the AFSA may direct an Authorised Market Institution to:

- (a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period; or
- (b) suspend transactions on the market or through the facilities operated by the Authorised Market Institution; or
- (c) suspend transactions in Investments conducted on the market or through the facilities operated by the Authorised Market Institution; or
- (d) prohibit trading in loans or Investments conducted on the market or through the facilities operated by the Authorised Market Institution; or
- (e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by the Authorised Market Institution; or
- (f) prohibit a specified Person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or



- (g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the AFSA's objectives.

#### **59. Liability of Authorised Market Institutions and their Employees**

Neither an Authorised Market Institution nor any Employee of an Authorised Market Institution may be held liable for anything done or omitted to be done in the performance or discharge or purported performance or discharge of their respective duties and regulatory functions if the act or omission is shown to have been committed or omitted in good faith.

### **CHAPTER 2 – Offer of Securities**

#### **60. Prohibition – Offer of Securities**

A Person must not make an Offer of Securities except as provided in Rules made by the AFSA.

#### **61. Definition of an Offer of Securities**

An Offer of Securities means a communication to any Person in any form or by any means, presenting information on the terms of the Offer and the Securities offered, so as to enable an investor to decide whether or not to buy or subscribe to those Securities but excluding:

- (a) any communication in connection with the trading of Securities admitted to trading on an Authorised Investment Exchange; or
- (b) any communication made for the purposes of complying with the on-going reporting requirements of the AFSA or an Authorised Market Institution; or
- (c) any other communication prescribed in the Rules by the AFSA.

#### **Guidance: Offers of Units in a Listed Fund**

For the avoidance of doubt, this Chapter 2 does not apply to the Offer of Units in a Listed Fund. While a Unit of a Listed Fund is, in general terms, a type of security, it is not a Security for the purposes of the Framework Regulations (as defined in the Glossary (GLO)) or any other AIFC Financial Services Regulations or Rules to which GLO applies. Rules in relation to the Offer of Units in a Listed Fund are set out, inter alia, in the AIFC Collective Investment Scheme Rules. Fund Managers should also refer to the applicable Business Rules.

### **CHAPTER 3 – Admission to trading**

#### **62. Prohibition – Admission to trading**

A Person may not have Securities or Units in a Listed Fund admitted to trading on an Authorised Investment Exchange unless:

- (a) such Investments have been admitted to the Official List maintained by the Authorised Investment Exchange; and
- (b) in relation to Securities, a Prospectus in relation to the relevant Securities containing the information prescribed for this purpose by the AFSA has been approved by the Authorised Investment Exchange; and
- (c) in relation to Units in Listed Funds other than Overseas Listed Funds:



- (i) the Fund is a Non-Exempt Fund under the AIFC Collective Investment Scheme Rules; and
- (ii) there are Offering Materials in relation to the relevant Units and the Authorised Investment Exchange has satisfied itself that such Offering Materials satisfies the requirements in AIFC Collective Investment Scheme Rules.

### **Guidance: Units in a Listed Fund**

For the avoidance of doubt, a Prospectus is not required in relation to Units in a Listed Fund. The requirements in relation to Offering Materials, which apply to Units in a Listed Fund (other than Overseas Listed Funds), are set out in the CIS. The requirements in relation to Offering Materials for Overseas Listed Funds will be regulated according to the Business Rules.

### **63. Exemptions**

The AFSA may, at its discretion and on its own initiative, identify by Rules:

- (a) Exempt Offerors; and
- (b) Exempt Securities

to which the prohibition in section 62 does not apply or applies in a modified manner.

## **CHAPTER 4 – Listing**

### **64. Maintaining an Official List**

- (1) Subject to (3), an Official List for an Authorised Investment Exchange may be maintained by either the relevant Authorised Investment Exchange or the AFSA.
- (2) An Authorised Investment Exchange must, when maintaining an Official List, comply with the relevant requirements in these Regulations and the Rules made thereunder.
- (3) The AFSA may, at any time, transfer the responsibility for maintaining an Official List hitherto maintained by an Authorised Investment Exchange to the AFSA where it considers it necessary or desirable to do so.
- (4) An Authorised Investment Exchange must not permit trading of Securities or Units in a Listed Fund on its facilities unless such Investments are admitted to, and not suspended from, an Official List maintained by the Authorised Investment Exchange or the AFSA except where otherwise prescribed in the Rules.

### **65. Listing Rules Requirements**

- (1) An Authorised Investment Exchange must, when maintaining an Official List, establish and maintain Listing Rules as part of its Business Rules.
- (2) The Listing Rules of an Authorised Investment Exchange must contain such provisions as are prescribed in the Rules.
- (3) Where the AFSA maintains an Official List, it will, by Rules, prescribe the relevant Listing Rules.



**66. Admission of Securities or Units in a Listed Fund to an Official List**

- (1) An Authorised Investment Exchange or the AFSA may grant admission of Securities or Units in a Listed Fund to an Official List maintained by it only where it is satisfied that such admission is in accordance with the relevant Listing Rules.
- (2) Where a Person applies to have Securities or Units in a Listed Fund admitted to an Official List maintained by an Authorised Investment Exchange or the AFSA, the Authorised Investment Exchange or the AFSA, as is relevant, must notify the applicant in writing of its decision in relation to the application for admission of such Investments to the Official List.
- (3) Where a Person has any Securities or Units in Listed Funds included on an Official List, such Investments must be admitted to trading on an Authorised Investment Exchange as soon as possible.
- (4) Where any Securities or Units in Listed Funds included in an Official List are not admitted to trading in accordance with the requirement in section 66(3), such Investments must be removed from the Official List.
- (5) The AFSA may, by Rules, prescribe any circumstances in which Securities or Units in a Listed Fund admitted to an Official List need not comply with the requirement in section 66(3).

**67. AFSA objection to admission of Securities or Units in a Listed Fund to an Official List**

- (1) Where an Authorised Investment Exchange maintains an Official List, the AFSA may:
  - (a) object to the admission of Securities or Units in a Listed Fund to such an Official List; or
  - (b) impose conditions or restrictions in respect of the admission of Securities or Units in a Listed Fund to such an Official List, or vary or withdraw such conditions or restrictions, in the circumstances specified in section 67(3).
- (2) Where the AFSA maintains an Official List, the AFSA may:
  - (a) refuse an application for admission of Securities or Units in a Listed Fund to such an Official List; or
  - (b) impose conditions or restrictions, in respect of the admission of Securities or Units in a Listed Fund to such an Official List, or vary or withdraw such conditions or restrictions, in the circumstances specified in section 67(3).
- (3) The AFSA may exercise its powers under section 67(1) or 67(2) where:
  - (a) the AFSA reasonably considers that:
    - (i) granting the Securities or Units in a Listed Fund admission to an Official List would be detrimental to the interests of Persons dealing in the relevant Securities or Units in a Listed Fund using the facilities of an Authorised Investment Exchange or otherwise; or



- (ii) any requirements in the Listing Rules as are applicable have not been or will not be complied with; or
  - (iii) any requirement imposed by the AFSA has not been or will not be complied with; or
  - (iv) the Issuer of the Securities or Units in a Listed Fund has failed or will fail to comply with any obligations applying to it including those relating to having its Securities or Units in a Listed Fund admitted to an Official List or listed or traded in another jurisdiction; or
- (b) the AFSA otherwise considers it necessary or desirable to do so.
- (4) Where the AFSA objects to the admission of Securities or Units in a Listed Fund to an Official List pursuant to section 67(3)(a), such Investments must not be admitted by an Authorised Investment Exchange to its Official List.
- (5) Where the AFSA imposes conditions or restrictions on the admission of Securities or Units in a Listed Fund to an Official List pursuant to section 67(3)(b), such Investments must not be admitted by an Authorised Investment Exchange to its Official List unless there is compliance with those conditions and restrictions.

#### **68. Suspending and delisting Securities or Units in a Listed Fund from an Official List**

- (1) The AFSA or an Authorised Investment Exchange may, in accordance with its Listing Rules, suspend or delist Securities or Units in a Listed Fund from its Official List with immediate effect or from such date and time as may be specified where it is satisfied that there are circumstances that warrant such action or it is in the interests of the AIFC.
- (2) The AFSA may direct an Authorised Investment Exchange to suspend or delist Securities or Units in a Listed Fund from an Official List with immediate effect or from such date and time as may be specified if it is satisfied there are circumstances that warrant such action or it is in the interests of the AIFC.
- (3) The AFSA may revoke a direction given under subsection 68(2) at any time.
- (4) Securities or Units in a Listed Fund that are suspended from an Official List remain admitted to an Official List for the purposes of this Part.
- (5) The AFSA may, by Rules, prescribe any additional requirements or procedures relating to the delisting or suspension of Securities or Units in a Listed Fund from, or restoration of Securities or Units in a Listed Fund to, an Official List.

### **CHAPTER 5 – Prospectus Requirement**

#### **69. Prospectus content**

A Prospectus must contain:

- (a) information which is material to an investor for making an informed assessment of:
  - (i) the assets and liabilities, profits and losses, financial position, and prospects of the Issuer and of any guarantor;
  - (ii) the rights attaching to the Securities; and



- (iii) the reasons for the issuance and its impact on the Issuer; and
- (b) such further information and documents as may be specified by the AFSA pursuant to section 70.

#### **70. AFSA power to prescribe Prospectus content**

- (1) The AFSA may, by Rules, prescribe the information that must be included in a Prospectus.
- (2) The AFSA may, in prescribing the information to be included in a Prospectus, require specific content for a Prospectus of a particular type of Security.
- (3) The Issuer or other Person responsible for the issue of a Prospectus must include in the Prospectus all the information required under subsections (1) and (2) that would be reasonable for him to have knowledge of, or acquire through reasonable enquiries.
- (4) The AFSA may by Rules prescribe:
  - (a) the circumstances in which a Prospectus may incorporate any material by reference; and
  - (b) the Persons liable for the content of a Prospectus.

#### **71. AFSA power to approve omission of information**

The AFSA may approve the omission from the Prospectus, or constituent parts thereof, of certain information to be included therein, if it considers that any of the following conditions is met:

- (a) disclosure of such information would be contrary to the public interest;
- (b) disclosure of such information would be seriously detrimental to the Issuer or to the guarantor, if any, provided that the omission of such information would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the Issuer or guarantor, and of the rights attached to the securities to which the prospectus relates;
- (c) such information is of minor importance in relation to admission to trading on an Authorised Investment Exchange and would not influence the assessment of the financial position and prospects of the Issuer or guarantor.

#### **72. AFSA power to publish or require publication of information**

Where a Person issuing a Prospectus fails to publish any information which that Person is required to publish by or under these Regulations, the AFSA may direct the Issuer to publish such information or in a time frame prescribed by the AFSA or publish such information itself.

#### **73. Obligation to issue a Supplementary Prospectus**

If at any time after the issue of a Prospectus there is a significant change in, or a material mistake or inaccuracy affecting any matter contained in the Prospectus or a significant new matter arises, the Issuer or the Person responsible for the issue of the Prospectus must issue a Supplementary Prospectus which provides details of the change, mistake, inaccuracy or new matter.



**74. Right to withdraw**

- (1) Where the obligation to issue a Supplementary Prospectus arises, investors who have already agreed to purchase or subscribe for the Securities before the Supplementary Prospectus is published have the right to withdraw their acceptances. Subject to (2), such right is exercisable within five working days after the issue of the Supplementary Prospectus or such longer period as either the Issuer may decide or the Authorised Investment Exchange or the AFSA may direct.
- (2) Investors may exercise the right to withdraw their acceptances if the significant new factor, material mistake or material inaccuracy in (1) arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first.

**CHAPTER 6 – Misleading and deceptive statements or omissions**

**75. Prohibition against misleading and deceptive statements or omissions**

- (1) A Person must not issue a Prospectus if there is:
  - (a) a misleading or deceptive statement in the Prospectus; or
  - (b) any material omission from the Prospectus; or
  - (c) a significant new matter or a significant change in circumstances is known to the Issuer before the Prospectus is issued.
- (2) A Person does not contravene the prohibition in section 75(1) if that Person can prove the circumstances or matters specified in sections 76 or 77.

**76. Defence of reasonable inquiries and reasonable belief**

A Person does not commit a contravention of section 75(1), if that Person proves that he:

- (a) made all inquiries that were reasonable in the circumstances; and
- (b) after making such inquiries, believed on reasonable grounds that the Prospectus was not misleading or deceptive.

**77. Defence of reasonable reliance on information given by another Person**

- (1) A Person does not commit a contravention of section 75(1) if the Person proves that he placed reasonable reliance was placed by the Person on information given by:
  - (a) if the Person is not a natural Person, someone other than a member of the Governing Body, or Employee or representative of the Person; or
  - (b) if the Person is a natural Person, someone other than an Employee or representative of the natural person.
- (2) For the purposes of this Part, a Person is not the representative of another Person merely because the Person performs a particular professional or advisory function for that other Person.



**78. Statements about future matters**

- (1) A Person is taken to make a misleading or deceptive statement about a future matter by himself or through his representative, if he, at the time of making the statement or causing the statement to be made, did not have reasonable grounds for making the statement or causing the statement to be made.
- (2) The onus for proving that reasonable grounds existed for the purposes of section 78(1) is on the Person who made the statement or caused the statement to be made.
- (3) A Person referred to in section 78(2) may rely on the circumstances referred to in section 76 or 77 in order to prove that he had reasonable grounds for making the statement relating to the future matter.

**79. Civil compensation**

- (1) Any Person prescribed in Rules made by the AFSA as being liable for a Prospectus is liable to pay compensation to another Person who has acquired Securities to which the Prospectus relates and who has suffered loss or damage arising from any untrue or misleading statement in the Prospectus or the omission from it of any material matter required to have been included in the Prospectus under these Regulations or Rules made thereunder.
- (2) The AFSA may make Rules prescribing circumstances in which a Person who would otherwise be liable under section 79(1) will not be so liable.
- (3) Nothing in this section affects the powers, rights or liabilities that any Person may have apart from this section including the power to institute proceedings under section 129 (Action for Damages).

**80. Stop orders**

If the AFSA is satisfied that an Offer of Securities to the Public would contravene or has contravened these Regulations or the Rules made for the purposes of these Regulations or it is necessary or desirable in the interest of the AIFC, the AFSA may issue a stop order directing that no offer, issue, sale or transfer of the Securities be made for such a period of time as it thinks appropriate.

**CHAPTER 7 – Obligations of Reporting Entities**

**81. Definition of Reporting Entity**

A Person is a Reporting Entity if the Person:

- (1) has Securities or Units admitted to an Official List;
- (2) is the Fund Manager of a Listed Fund; or
- (3) is declared by the AFSA to be a Reporting Entity.

**82. Governance**

- (1) A Reporting Entity must have a corporate governance framework which is adequate to promote prudent and sound management of the Reporting Entity in the long-term interest of the Reporting Entity and its shareholders.





- (2) For the purposes of the requirement in section 82(1), the AFSA may, by Rules, prescribe:
  - (a) corporate governance principles and standards that apply to a Reporting Entity, including any requirements applicable to its board of directors and individual members, controllers, employees or any other Person as appropriate;
  - (b) requirements relating to fair treatment of shareholders; and
  - (c) provisions to address conflicts of interests.
- (3) The requirements in section 82 do not apply to Listed Funds or Fund Managers of Listed Funds. The AFSA may, by Rules, prescribe any circumstances in which such requirements do not apply to certain other Reporting Entities.

### **83. Market disclosure**

- (1) A Reporting Entity must, subject to section 83(5), make disclosures to the market of information specified by the AFSA in the circumstances prescribed by the Rules.
- (2) Without limiting the generality of section 83(1), the AFSA may, by Rules, prescribe the type of information and the circumstances in which such information must be disclosed including:
  - (a) financial information;
  - (b) Inside Information as defined in section 87(a); and
  - (c) any other information or material change which occurs in relation to a Reporting Entity.
- (3) Where information is required to be disclosed pursuant to section 83(1), the Reporting Entity must:
  - (a) issue a release of information to the market disclosing the information; and
  - (b) file a report with the AFSA,in the manner prescribed by the Rules.
- (4) Where a Reporting Entity has failed to publish information required to be published pursuant to section 83(1) and the Rules made for the purposes of this section, the AFSA may publish such information in a manner considered appropriate by the AFSA.
- (5) The AFSA may, by Rules, prescribe the circumstances in which a Reporting Entity need not comply with the disclosure requirement in section 83(1).

### **84. Financial reports**

The AFSA may prescribe by Rules:

- (a) financial reports to be filed by a Reporting Entity; and
- (b) audit requirements to be observed by a Reporting Entity.



**85. Sponsors and compliance advisers**

- (1) The AFSA may, where it considers it appropriate to do so, require that a Reporting Entity or a Person that intends to have Securities or Units in a Listed Fund admitted to an Official List or admitted to trading on an Authorised Investment Exchange appoints an Authorised Firm or Accredited Firm to act as a sponsor or compliance adviser.
- (2) The AFSA may, by Rules, prescribe:
  - (a) the circumstances in which a Reporting Entity is required to appoint a sponsor or compliance adviser;
  - (b) the requirements applicable to the Reporting Entity and to an Authorised Firm or Accredited Firm appointed as a sponsor or compliance adviser; and
  - (c) any other matter necessary to give effect to such appointments.

**CHAPTER 8 – Prevention of Market Abuse**

**86. Market Abuse**

A Person must not, in the AIFC or elsewhere, directly or indirectly:

- (a) acquire or dispose of, or attempt to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, an Investment, on the basis of Inside Information relating to the Investment; or
- (b) disclose Inside Information to another Person otherwise than in the proper course of the exercise of his employment, profession or duties; or
- (c) recommend or induce any Person, on the basis of Inside Information, to acquire or dispose of an Investment to which that information relates; or
- (d) effect, or participate in effecting, transactions or orders to trade (otherwise than for legitimate reasons in conformity with accepted market practice on the relevant market) which:
  - (i) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price or value of, one or more Investments; or
  - (ii) secure the price of one or more Investments at an abnormal or artificial level; or
- (e) effect, or participate in effecting, transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; or
- (f) disseminate, or cause the dissemination of, information by any means which gives, or is likely to give, a false or misleading impression as to an Investment by a Person who knew or could reasonably be expected to have known that the information was false or misleading.

**87. Rules relating to Market Abuse**

The AFSA may issue Rules in respect of the scope and effect of section 86, including:

- (a) the meaning of Inside Information;



- (b) particular types of conduct that are to be regarded as contravening or not contravening section 86;
  - (c) particular types of conduct that are not to be regarded as contravening section 86; and
  - (d) reasons which may or may not be regarded as legitimate, and practices that may or may not be regarded as accepted market practice for the purposes of section 86(d),
- and such Rules will be binding on all Persons to whom section 86 relates.

## CHAPTER 9 – Takeovers

### 88. Takeover Rules

- (1) The AFSA may prescribe by Rules (“the Takeover Rules”):
  - (a) the procedures for and obligations of Persons in respect of a Takeover of an Issuer whose Securities are admitted to an Official List with a view to ensuring:
    - (i) that where a Takeover takes place, it does so in an efficient, competitive, fair and informed market;
    - (ii) that shareholders are treated fairly and shareholders of the same class are treated the same; and
    - (iii) that a Takeover is conducted in an orderly framework;
  - (b) principles to be observed by a Person involved in a Takeover (“the Takeover Principles”), relating to, but not limited to:
    - (i) treatment of shareholders and of classes of shareholders in a Takeover;
    - (ii) adequacy of time and of information provided to shareholders to enable proper consideration of a Takeover bid;
    - (iii) avoidance of the creation of false markets; and
    - (iv) avoidance of oppression of minorities.
- (2) A Person who is involved in a Takeover of an Issuer whose Securities are admitted to an Official List must comply with and observe the spirit and the wording of the Takeover Principles.
- (3) The requirements of section 88 do not apply to Listed Funds.

## CHAPTER 10 – Recognition

### 89. Recognition of Non-AIFC Market Institutions

- (1) A Person which operates an investment exchange, clearing house from a place of business in a jurisdiction other than the AIFC may apply to the AFSA for an order declaring it to be a Recognised Non-AIFC Investment Exchange or Recognised Non-AIFC Clearing House as appropriate (together “Recognised Non-AIFC Market Institutions”).
- (2) An application under subsection (1) must be made in such manner as the AFSA may by Rules require.



- (3) The AFSA may make an order referred to in subsection (1) if, having regard to the law and practice of the country or territory in which the applicant's head office is situated and to the rules and practice of the applicant, it appears to the AFSA that the following requirements are met:
- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with the relevant requirements for the licensing of an Authorised Market Institution in Chapter 2 of Part 3;
  - (b) there are adequate procedures for dealing with a Person who is unable, or likely to become unable, to meet his obligations in respect of one or more Market Contracts connected with the investment exchange or clearing house;
  - (c) the applicant is able to co-operate with the AFSA by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between the AFSA and those responsible for the supervision of the applicant in the country or territory in which the applicant or the applicant's head office is situated.

### **90. Exemption for Recognised Non-AIFC Market Institutions from General Prohibition**

- (1) An Recognised Non-AIFC Investment Exchange will not be deemed to be carrying on any Market Activity or Regulated Activity in the AIFC where such activity:
- (a) is carried on as a part of the Recognised Non-AIFC Investment Exchange's business as an investment exchange; or
  - (b) is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another Person.
- (2) An Recognised Non-AIFC Clearing House will not be deemed to be carrying on any Market Activity or Regulated Activity in the AIFC where such activity:
- (a) is carried on for the purposes of, or in connection with, the provision of clearing services by the Recognised Non-AIFC Clearing House; or
  - (b) is carried on for the purposes of, or in connection with, the provision by the Recognised Non-AIFC Clearing House of services designed to facilitate the provision of clearing services by another Person.

### **91. Recognised Non-AIFC Member**

- (1) A Person located in a jurisdiction other than the AIFC may apply to the AFSA for an order declaring it to be a Recognised Non-AIFC Member.
- (2) An application under subsection (1) must be made in such manner as the AFSA may by Rules require.
- (3) The AFSA may make an order referred to in subsection (1) if, the applicant satisfies the AFSA that the following requirements are met:
- (a) the applicant is licensed or otherwise authorised to trade on or use the facilities of an exchange or clearing house in a jurisdiction acceptable to the AFSA;



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- (b) the applicant is regulated in respect of trading in such jurisdiction by a regulator to a standard satisfactory to the AFSA;
  - (c) the law and practice under which the applicant is licensed or otherwise authorised is broadly equivalent to the AFSA's regulatory regime as it applies to a Member;
  - (d) when using the facilities of an Authorised Investment Exchange or Authorised Clearing House, MTF Operator, OTF Operator, or Digital Asset Trading Facility Operator the applicant does not exceed the scope of the activities it is authorised to carry on by those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated;
  - (e) the applicant has agreed to cooperate with the AFSA and subject itself to such parts of the legal and regulatory framework administered by the AFSA as the AFSA may require.
- (4) The AFSA will only make an order referred to in subsection (1) if adequate arrangements exist, or will exist, for co-operation between the AFSA and those responsible for the supervision of the applicant in the country or territory in which the applicant or the applicant's head office is situated.
- (5) The AFSA may prescribe by Rules ongoing criteria which a Person must satisfy in order to continue to be a Recognised Non-AIFC Member.
- (6) If it is necessary or desirable in pursuit of its Regulatory Objectives, the AFSA may revoke or vary an order declaring a Person to be a Recognised Non-AIFC Member in the circumstances and manner prescribed in the Rules made for the purposes of this section.



## PART 7: COLLECTIVE INVESTMENT SCHEMES

### 92. Definition of Collective Investment Scheme

- (1) "Collective Investment Scheme" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable Persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the Persons who are to participate do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.
- (3) The arrangements must also have either or both of the following characteristics:
  - (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
  - (b) the property is managed as a whole by or on behalf of the operator of the scheme.
- (4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single Collective Investment Scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) The AFSA may by Rules provide that arrangements do not amount to a Collective Investment Scheme:
  - (a) in specified circumstances; or
  - (b) if the arrangements fall within a specified category of arrangement.

### 93. Registration of Collective Investment Schemes

- (1) The AFSA may make Rules relating to the registration by it of Collective Investment Schemes.
- (2) Rules made by the AFSA under section 93(1) may provide that all or certain categories of Collective Investment Schemes may not be established or promoted by Authorised Persons unless they have been registered.
- (3) Rules made by the AFSA under section 93(1) may also include provisions as to:
  - (a) the constitution, management and operation of such Collective Investment Schemes;
  - (b) the investment and borrowing powers of such Collective Investment Schemes;
  - (c) the procedure for application to the AFSA for registration of Collective Investment Schemes;
  - (d) operating duties and responsibilities in respect of Collective Investment Schemes;
  - (e) the registration of offering material or particulars and reporting requirements for Collective Investment Schemes; and



- (f) suspension of dealings in and termination of Collective Investment Schemes.

**94. Power to give directions in respect of Collective Investment Schemes**

- (1) The AFSA may give a direction under this section if it appears to the AFSA that:
  - (a) in respect of a Collective Investment Scheme registered under section 93(1), one or more of the requirements under Rules made pursuant to section 93(1) is no longer satisfied or is likely to be breached; or
  - (b) it is necessary or desirable to give such a direction in order to protect the interests of participants in a registered Collective Investment Scheme.
- (2) A direction under this section may:
  - (a) require the Person or Persons responsible for the management or operation of a registered Collective Investment Scheme:
    - (i) to cease the issue or redemption of both the issue and redemption of units in the Collective Investment Scheme; or
    - (ii) to wind up the Collective Investment Scheme;
  - (b) withdraw the AFSA's registration of that Collective Investment Scheme; or
  - (c) restrict or suspend promotion or sale of units in a Collective Investment Scheme.



**PART 8: SUPERVISION**

**CHAPTER 1 – Supervisory powers of the AFSA**

**95. Exercise of supervisory powers by the AFSA**

- (1) The AFSA may exercise any of the powers set out in this Chapter at any time where it considers it necessary or desirable to do so in accordance with its Regulatory Objectives.
- (2) The AFSA may set out in Rules or guidance circumstances in which it is likely to exercise such powers.
- (3) If the AIFC has exercised one or more of the powers set out in this Chapter it may, if it considers it necessary or desirable to do so in accordance with the Regulatory Objectives:
  - (a) withdraw a prohibition, restriction, requirement, or decision to exercise any of its supervisory powers; or
  - (b) substitute or vary an existing prohibition, restriction, requirement, or decision to exercise any of its supervisory powers.
- (4) A requirement imposed on a Person as a result of the exercise by the AFSA of powers under this Part may be enforceable by injunction on the application of the AFSA to the AIFC Court.
- (5) Any prohibition or requirement including any variation or substitution of such prohibition or requirement, does not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published in relation to such imposition, withdrawal, substitution or variation.

**96. Power to gather information**

- (1) The AFSA may, by notice in writing, require an Authorised Person, Ancillary Service Provider, Approved Individual, Designated Individual or any Director, Employee or representative of an Authorised Person or Ancillary Service Provider to:
  - (a) give, or procure the giving of, such specified information; or
  - (b) produce, or procure the production of, such specified documents;to the AFSA as the AFSA considers necessary or desirable to meet the Regulatory Objectives.
- (2) The AFSA may require an Authorised Person or Ancillary Service Provider to allow the AFSA to enter its premises during normal business hours or at any other time as may be agreed for the purpose of inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the Regulatory Objectives.
- (3) The AFSA may exercise its powers under this section 96 in respect of any information, documents or premises wherever they may be located in the Republic of Kazakhstan.
- (4) Information given or a document produced as a result of the exercise by the AFSA of powers under this section is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.





**97. Power to require the production of a report**

- (1) The AFSA may, by notice in writing, require an Authorised Person or Ancillary Service Provider to provide the AFSA with a report on any matter as the AFSA considers necessary or desirable to meet the Regulatory Objectives.
- (2) The Person appointed to make a report must be a Person nominated or approved by the AFSA.
- (3) If a requirement has been made of an Authorised Person or Ancillary Service Provider, the Authorised Person or Ancillary Service Provider must take all reasonable steps to ensure that:
  - (a) any Person who is providing or has provided services to the Authorised Person or Ancillary Service Provider must provide all such assistance as the appointed Person may reasonably require; and
  - (b) the appointed Person co-operates with the AFSA.
- (4) The obligation in section 97(1) is enforceable on application by the AFSA to the AIFC Court.
- (5) The costs of providing a report must be paid by the Authorised Person or Ancillary Service Provider to whom a notice has been given under subsection 97(1).
- (6) Subject to section 97(7), information given or a document produced as a result of the exercise by the AFSA of powers under this section is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (7) The AFSA may not disclose a statement made by a Person in a report made pursuant to a requirement made of the Person under section 97(1) to any law enforcement agency for the purpose of criminal proceedings against the Person unless:
  - (a) the Person consents to the disclosure; or
  - (b) the AFSA is required by law or court order to disclose the statement.

**98. Power to restrict, withdraw or suspend a Licence**

- (1) The AFSA may:
  - (a) impose or vary such conditions, restrictions and requirements on a Licence as the AFSA considers appropriate; or
  - (b) withdraw an Authorised Person's Licence or vary its Licence to remove one or more Regulated Activities or Market Activities; or
  - (ba) withdraw an Ancillary Service Provider's Licence or vary its Licence to remove one or more Ancillary Services; or
  - (c) suspend an Authorised Person's Licence in relation to one or more Regulated Activities or Market Activities.
  - (d) suspend an Ancillary Service Provider's Licence in relation to one or more Ancillary Services.



- (2) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

**99. Power to impose a prohibition**

- (1) The AFSA may prohibit an Authorised Person or Ancillary Service Provider from:
- (a) entering into certain specified transactions or types of transactions; or
  - (b) soliciting business from certain specified Persons or types of Persons; or
  - (c) carrying on business in a specified manner or other than in a specified manner; or
  - (d) using a particular name or description in respect of the Authorised Person or Ancillary Service Provider; or
  - (e) dealing with any relevant property in a specified manner or other than in a specified manner; or
  - (f) assisting, counselling or procuring another Person to deal with any relevant property in a specified manner or other than in a specified manner.
- (2) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

**99-1. Power to give directions for prudential purposes and capital requirements**

- (1) For prudential purposes and capital requirements, the AFSA may direct an Authorised Person or Authorised Persons within a specified class to, among others:
- (a) comply with any specified additional capital or liquidity requirements;
  - (b) apply a specific provisioning policy or treatment of specified assets;
  - (c) comply with specified limits on material risk exposures;
  - (d) comply with specified limits on exposures to related parties;
  - (e) meet additional or more frequent reporting requirements; or
  - (f) take such other action as is specified in the direction.
- (2) The AFSA may direct an Affiliate of an Authorised Person to take specified actions or not to carry on specified activities if the AFSA:
- (a) is the consolidated supervisor of the Group to which the Authorised Person belongs; and
  - (b) is satisfied that the direction is necessary or desirable for the purposes of the effective prudential supervision of the Group on a consolidated basis.
- (3) A direction to an Affiliate under subsection (2) may include a requirement that the Affiliate:
- (a) limit any activities it carries on or may carry on (including closing any office which is outside the jurisdiction in which it has its principal place of business and head office)



- if the activities are reasonably likely to expose the Authorised Person or its Group to excessive risks or risks that are not properly managed; or
- (b) take such other measures as are necessary to remove any impediments to effective supervision of the Group on a consolidated basis, including a direction to take steps to restructure the Group.
  - (4) Nothing in this section limits the scope or application of any other power that the AFSA may have in these Regulations, any Rules or Regulations or legislation administered by it.
  - (5) A direction given under this section comes into force on the date specified in it and remains in force, subject to subsection (7), until it is revoked or varied in writing by the AFSA under subsection (6).
  - (6) The AFSA may revoke or vary any direction given pursuant to this section.
  - (7) A direction given to Authorised Persons within a specified class under subsection (1), including any variation made to such a direction under subsection (6), may not remain in force for a period longer than 12 months from the date specified in the initial direction given under subsection (1).
  - (8) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this decision.

#### **100. Power to impose a requirement**

- (1) The AFSA may require an Authorised Person or Ancillary Service Provider to:
  - (a) take or refrain from taking such action as the AFSA considers appropriate;
  - (b) carry on business in, and only in, a specified manner;
  - (c) deal with any relevant property in a specified manner;
  - (d) deal with any relevant property such that:
    - (i) the property remains of a value and in a condition that appears to the AFSA to be desirable with a view to ensuring that the Authorised Person or Ancillary Service Provider will be able to meet its liabilities in relation to the business which constitutes a Regulated Activity or Ancillary Service for which it holds a Licence; and
    - (ii) the Authorised Person or Ancillary Service Provider is able at any time to transfer or dispose or otherwise deal with the property when instructed to do so by the AFSA.
- (2) For the purposes of this section:
  - (a) “dealing” in relation to property includes the maintaining, holding, disposing and transferring of property; and
  - (b) “relevant property”, in relation to an Authorised Person, means:



- (i) any property held by the Person on behalf of any of the clients of the Person, or held by any other Person on behalf of or to the order of the Person; or
  - (ii) any other property which the AFSA reasonably believes to be owned or controlled by the Person.
- (3) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

**101. Power to enter into enforceable agreement**

- (1) The AFSA may enter into a written agreement with any Person.
- (2) An agreement under (1) may include an agreement to:
  - (a) pay any sum to any Person (including the AFSA); or
  - (b) take remedial action; or
  - (c) do any other thing.
- (3) The terms of such an agreement may be varied with the consent of the AFSA.
- (4) If the AFSA considers that the Person who entered into the agreement has been or is in breach of any of its terms, it may apply to the AIFC Court for:
  - (a) an order directing the Person to comply with the terms of the agreement; or
  - (b) an order directing the Person to pay to any Person or to the AFSA an amount up to the amount of any financial benefit that the Person has obtained directly or indirectly and that is reasonably attributable to the breach; or
  - (c) any order that the AIFC Court considers appropriate directing the Person to compensate any other Person who has suffered loss or damage as a result of the breach; or
  - (d) any other order that the AIFC Court considers appropriate.

**CHAPTER 2 – Obligations of Authorised Persons and Ancillary Service Providers**

**102. Obligation of disclosure to the AFSA**

- (1) Subject to (2), an Authorised Person or Ancillary Service Provider must disclose to the AFSA anything which reasonably tends to show:
  - (a) a breach, or likely breach of a provision of legislation administered by the AFSA; or
  - (b) a failure, or likely failure, to comply with any obligation to which an Authorised Person or Ancillary Service Provider is subject under such legislation; or
  - (c) any other matter as the AFSA may prescribe in Rules;

which may be attributable to the conduct of the Authorised Person or Ancillary Service Provider or its Directors, officers, Employees or representatives.



- (2) Section 102(1) does not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (3) An Authorised Person or Ancillary Service Provider must establish and implement appropriate systems and internal procedures to enable its compliance with section 102(1).
- (4) Any provision in an agreement between an Authorised Person, Ancillary Service Provider and a Director, officer, Employee, representative or auditor thereof is void in so far as it purports to hinder compliance with an obligation under section 102(1).
- (5) No Person may be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an Authorised Person or Ancillary Service Provider to comply with an obligation under subsection 102(1).
- (6) The AIFC Court may, on application of an aggrieved Person, make any order for relief where a Person has been subjected to any such detriment or loss or damage as referred to in section 102(5).

### **103. Obligation to comply with an order or requirement of the AFSA**

If the AFSA makes an order, gives a direction or prohibition, or makes any requirement in relation to an Authorised Person or Ancillary Service Provider pursuant to a provision of these Regulations or Rules made thereunder or other legislation administered by the AFSA, such Authorised Person or Ancillary Service Provider must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

### **104. Provision of information to the AFSA**

- (1) An Authorised Person or Ancillary Service Provider must not:
  - (a) provide information which is false, misleading or deceptive to the AFSA; or
  - (b) conceal information where the concealment of such information is likely to mislead or deceive the AFSA.
- (2) An Ancillary Service Provider must provide to the AFSA, on an annual basis, an activity report using the appropriate form specified by the AFSA.

### **105. Obstruction of the AFSA**

An Authorised Person or Ancillary Service Provider must not engage in conduct that is intended to obstruct the AFSA in the exercise of any powers under this Part or Part 9 (Enforcement), including the:

- (a) destruction of documents;
- (b) failure to give or produce information or documents specified by the AFSA;
- (c) failure to attend before the AFSA at a specified time and place to answer questions;
- (d) giving of information that is false or misleading; and
- (e) failure to give any assistance in relation to an investigation which the Person is able to give.



**106. No liability for provision of information or documents to the AFSA**

An Authorised Person, an Ancillary Service Provider, an Approved Individual, a Designated Individual or any other Employee or Director of an Authorised Person or an Ancillary Service Provider is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of:

- (a) complying, or proposing to comply, with a requirement made, or purporting to have been made, under any provision of this Part for inspection of, copying of, giving of or production of, information or documents;
- (b) the giving of information or production of a document by the Person to the AFSA in good faith and in reasonable belief that the information or document is relevant to any functions of the AFSA whether such information or document is given or produced pursuant to a requirement at law or otherwise.

**107. Self-incrimination**

Subject to section 108(1), it is not a reasonable excuse for a Person to refuse or fail to:

- (a) permit inspection and copying of any information or document; or
- (b) give or produce, or procure the giving or production of, any information or document; or
- (c) answer questions;

pursuant to any requirement under either this Part 8 (Supervision) or 9 (Enforcement) on the grounds that any such information or document or answer, as the case may be:

- (d) might tend to incriminate the Person or make the Person liable to a penalty; or
- (e) is, or contains, or might reveal a Privileged Communication; or
- (f) is, or contains, or might reveal a communication made in confidence.

**108. Privilege**

- (1) Where the AFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a Privileged Communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless:
  - (a) where the Person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or
  - (b) otherwise, the Person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.
- (2) Where a lawyer so refuses to comply with a requirement, he must, as soon as practicable, give to the AFSA a written notice setting out:



- (a) where the lawyer knows the name and address of the Person to whom, or by whom, or on behalf of whom, the communication was made, then that name and address; and
  - (b) where the requirement to give information or produce a document relates to a communication which was made in writing, then sufficient particulars to identify the document containing the communication.
- (3) “Privileged Communication” means a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law, but does not include a general duty of confidentiality.

## **CHAPTER 3 – Accounting / Auditing**

### **109. Requirement to appoint an Auditor**

- (1) An Authorised Person must appoint an Auditor.
- (2) The AFSA may direct, or the AIFC Court on an application made by the AFSA may order, an Authorised Person to:
  - (a) appoint an Auditor, if an Auditor has not been appointed by the Authorised Person; or
  - (b) remove an Auditor and appoint a new Auditor, if in the opinion of the AFSA or the AIFC Court the Auditor appointed by the Authorised Person is not suitable to provide Audit Services.
- (3) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

### **110. Auditor rules**

The AFSA may make such Rules regarding:

- (a) the appointment, term of office, registration or removal of auditors;
- (b) the qualification or approval of auditors;
- (c) the duties, functions and powers of auditors;
- (d) the scope, content and timing of any reports, reviews or audits to be undertaken by auditors;
- (e) the remuneration of auditors;
- (f) the notification or reporting obligations of auditors (whether to the relevant Authorised Person, the AFSA or otherwise); and
- (g) such other related or ancillary matters the AFSA thinks fit.

## **CHAPTER 4 – Financial Service Transfers**

### **111. Relevant Transfer**

The AFSA may provide by Rules that the transfer of the business of carrying on specified Regulated Activities by an Authorised Firm (a “Relevant Transfer”) either:



- (a) may only be made by an order of the AIFC Court under section 113; or
- (b) may be made by such an order if the transferor elects.

**112. Application to the AIFC Court**

- (1) An application to the AIFC Court for an order sanctioning a Relevant Transfer may be made by either the transferor or the transferee under the Relevant Transfer or both.
- (2) Where an application is made to the AIFC Court for an order sanctioning a Relevant Transfer, the AFSA may give directions in respect of:
  - (a) the preparation of a report in relation to the transfer;
  - (b) the notification of specified Persons of the transfer; and
  - (c) the publication of notices in relation to the transfer.
- (3) On an application under (1), the following are entitled to be heard:
  - (a) any Person who alleges that he would be adversely affected by the carrying out of the transfer; and
  - (b) the AFSA.

**113. Powers of the Court in relation to a transfer scheme**

- (1) The AIFC Court may make an order under this section approving a Relevant Transfer if:
  - (a) any directions given by the ASFA pursuant to section 112(2) have been complied with;
  - (b) on or before the Relevant Transfer becoming effective, the transferee:
    - (i) will have the authorisation required (if any) to enable it to carry on the business which is to be transferred to it in the place to which it is to be transferred; and
    - (ii) will possess adequate financial resources to carry on the business concerned in accordance with the legislation applicable in the place to which it is to be transferred; and
  - (c) the AIFC Court considers, in all the circumstances of the case, it is appropriate to sanction the Relevant Transfer.
- (2) If the AIFC Court makes an order sanctioning a Relevant Transfer, it may by that or any subsequent order make such provision (if any) as it thinks fit:
  - (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the Authorised Firm concerned; or
  - (b) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the firm concerned; or
  - (c) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the Relevant Transfer is fully and effectively carried out; or





- (d) for dealing with the interests of any Person who, within such time and in such manner as the AIFC Court may direct, objects to the Relevant Transfer; or
  - (e) for the dissolution, without winding up, of any firm concerned.
- (3) An order may:
  - (a) transfer property or liabilities whether or not the Authorised Firm concerned otherwise has the capacity to effect the transfer in question; or
  - (b) make provision in relation to property which was held by the Authorised Firm concerned as trustee; or
  - (c) make provision as to future or contingent rights or liabilities of the Authorised Firm concerned, including provision as to the construction of instruments under which such rights or liabilities may arise.
- (4) If an order makes provision for the transfer of property or liabilities:
  - (a) the property is transferred to and vests in; and
  - (b) the liabilities are transferred to and become liabilities of;the transferee as a result of the order.
- (5) If any property or liability included in the order is governed by the law of any jurisdiction other than the AIFC, the order may require the Authorised Firm concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (6) Property transferred as the result of an order under this section may, if the AIFC Court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.
- (7) An order under this section which provides for the transfer of property is to be treated as an instrument of transfer for the purposes of any Regulation or Rule requiring the delivery of an instrument of transfer to register property.



**PART 9: ENFORCEMENT**

**CHAPTER 1 – Power to conduct investigations**

**114. Power of the AFSA to conduct an investigation**

- (1) The AFSA may conduct such investigation as it considers appropriate and expedient:
  - (a) where it has reason to suspect that a contravention of any legislation administered by the AFSA is being or may have been committed; or
  - (b) further to a request made by a Financial Services Regulator.
- (2) A Person is entitled to legal representation during the course of an investigation.

**115. Costs of an Investigation**

- (1) The AFSA will pay the costs and expenses of an investigation save that, where, as a result of an investigation under section 114, the Person under investigation is found to have contravened any legislation administered by the AFSA, the AFSA or, where appropriate, the AIFC Court, may order that the Person must pay the AFSA in respect of the whole or any part of the costs and expenses of the investigation.
- (2) The AFSA may apply to the AIFC Court for an order under section 115(1) only where there is a proceeding before the AIFC Court relating to the alleged contravention by the Person.

**116. Powers to Obtain Information and Documents for Investigation**

- (1) If the AFSA considers that a Person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:
  - (a) enter the business premises of such Person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
  - (b) require such Person, by written notice, to
    - (i) give, or procure the giving of, specified information in such form as it may reasonably require; or
    - (ii) produce, or procure the production of, specified documents; or
    - (iii) attend before an officer or Employee of the AFSA at a specified time and place to answer questions in private (compulsory interview); or
    - (iv) give it assistance in relation to the investigation.
- (2) Where the AFSA exercises its power under section 116(1)(a) to enter business premises, it may:
  - (a) require any appropriate Person to make available any relevant information stored at those premises for inspection or copying;
  - (b) require any appropriate Person to convert any relevant information into a form capable of being copied; and



- (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) Where the AFSA exercises its power under section 116(1)(b)(iii) to conduct a compulsory interview, it may give a direction:
  - (a) concerning who may be present;
  - (b) preventing any Person present during any part of the compulsory interview from disclosing to any other Person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
  - (c) concerning the conduct of any Person present, including as to the manner in which they will participate in the interview;
  - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
  - (e) requiring the interviewee to answer any questions relevant to the investigation.
- (4) The AFSA may require the relevant Person to give such information or produce such documents by the end of a reasonable period, at a place and in a form specified in the notice.
- (5) The AFSA may exercise its powers under subsection 116(1) in respect of any Person within, or outside of, the AIFC provided that, if the Person is outside the AIFC and is not an Authorised Person, Ancillary Service Provider, or Approved Individual, Designated Individual, or Director of an Authorised Person or Ancillary Service Provider, the AFSA must either:
  - (a) use any arrangements it has with a regulatory authority in the jurisdiction in which the Person is resident or domiciled, or the premises are located, to assist it to exercise the power; or
  - (b) apply to the AIFC Court for an order compelling the Person to provide the information, produce or procure the production of the documents, or answer questions, or permitting the AFSA to enter the premises of that Person.

**117. Use and effect of information and documents obtained for an Investigation**

- (1) Subject to section 117(2), any information given or document produced as a result of the exercise by the AFSA of powers under section 116 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (2) The AFSA may not disclose a statement made by a Person in answer to any question asked pursuant to a requirement made of the Person under section 116(1)(b)(iii) to any law enforcement agency for the purpose of criminal proceedings against the Person unless:
  - (a) the Person consents to the disclosure; or
  - (b) the AFSA is required by law or court order to disclose the statement.
- (3) The AFSA may retain possession of any information and documents given to it pursuant to a requirement made under section 116(1) for so long as is necessary:
  - (a) for the purposes of the investigation to which the notice relates; or



- (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
  - (c) for such a proceeding to be completed.
- (4) A Person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under section 116(1), but any lien is not otherwise prejudiced.
- (5) Where a Person is unable to produce information or documents in compliance with a requirement made under section 116(1), the AFSA may require the Person to state, to the best of that Person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (6) Where the AFSA considers that, if disclosed, the fact of the issuing of a notice requiring a Person to:
- (a) produce documents; or
  - (b) give information; or
  - (c) attend a compulsory interview; or
  - (d) give assistance;

may hinder the investigation to which it relates, the AFSA may direct a Person who receives a notice under section 116(1) and/or that person's legal representative not to disclose the receipt of the notice or any information relating to compliance therewith to any other Person, other than his legal representative under a duty of confidentiality.

## **CHAPTER 2 – Disciplinary sanctions**

### **118. Sanctions for contraventions**

- (1) If the AFSA considers that a Person has committed a Contravention, it may:
- (a) fine the Person such amount as it considers appropriate in respect of the contravention;
  - (b) censure the Person in respect of the contravention;
  - (c) make a direction requiring the Person to effect restitution or compensate any other Person in respect of the contravention within such period and on such terms as the AFSA may direct;
  - (d) give a direction requiring the Person to account for, in such form and on such terms as the AFSA may direct, such amounts as the AFSA determines to be profits or unjust enrichment arising from the contravention;
  - (e) give a direction requiring the Person to cease and desist from such activity constituting or connected to the contravention as the AFSA may stipulate;
  - (f) give a direction requiring the Person to do an act or thing to remedy the contravention or matters arising from the contravention;
  - (g) give a direction restricting or prohibiting the Person from holding office in or being a Director or Employee of any Authorised Person or Ancillary Service Provider.



- (2) Nothing in this section prevents the AFSA from exercising any other power that it may exercise under any legislation administered by it.
- (3) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

### 119. General contravention provision

A Person commits a Contravention if he:

- (a) fails to comply with any prohibition or requirement imposed on him by the AFSA, any undertaking given by him to the AFSA, or any agreement made by him with the AFSA; or
- (b) does anything that is prohibited under, or that contravenes any legislation administered by the AFSA; or
- (c) does not do something that the Person is required to do under any legislation administered by the AFSA; or
- (d) commits an act of fraud or abuses any fiduciary duty which he owes to his clients or customers or to an Authorised Person; or
- (e) acts in a deceptive, misleading or dishonest manner in any context; or
- (f) otherwise commits any contravention described as such in these Regulations or Rules made by the AFSA.

### 120. Involvement in contraventions

- (1) If a Person is knowingly concerned in a Contravention by another Person of legislation administered by the AFSA, that Person also commits a Contravention of the relevant legislation.
- (2) A Person is knowingly concerned in a Contravention if, and only if, that Person:
  - (a) has aided, abetted, counselled, or procured the Contravention; or
  - (b) has induced, whether by threats or promises or otherwise, the Contravention; or
  - (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
  - (d) has conspired with another or others to commit the Contravention.

### 121. Contraventions by Bodies Corporate

- (1) If a Contravention committed by a Body Corporate is shown:
  - (a) to have been committed with the consent or connivance of an officer; or
  - (b) to be attributable to any neglect on his part;

the officer as well as the Body Corporate commits the Contravention and is liable to sanctions accordingly.



- (2) If the affairs of a Body Corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the Body Corporate.
- (3) The AFSA may by Rules provide for the application of any provision of this section, with such modifications as the AFSA considers appropriate, to a Body Corporate formed or recognised under the law of a territory outside the AIFC.

### CHAPTER 3 – Other enforcement powers

#### 122. Appointment of Managers

- (1) Where it considers it necessary or desirable in the pursuit of its objectives, the AFSA may issue a written notice requiring an Authorised Person to appoint one or more individuals to act as managers of the business of such Person on such terms as the AFSA may specify in any such notice.
- (2) The terms specified in the written notice may be varied by the AFSA from time to time by further written notice.
- (3) An individual so appointed by an Authorised Person must be either nominated or approved by the AFSA.

#### 123. Compulsory Winding up

- (1) The AFSA may petition to the AIFC Court for the winding up of an Authorised Person or Ancillary Service Provider.
- (2) On such a petition, the AIFC Court may wind up the Authorised Person or Ancillary Service Provider if it is of the opinion that it is just and equitable that the Authorised Person or Ancillary Service Provider be wound up.

### CHAPTER 4 – Injunctions, Restitution and Actions for Damages

#### 124. Injunction – contraventions

- (1) Where a Person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention within the meaning of section 119 the AIFC Court may, on application of the AFSA or any aggrieved Person, make one or more of the following orders:
  - (a) an order restraining the Person from engaging in the conduct including but not limited to, engaging in conduct that may constitute a contravention;
  - (b) an order requiring that Person to do any act or thing including, but not limited to, acts or things to remedy the contravention or to minimise loss or damage;
  - (c) any other order as the AIFC Court sees fit.

#### 125. Injunction – investigations and proceedings

- (1) Where:



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- (a) the AFSA is conducting or has conducted an investigation into the acts or omissions of a Person (the 'relevant Person') which may constitute a contravention within the meaning of section 119; or
- (b) a civil or regulatory proceeding has been instituted, by the AFSA or otherwise, against a relevant Person in relation to an alleged contravention,

the AIFC Court may, on application of the AFSA or any aggrieved Person, make one or more of the following orders:

- (c) an order restraining the relevant Person from paying, transferring, disposing of, or otherwise dealing with, any assets of his which he is reasonably likely to dispose of or otherwise deal with;
  - (d) an order restraining any other Person holding assets on behalf of the relevant Person from paying, transferring, disposing of, or otherwise dealing with, any assets of the relevant Person which are reasonably likely to be disposed of or otherwise dealt with;
  - (e) an order prohibiting the relevant Person or any other Person from taking or sending out of the jurisdiction of the AIFC Court any assets of the relevant Person or held on his behalf;
  - (f) if the relevant Person is a natural person
    - (i) an order appointing a receiver or trustee, having such powers as the AIFC Court may see fit, of the property or any of the property of the relevant Person;
    - (ii) an order requiring him to deliver up to the AIFC Court his passport and such other documents as the AIFC Court sees fit; or
    - (iii) an order prohibiting him from leaving the Republic of Kazakhstan without the consent of the AIFC Court;
  - (g) if the relevant Person is a Body Corporate, an order appointing a receiver or receiver and manager, having such powers as the AIFC Court may see fit, of the property or any of the property of the relevant Person.
- (2) Nothing in section 125 affects the powers that any Person or the AIFC Court may have apart from this section.

### 126. Injunction – market abuse

- (1) If, on the application of the AFSA, the AIFC Court is satisfied:
- (a) that there is a reasonable likelihood that any Person will engage in Market Abuse; or
  - (b) that any Person is or has engaged in Market Abuse and that there is a reasonable likelihood that the Market Abuse will continue or be repeated;
- the AIFC Court may make an order restraining the Market Abuse.
- (2) If on the application of the AFSA the AIFC Court is satisfied:
- (a) that any Person is or has engaged in Market Abuse; and



(b) that there are steps which could be taken for remedying the Market Abuse;

the AIFC Court may make an order requiring him to take such steps as the AIFC Court may direct to remedy it.

(3) If, on the application of the AFSA, the AIFC Court is satisfied that any Person:

(a) may be engaged in Market Abuse; or

(b) may have been engaged in Market Abuse.

the AIFC Court may make an order restraining the Person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.

(4) In subsection (2), references to remedying any Market Abuse include references to mitigating its effect.

#### 127. Restitution Order – contraventions

(1) The AIFC Court may, on the application of the AFSA, make an order under subsection (2) if it is satisfied that a Person has committed a contravention within the meaning of section 119, and:

(a) that profits have accrued to him as a result of the contravention; or

(b) that one or more Persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The AIFC Court may order the Person concerned to pay to the AFSA such sum as appears to the Court to be just and equitable having regard:

(a) in a case within paragraph (a) of subsection (1), to the profits appearing to the AIFC Court to have accrued; and

(b) in a case within paragraph (b) of subsection (1), to the extent of the loss or other adverse effect; and

(c) in a case within both of those paragraphs, to the profits appearing to the AIFC Court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the AFSA in pursuance of an order under subsection (2) must be paid by it to such Person or distributed by it among such Persons as the AIFC Court may direct.

(4) On an application under subsection (1) the AIFC Court may require the Person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes:

(a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of subsection (1);

(b) establishing whether any Person or Persons have suffered any loss or adverse effect as mentioned in paragraph (b) of subsection (1) and, if so, the extent of that loss or adverse effect; and





- (c) determining how any amounts are to be paid or distributed under subsection (3).
- (5) The AIFC Court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.
- (6) Nothing in this section affects the right of any Person other than the AFSA to bring proceedings in respect of the matters to which this section applies.

**128. Restitution Order – market abuse**

- (1) The AIFC Court may, on the application of the AFSA, make an order under subsection (4) if it is satisfied that a Person:
  - (a) has engaged in Market Abuse; or
  - (b) by taking or refraining from taking any action, has required or encouraged another Person or Persons to engage in behaviour which, if engaged in by the Person concerned, would amount to Market Abuse;and the condition mentioned in subsection (2) is fulfilled.
- (2) The condition is that:
  - (a) profits have accrued to the Person concerned as a result; or
  - (b) one or more Persons have suffered loss or been otherwise adversely affected as a result.
- (3) But the AIFC Court may not make an order under subsection (4) if it is satisfied that:
  - (a) the Person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).
- (4) The AIFC Court may order the Person concerned to pay to the AFSA such sum as appears to the AIFC Court to be just having regard:
  - (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the AIFC Court to have accrued;
  - (b) in a case within paragraph (b) of subsection (2), to the extent of the loss or other adverse effect;
  - (c) in a case within both of those paragraphs, to the profits appearing to the AIFC Court to have accrued and to the extent of the loss or other adverse effect.
- (5) Any amount paid to the AFSA in pursuance of an order under subsection (4) must be paid by it to such Person or distributed by it among such Persons as the AIFC Court may direct.
- (6) On an application under subsection (1) the AIFC Court may require the Person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes:



- (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of subsection (2);
  - (b) establishing whether any Person or Persons have suffered any loss or adverse effect as mentioned in paragraph (b) of subsection (2) and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (5).
- (7) The AIFC Court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.
- (8) Nothing in this section affects the right of any Person other than the AFSA to bring proceedings in respect of the matters to which this section applies.

### 129. Action for damages

- (1) Unless otherwise provided under Rules made by the AFSA, where a Person:
- (a) intentionally, recklessly or negligently commits a breach of duty, requirement, prohibition, obligation or responsibility imposed by or under these Regulations; or
  - (b) commits fraud or other dishonest conduct in connection with a matter arising under such Regulations;

that Person is liable to compensate any other Person for any loss or damage caused to that other Person as a result of such conduct, and otherwise is liable to restore such other Person to the position they were in prior to such conduct.

- (2) The AIFC Court may, on application of the AFSA or a Person who has suffered loss or damage caused as a result of conduct described in subsection (1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the AIFC Court sees fit, except where such liability is excluded under these Regulations or any Rules made by the AFSA.
- (3) Nothing in this section affects the powers that any Person or the Court may have apart from this section.

### 130. Power of the AFSA to intervene in proceedings

- (1) The AFSA may intervene as a party in any proceedings in the AIFC Court where it considers such intervention appropriate to meet one or more of its Regulatory Objectives.
- (2) Where the AFSA so intervenes, it will, subject to any other law, have all the rights, duties and liabilities of such a party.

#### 130-1. Procedural irregularities

- (1) A procedure under these Regulations or any other Rules or Regulations is not invalidated because of any procedural irregularity unless the AIFC Court declares the procedure to be invalid.
- (2) For the purposes of this section:



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(a) procedure includes the making of a decision, the conduct of a hearing, the giving of the relevant notice, and any proceedings (legal or otherwise); and

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



**PART 10: CONFIDENTIALITY**

**131. Confidential information**

- (1) For the purposes of these Regulations, information is confidential if it is received by the AFSA or an officer, Employee, or delegate of the AFSA in the exercise of a function under these Regulations or any other AIFC Regulations or Rules.
- (2) Confidential information does not include information that has been made available to the public in circumstances in which disclosure is permitted under these Regulations or any other AIFC Regulations or Rules.

**132. General prohibition on disclosure**

- (1) Subject to subsection (2), confidential information must not be disclosed to a third party by the AFSA or by an officer, Employee, or delegate of the AFSA, or by any Person coming into possession of the information, without the consent of the Person to whom the duty of confidentiality is owed.
- (2) The AFSA may disclose confidential information if such disclosure:
  - (a) is permitted or required under these Regulations or any other AIFC Regulations or Rules;
  - (b) is made to any of the authorities listed in CO-OP for the purpose of assisting the exercise by any such authority of its regulatory functions; or
  - (c) is made in good faith for the purposes of the exercise of the functions and powers of the AFSA.
- (3) A Contravention in bad faith of subsection (1) by an officer, Employee, delegate or agent of the AFSA, or by any other Person coming into possession of the information is punishable by a fine of such amount as it considers appropriate in respect of the Contravention up to a maximum fine of \$10,000 or disciplinary proceedings. The AFSA may also seek injunctive relief if appropriate.
- (4) The AFSA may make Rules for the purpose of ensuring the confidentiality of information received in the exercise of a regulatory function.

**132-1. Prohibition on disclosure for Person**

A Person who receives from the AFSA notice, decision, direction, order, request or warning, which is marked as confidential, must not disclose the existence and content of such notice, decision, direction, order, request or warning to any third party except for obtaining necessary professional advice in relation to the Person's rights and obligations.



**PART 11: CO-OPERATION AND EXCHANGE OF INFORMATION**

**133. Regulatory co-operation**

- (1) The AFSA may, where it considers appropriate, exercise its powers under these Regulations or under any other AIFC Regulations or Rules for the purpose of assisting the exercise by specified Persons of their regulatory functions.
- (2) The AFSA must implement policies and procedures to ensure that it:
  - (a) is able to exercise its powers on behalf of specified Persons, including powers to obtain information that has been appropriately requested;
  - (b) protects the confidentiality of such information; and
  - (c) restricts the disclosure of such confidential information by limiting the purposes for which, and the Persons to whom, such disclosure may be made.
- (3) The AFSA may make Rules for the purpose of assisting the exercise by specified Persons of their regulatory functions.



**Part 12: RECOVERY AND RESOLUTION**

**CHAPTER 1 – General**

**134. Application**

- (1) This Part applies to:
  - (a) an Authorised Person, or a class of Authorised Persons, prescribed by the AFSA; and
  - (b) an entity in a Group to which an Authorised Person or member of a class referred to in (a) belongs if that entity is specified by written notice by the AFSA as an entity having systemic importance.
- (2) An Authorised Person does not cease to be an Authorised Person or an Authorised Person of a particular class for the purposes of this Part merely because it ceases to:
  - (a) hold a licence to carry on a Financial Service; or
  - (b) carry on a Financial Service, as a result of a Resolution Action.

**135. Other powers not limited**

Nothing in this Part limits the scope or application of any other provision in these Regulations or any other legislation administered by the AFSA.

**136. Rules for the purposes of this Part**

The AFSA may make Rules for the purposes of this Part, including Rules relating to:

- (a) the class of Authorised Persons to whom this Part applies;
- (b) Recovery or Resolution Plans;
- (c) Resolvability Assessments;
- (d) the holding and maintenance of Loss Absorbing Capacity;
- (e) the Resolution Powers and Resolution Tools;
- (c) the appointment of independent valuers and the valuations required under this Part;
- (d) the recognition of Resolution Action taken in jurisdictions outside the AIFC;
- (e) the effect of action taken under this Part on provisions in agreements or contracts;
- (f) the notification of events relevant to the AFSA's exercise of its powers under this Part;
- (g) the conditions and procedures relating to the AFSA exercising any powers under this Part; and
- (f) any other matter necessary or incidental to give effect to this Part.



## CHAPTER 2 – RECOVERY AND RESOLUTION PLANNING

### 137. Recovery Plans

- (1) This section applies to an Authorised Person which:
  - (a) is of a class prescribed in the Rules as requiring a Recovery Plan; or
  - (b) is not included in a class prescribed under (a), but has been given written notice by the AFSA that it must prepare a Recovery Plan.
- (2) An Authorised Person must prepare and submit to the AFSA for review a plan setting out the measures to be taken to restore the financial position of the Authorised Person (or one or more entities in its Group) in the event of a serious deterioration of the Authorised Person's financial position (the "Recovery Plan").
- (3) The Recovery Plan must be in writing and set out such information as may be prescribed in the Rules.
- (4) The AFSA may, by written notice given to the Authorised Person, require it to prepare and submit to the AFSA such information that the AFSA considers reasonably necessary for it to assess the adequacy of the Authorised Person's Recovery Plan.
- (5) If the AFSA is not satisfied with an Authorised Person's Recovery Plan it may, by written notice, require the Authorised Person to take measures to rectify any deficiencies in the Recovery Plan and submit the rectified Recovery Plan to the AFSA.
- (6) An Authorised Person must review and update its Recovery Plan and submit the updated Recovery Plan to the AFSA:
  - (a) annually;
  - (b) where there has been a material change reasonably likely to affect the implementation of the original Recovery Plan; or
  - (c) if otherwise directed in writing by the AFSA to do so.

### 138. Resolution Plans

- (1) The AFSA may prepare a plan for securing an orderly Resolution (the "Resolution Plan") of an Authorised Person.
- (2) The Resolution Plan must set out the strategies for the Resolution (including consideration of failure scenarios, the options for the exercise of the Resolution Powers, the application of the Resolution Tools) and contain such information as may be prescribed in the Rules.
- (3) If the AFSA decides to prepare a Resolution Plan with respect to an Authorised Person, it must inform the Authorised Person in writing of that decision.
- (4) An Authorised Person that is informed of the AFSA's decision to prepare a Resolution Plan must, to the extent reasonably necessary for the AFSA to prepare, assess or update the Resolution Plan, do the following:
  - (a) maintain in the AIFC up to date information and systems; and



- (b) if required in writing by the AFSA, provide to the AFSA any information and assistance within a specified period.

### **139. Resolvability Assessment**

- (1) The AFSA may conduct an assessment to determine if there are any impediments that may prevent or affect the Resolvability of an Authorised Person (the “Resolvability Assessment”).
- (2) An Authorised Person must provide to the AFSA such information and assistance that the AFSA considers reasonably necessary for the Resolvability Assessment.

### **140. Requirement to Remove Impediments to Resolvability**

- (1) The AFSA may by written notice require an Authorised Person or an entity in its Group to take such measures as the AFSA considers reasonably necessary to remove impediments to, or improve, the Resolvability of an Authorised Person.
- (2) The measures may include changes relating to:
  - (a) legal, ownership or governance structure;
  - (b) operations, including intra-Group dependencies and relationships with third parties;
  - (c) business activities or practices;
  - (d) financial matters, (including assets, liabilities, rights and obligations), or funding strategy, (including measures to improve the resilience of Core Business Lines and Critical Functions);
  - (e) risk profile, including liquidity risk; or
  - (f) terms to be included in contracts.
- (3) The procedures in Schedule 2 apply to a decision of the AFSA under this section.

### **141. Loss Absorbing Capacity Requirement**

- (1) The AFSA may by written notice require an Authorised Person to hold and maintain a minimum amount of financial instruments or resources available during Resolution:
  - (a) to absorb losses; and
  - (b) to enable the Authorised Person to be recapitalised so that it can continue to perform Critical Functions while Resolution is ongoing (“Loss Absorbing Capacity”).
- (2) The AFSA must specify in the notice the nature of the financial instruments or resources to be held and maintained by the Authorised Person.
- (3) The AFSA may vary or revoke a requirement under this section.
- (4) The procedures in Schedule 2 apply to a decision of the AFSA under this section.





## CHAPTER 3 – EARLY INTERVENTION POWERS

### 142. Conditions for exercise of Early Intervention Powers

The AFSA may exercise one or more of its powers specified in section 143 in relation to an Authorised Person if it considers that:

- (a) an Authorised Person's liquidity or solvency is impaired, or may soon be impaired unless there is a major improvement in its financial resources, assets, leverage exposures, risk profile, business model, risk management systems and controls, or quality of its governance and management;
- (b) one or more indicators in the Authorised Person's Recovery Plan for taking action to restore its financial position demonstrate inadequate remedial action; or
- (c) it is otherwise necessary and desirable to meet the AFSA's objectives.

### 143. Early Intervention Powers

- (1) The AFSA may by written notice require an Authorised Person to prepare and submit to the AFSA a corrective action plan that:
  - (a) examines the status of its liquidity or solvency impairment;
  - (b) explains in detail the corrective actions that will be taken to address and rectify identified weaknesses; and
  - (c) sets out the timeframes for the corrective actions.
- (2) The AFSA may also by written notice require an Authorised Person to:
  - (a) call a general meeting of shareholders, set an agenda and propose specified resolutions;
  - (b) search for, and communicate with, potential purchasers of the Authorised Person's business or part of the business;
  - (c) remove directors or senior management who have failed to meet their obligations, including fiduciary duties
  - (d) limit or, if appropriate, clawback compensation paid to directors and senior management;
  - (e) obtain the AFSA's written approval before making or incurring any major capital expenditure, material commitment or contingent liability;
  - (f) enhance internal governance, systems, controls and risk management; or
  - (g) implement one or more measures in the Authorised Person's Recovery Plan.

## CHAPTER 4 – RESOLUTION

### 144. Conditions for Resolution and general provisions

- (1) The AFSA may exercise its Resolution Powers or apply its Resolution Tools in relation to



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an Authorised Person only if it is satisfied that the following conditions (the “Resolution Conditions”) are met:

- (a) the Authorised Person is failing or is likely to fail;
  - (b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action that is taken by or in respect of the Authorised Person will prevent the failure or likely failure of the Authorised Person within a reasonable timeframe; and
  - (c) the taking of Resolution Action is in the public interest.
- (2) For the purposes of paragraph (a) of subsection (1), an Authorised Person is failing or likely to fail if one or more of the following circumstances exist:
- (a) it no longer meets requirements under these Regulations or Rules or other legislation administered by the AFSA, such as prescribed capital or liquidity levels;
  - (b) its access to market-based funding sources is seriously impaired;
  - (c) there is a significant deterioration in the value of its assets;
  - (d) there are serious governance issues or deficiencies in its risk management and controls that may have a significant impact on the Authorised Person’s financial condition; or
  - (e) it is unable to pay its debts or other liabilities as they fall due.

However, an Authorised Person is not failing or likely to fail merely because one or more Early Intervention Powers have been exercised in relation to it.

- (3) Subject to paragraph (a) of subsection (1) and subsection (2), the AFSA may take into account the likely impact on the Authorised Person of the failure or likely failure of another entity in the Authorised Person’s Group.
- (4) For the purposes of paragraph (c) of subsection (1), an action is in the public interest if:
- (a) it is necessary and proportionate to achieve one or more of the AFSA’s objectives; and
  - (b) winding up the Authorised Person under the AIFC Insolvency Regulations or other applicable insolvency laws would not meet the AFSA’s objectives to the same extent.
- (5) An Authorised Person must immediately notify the AFSA if its senior management reasonably considers or is aware that:
- (a) it is failing or likely to fail;
  - (b) another entity in its Group is failing or likely to fail;
  - (c) in the case of an Authorised Person operating as a branch in the AIFC, the Resolution Authority in the jurisdiction of its head office is considering, or has initiated, Resolution Action in relation to the Authorised Person;
  - (d) a Resolution Authority, in a jurisdiction where another entity in its Group is present is considering, or has initiated, Resolution Action in relation to that entity; or



- (e) a Resolution Authority in the jurisdiction of the head office of the legal entity of which the Authorised Person is a subsidiary is considering, or has initiated, Resolution Action in relation to the head office.
- (6) If the AFSA determines that the Resolution Conditions are met in respect of an Authorised Person, it:
  - (a) must record its decision together with the reasons for that decision and the actions that it intends to take as a result of the decision;
  - (b) must give written notice of the decision to:
    - (i) the Authorised Person;
    - (ii) if applicable, the financial services regulator and Resolution Authorities of jurisdictions in which any relevant Group entity or significant branches are located; and
    - (iii) if applicable, any scheme for the protection of depositors or Clients that is relevant to the Authorised Person; and
  - (c) may publish information about the decision if it appears to the AFSA to be desirable to do so in the public interest.

#### **145. Appointment of Independent Valuer**

- (1) The AFSA may arrange for an independent valuer to be appointed to carry out a valuation of the assets and liabilities of an Authorised Person for the purposes of this Chapter.
- (2) The AFSA may prescribe in the Rules the eligibility requirements for a person to be appointed as an independent valuer.
- (3) A valuation by an independent valuer must be carried out in such manner as the AFSA may prescribe in the Rules.
- (4) The AFSA:
  - (a) may require the Authorised Person to pay the cost of any valuation; or
  - (b) may recover those costs from the Authorised Person.

#### **146. Valuations**

- (1) Before the AFSA exercises a Resolution Power in respect of an Authorised Person, it must cause a valuation to be carried out to assess the value of the assets and liabilities of the Authorised Person (a "Pre-Resolution Valuation").
- (2) Despite subsection (1), if the urgency of the case makes it appropriate for a Resolution Power to be exercised in respect of an Authorised Person before a Pre-Resolution Valuation can be carried out, the AFSA may cause a provisional valuation to be carried out of the assets and liabilities of the Authorised Person (a "Provisional Valuation").
- (3) If the AFSA causes a Provisional Valuation to be carried out, it shall cause a further valuation (a "Definitive Valuation") to be carried out on the assets and liabilities of the



Authorised Person as soon as practicable after the Provisional Valuation.

- (4) A Pre-Resolution Valuation, Provisional Valuation and Definitive Valuation must be carried out in such manner as the AFSA may prescribe in the Rules.

### 147. Resolution Powers

- (1) If the AFSA is satisfied that the Resolution Conditions have been met, it may, by written notice, exercise one or more of the following Resolution Powers in relation to an Authorised Person:
- (a) remove and replace any director or member of senior management (regardless of whether they are responsible for the failure);
  - (b) appoint one or more individuals to act as a Temporary Administrator in accordance with section 150;
  - (c) recover monies from any person whose acts or omissions materially contributed to the failure, including by the claw-back of variable remuneration such as bonuses;
  - (d) terminate contracts, continue or assign contracts or purchase or sell assets;
  - (e) write down or convert any instrument or liability;
  - (f) ensure continuity of essential services and functions by:
    - (i) requiring other entities in the Group to continue to provide essential services or facilities to the Authorised Person or any successor or an acquiring entity; or
    - (ii) procuring the essential services or facilities from unaffiliated third parties;
  - (g) override rights of shareholders of the Authorised Person, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of business operations, recapitalisation or other measures to restructure and dispose of the Authorised Person's business, liabilities or assets;
  - (h) apply the Sale of Business Tool;
  - (i) apply the Bail-In Tool;
  - (j) require the Authorised Person to prepare and implement a Business Reorganisation Plan;
  - (k) temporarily suspend the exercise of early termination rights under any contracts or agreements that may otherwise be triggered upon entry of the Authorised Person into Resolution or in connection with the exercise of Resolution Powers or application of a Resolution Tool;
  - (l) impose a moratorium with a suspension of payments to unsecured creditors and Clients (except for payments to central counterparties, payment, clearing and settlements systems and central banks) and a stay on creditor actions to attach assets or otherwise collect money or property from the Authorised Person, while protecting the enforcement of eligible netting and collateral agreements;



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- (m) take any action necessary to effect the restructure or closure and orderly wind-down of the whole or part of the business of the Authorised Person while facilitating prompt access to transaction accounts and to segregated Client Assets;
  - (n) require the Authorised Person or any of the entities in the Group to provide any services or facilities;
  - (o) require the Authorised Person to promptly return Client Assets to Clients;
  - (p) suspend any payment or delivery obligations pursuant to any contract to which the Authorised Person is a party; or
  - (q) restrict secured creditors of the Authorised Person from enforcing security interests in relation to any assets of the Authorised Person.
- (2) In addition to the powers specified in subsection (1), the AFSA may:
- (a) require any person to provide any information required for the AFSA to decide upon and prepare Resolution Action, including to update or supplement information provided in the Resolution Plan;
  - (b) remove rights to acquire further Shares, such as shareholders' pre-emption rights in the case of a new Share issue under the AIFC Companies Regulations;
  - (c) cancel or modify the terms of a contract to which the Authorised Person is a party or substitute a purchaser under the Sale of Business Tool as a party;
  - (d) in relation to Debenture and other Eligible Liabilities issued by the Authorised Person:
    - (i) amend or alter the maturity;
    - (ii) amend the amount of interest payable; or
    - (iii) amend the date on which the interest becomes payable, including by suspending payment for a temporary period;
  - (e) close out and terminate financial contracts or derivative contracts for the purposes of the application of the Bail-In Tool;
  - (f) require a person to discontinue or suspend the admission to trading of financial instruments relating to the Authorised Person; and
  - (g) apply powers to allocate losses and allocate or terminate contracts of an Authorised Market Institution taking into account the particular circumstances of the Authorised Market Institution.
- (3) The AFSA may exercise its Resolution Powers when the Resolution Conditions are met under section 144:
- (a) regardless of any restriction on, or requirement to obtain consent for, the transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply;



- (b) without the requirement to obtain approval or consent from any person either public or private, including the shareholders or creditors of the Authorised Person; and
  - (c) without the requirement to notify any person, including any requirement to publish any notice or Prospectus or to file or register any document with any other authority.
- (4) The AFSA may consult and cooperate with a central bank when planning or carrying out the Resolution of an Authorised Market Institution if that Authorised Market Institution is linked to the systems operated by the central bank.
- (5) The procedures in Schedule 2 apply to a decision of the AFSA under subsections (1) and (3).

#### 148. Sale of Business Tool

- (1) The AFSA may apply the Sale of Business Tool to an Authorised Person by effecting a sale of all or part of the business of the Authorised Person to one or more purchasers. The Sale of Business Tool is effected by:
- (a) making one or more property transfer instruments for the transfer of all or any rights, assets or liabilities of the Authorised Person; and
  - (b) if an Authorised Person is not a branch, making one or more Share transfer instruments for the transfer of all or part of the Shares of the Authorised Person.
- (2) The AFSA may apply the Sale of Business Tool to an Authorised Person without complying with any procedural requirements under the AIFC Companies Regulations or the constitutional documents of the Authorised Person.
- (3) The AFSA may prescribe Rules relating to the application of the Sale of Business Tool.
- (4) The procedures in Schedule 2 apply to a decision of the AFSA under this section.

#### 149. Bail-In Tool

- (1) The Bail-In Tool is a Resolution Tool that may be applied by the AFSA in relation to an Authorised Person that is not a branch:
- (a) to recapitalise the Authorised Person:
    - (i) to the extent sufficient to restore the Authorised Person's ability to comply with the authorisation requirements as applicable;
    - (ii) to continue to carry out the activities for which the Authorised Person is authorised under these Regulations; or
    - (iii) to sustain sufficient market confidence in the Authorised Person;
  - (b) to convert to Shares or reduce the principal amount of claims or Debenture that are transferred under the Sale of Business Tool.
- (2) In applying the Bail-In Tool the AFSA may use the Write Down or Conversion Power in



such manner as may be prescribed in the Rules.

- (3) The AFSA may prescribe Rules relating to the application of the Bail-In Tool.
- (4) The procedures in Schedule 2 apply to a decision of the AFSA under this section.

### 150. Temporary Administrator

- (1) The AFSA may appoint a Temporary Administrator to replace the management of an Authorised Person.
- (2) The Temporary Administrator has such powers of the shareholders and management of the Authorised Person, as are specified by the AFSA in the instrument of appointment.
- (3) The Temporary Administrator has a duty to take all measures necessary to promote the AFSA's objectives in relation to Resolution. The duty may, if necessary, override any other duty placed upon the management of the Authorised Person under Acting Law of the AIFC and the Authorised Person's constitutional documents.
- (4) The person appointed to be the Temporary Administrator may be an individual (or one or more individuals acting jointly) or a body corporate.
- (5) Before appointing a person to be a Temporary Administrator, the AFSA must be satisfied that the person has sufficient qualifications, experience, and the fitness and propriety necessary to carry out the functions of a Temporary Administrator.
- (6) A Temporary Administrator must not be treated as a director (formally or de facto) of the Authorised Person.
- (7) The instrument of appointment must specify the date on which the appointment takes effect and the period of the appointment. The period of appointment must be for an initial period of not more than 12 months, but the AFSA may extend that appointment for a further period not more than 12 months.
- (8) The instrument of appointment may require the Temporary Administrator to report to the AFSA on any matter specified in the instrument and at the time or at intervals specified in the instrument.
- (9) The instrument of appointment may provide for the AFSA to pay the remuneration and costs of the Temporary Administrator or for the remuneration and costs of the Temporary Administrator to be paid by the Authorised Person, its parent or another entity in its Group.
- (10) The AFSA may vary the terms of appointment of a Temporary Administrator.

### 151. Resolution Safeguards

The AFSA must, when exercising a Resolution Power or applying a Resolution Tool in relation to an Authorised Person, aim to meet the following safeguards:

- (a) no shareholder, creditor or Client (including depositor and Policyholder) should be worse off under the Resolution Action than if the Authorised Person had been wound up under ordinary insolvency proceedings; and
- (b) any other Resolution Safeguards that may be prescribed in the Rules.



**152. Costs of Resolution**

- (1) The AFSA:
  - (a) may require the Authorised Person to pay the costs of exercising a Resolution Power or applying a Resolution Tool; or
  - (b) may recover those costs from the Authorised Person.
- (2) Without limiting subsection (1), the AFSA may recover the costs:
  - (a) as a deduction from any consideration paid by a transferee to the Authorised Person (in the case of a transfer of property under paragraph (a) of subsection (1) under section 148);
  - (b) as a deduction from the owners of the Shares (in the case of a transfer of Shares under paragraph (b) of subsection (1) under section 148); or
  - (c) from the Authorised Person, as a preferred creditor.

**CHAPTER 5 – MISCELLANIOUS**

**153. Recognition of Resolution Actions in other jurisdictions**

- (1) If a Resolution Authority in another jurisdiction notifies the AFSA that it intends to take or has taken Resolution Action in relation to an entity in that jurisdiction and requests the AFSA to recognise that Resolution Action, the AFSA may:
  - (a) make an order recognising the Resolution Action;
  - (b) make an order recognising part of the Resolution Action, and refuse to recognise the remainder of it; or
  - (c) refuse to recognise the Resolution Action.
- (2) When considering whether to recognise Resolution Action taken in a jurisdiction outside the AIFC, the AFSA must consider the impact of its decision on financial stability in the AIFC, and in any other jurisdiction.
- (3) The AFSA may refuse to recognise Resolution Action in another jurisdiction, or any part of a Resolution Action, if it is satisfied that one or more of the following conditions are met:
  - (a) the recognition would have an adverse effect on financial stability, the financial services industry in the AIFC or the economy of the Republic of Kazakhstan (whether this effect would occur directly or indirectly as a result of the recognition);
  - (b) the exercise of a Resolution Power or application of a Resolution Tool by the AFSA, rather than recognition of the Resolution Action in relation to the entity is necessary to achieve one or more of the AFSA's objectives in relation to Resolution;
  - (c) under the Resolution Action, creditors, Clients (including, in particular, depositors and Policyholders) or shareholders located or payable in the AIFC would not, by reason of being located and payable in the AIFC, receive the same treatment, and have similar legal rights, as creditors, Clients (including depositors and





- Policyholders) or shareholders who are located or payable in the other jurisdiction concerned; or
- (d) the recognition would have a significant detrimental impact on the AIFC or be unlawful under Acting Law of the AIFC.
- (4) If the AFSA makes a decision under subsection (1), the AFSA:
- (a) must record its decision together with the reasons for that decision;
- (b) must give written notice of the decision to:
- (i) the Resolution Authority in the other jurisdiction;
- (ii) if it considers it necessary, the entity; and
- (iii) if it considers it necessary, any Resolution Authority in any other relevant jurisdiction; and
- (c) may publish information about the decision if it considers it is desirable to do so in the public interest.
- (5) For the purposes of supporting, or giving full effect to, an order under (1)(a) or (b) (a “Resolution Recognition Order”), the AFSA may:
- (a) include in the order any provision that the AFSA considers necessary to give effect to the order; or
- (b) exercise or apply in conjunction with the order one or more Resolution Powers or Resolution Tools as it considers appropriate in the circumstances.
- (6) A Resolution Recognition Order must not prejudice the winding up of an Authorised Person under ordinary insolvency proceedings, unless the winding up conflicts with the Resolution Action, in which case the recognised Resolution Action takes precedence.

### **154. Application of Insolvency Regulations**

- (1) To the extent that this Part is inconsistent with the Insolvency Regulations, the provisions of this Part prevail.
- (2) If the AFSA determines that the Resolution Conditions have been met in relation to an Authorised Person, a person may not commence insolvency proceedings under the Insolvency Regulations in respect of the Authorised Person except with the AFSA’s consent.
- (3) The AFSA may apply to the AIFC Court under section 123 for the winding up of an Authorised Person or commence insolvency proceedings under the Insolvency Regulations in respect of the Authorised Person even if AFSA has determined that the Resolution Conditions have been met or AFSA has taken Resolution Action under this Part in respect of the Authorised Person.
- (4) The AFSA may take Resolution Action under this Part in relation to an Authorised Person even if insolvency proceedings have already commenced in relation to the Authorised Person



**155. Protection from liability**

- (1) An Authorised Person, an entity in its Group or a director or employee of the Authorised Person or an entity in its Group is not liable for damages in respect of anything done or omitted to be done in good faith in accordance with a requirement made by the AFSA under this Part.
- (2) A Temporary Administrator or an independent valuer appointed under this Part is not liable for damages in respect of anything done or omitted to be done in good faith for the purposes of, or in connection with, the performance of functions under that appointment.

**156. Default Event Provision**

- (1) Section 156(2) applies if a contract or other agreement:
  - (a) is entered into by an Authorised Person or a Regulated Financial Institution; or
  - (b) includes cross-default provisions, and is entered into by another Group entity in the Authorised Person's Group or Regulated Financial Institution's Group, and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.
- (2) The following must be disregarded in determining whether a Default Event Provision applies:
  - (a) the exercise of a measure in an Authorised Person's Recovery Plan, the removal of impediments to Resolvability of an Authorised Person, the imposition of an Early Intervention Power, the appointment of a Temporary Administrator, the exercise of a Resolution Power or application of a Resolution Tool, or the recognition of a Resolution Action taken by a Resolution Authority; and
  - (b) the occurrence of any event directly linked to the exercise or application of such measure, power, tool or action.
- (3) A notice under section 147 may specify additional matters to be disregarded under (2). Any such matters must be disregarded.
- (4) In this section, "specified" in relation to a contract or agreement means specified in the contract or other agreement.
- (5) In this section, "Default Event Provision" means a provision of a contract or other agreement:
  - (a) that has the effect that if a specified event or situation arises:
    - (i) the agreement is terminated, modified, replaced or suspended;
    - (ii) rights or duties under the agreement are terminated, modified, replaced or suspended;
    - (iii) a right accrues to terminate, modify or replace the agreement;



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- (iv) a right accrues to terminate, modify or replace rights or duties under the agreement;
  - (v) a set-off or netting right accrues under the agreement;
  - (vi) a sum becomes payable or ceases to be payable;
  - (vii) a right accrues to obtain possession, exercise control or enforce any security over any property;
  - (viii) delivery of anything becomes due or ceases to be due;
  - (ix) a right to claim a payment or delivery accrues, changes or lapses;
  - (x) any other right accrues, changes or lapses; or
  - (xi) an interest is created, changes or lapses; or
- (b) that has the effect that a provision of the contract or agreement:
- (i) takes effect only if a specified event occurs or does not occur;
  - (ii) takes effect only if a specified situation arises or does not arise;
  - (iii) has effect only for so long as a specified event does not occur;
  - (iv) has effect only while a specified situation lasts;
  - (v) applies differently if a specified event occurs;
  - (vi) applies differently if a specified situation occurs; or
  - (vii) applies differently while a specified situation lasts.



**PART 13: Miscellaneous**

**157. Public Registers**

- (1) The AFSA must publish and maintain, in such manner as it considers appropriate, a register of current and past grants, withdrawals and suspensions of Licences of all Authorised Persons and Ancillary Service Providers, and particulars of the status of Recognised Non-AIFC Market Institutions, Recognised Non-AIFC Members, Foreign Fund Managers, Approved Individuals, Designated Individuals, and Principal Representatives.
- (2) The AFSA may publish and maintain, in such manner as it considers appropriate, registers of:
  - (a) all Persons in relation to whom action has been taken under section 45-1(1); and
  - (b) all Persons who have been prohibited under section 118(1)(g) from holding office or being a Director or Employee of any Authorised Person or Ancillary Service Provider, indicating whether or not any such action or prohibition is in effect.
- (3) The AFSA may decide not to publish information about a suspension imposed under section 45-1(3).
- (4) The AFSA must make a reasonably current version of each register kept under subsections (1) and (3) freely available for viewing by the public during the normal business hours of the AFSA.

**158. Extended powers**

- (1) Any power which the AFSA may exercise in relation to an Authorised Person, Ancillary Service Provider, Approved Individual, Designated Individual or any Director, officer, Employee or representative of an Authorised Person, Ancillary Service Provider, or Registered Auditor under these Regulations or any other Rules or other legislation administered by the AFSA may, subject to subsections (2) and (3), continue to be exercised after the date on which:
  - (a) the Licence of such Authorised Person or Ancillary Service Provider; or
  - (b) the Approved Individual or Designated Individual status of such individual;is withdrawn by the AFSA under these Regulations or any other Rules or other legislation administered by the AFSA.
- (2) Except as provided in subsection (3), the AFSA may only exercise a power under subsection (1) in relation to a Person within three years after the day on which the AFSA became aware of the act or omission that gave rise to the right to exercise the power in respect of that Person.
- (3) If proceedings with respect to the act or omission are commenced by the AFSA within the period referred to in subsection (2), then the provisions of subsection (1) remain in force until such time as the proceedings and any review or appeal relating to the proceedings are completed.
- (4) For the purposes of this section, the AFSA is aware of an act or omission if it has information from which the act or omission can reasonably be inferred.



- (5) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

**159. Publication by the AFSA**

- (1) The AFSA may publish in such form and manner as it considers appropriate information and statements relating to decisions of the AFSA, sanctions, and any other matters which the AFSA considers relevant to the conduct of affairs in the AIFC.
- (2) Subject to any directions given by the AIFC Court, the AFSA may publish statements regarding any matters considered by the AIFC Court involving the AFSA.



## SCHEDULE 1: Decision-making procedures of the AFSA

### 1. Interpretation

For the purposes of this Schedule “Relevant Person” means a Person in relation to whom the AFSA exercises or proposes to exercise a power.

### 2. Application of Schedule

This Schedule applies to the AFSA, subject to paragraph 3, if a provision of these Regulations or Rules made thereunder requires or enables the AFSA to make a decision.

### 3. Decisions to which procedures do not apply

- (1) The procedures in this Schedule (other than sub-paragraph (2)) do not apply to a decision by the AFSA:
  - (a) to revoke a direction or withdraw a requirement, restriction or prohibition; or
  - (b) to withdraw a condition or restriction imposed in relation to a Licence, registration, authorisation or approval; or
  - (c) in relation to a Person, if the Person has requested, or consented in writing to, the making of the decision; or
  - (d) to give, revoke or vary a direction under section 9.
- (2) In the cases referred to in sub-paragraph (1), the AFSA must notify the Person in writing of the decision and the date on which it is to take effect.
- (3) If the AFSA makes a decision in relation to a Person after a determination of the AIFC Court relating to the conduct of the Person, the requirement to give the Person an opportunity to make representations under paragraph 4 or 6 (as applicable) does not apply in relation to findings of fact of the AIFC Court.

### 4. Opportunity to make representations before a decision

- (1) If the AFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:
  - (a) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (2); and
  - (b) an opportunity to make representations to the AFSA in person or in writing concerning the decision the AFSA proposes to take.
- (2) The Preliminary Notice must:
  - (a) specify the proposed decision;
  - (b) specify the reasons for that proposed decision, including any proposed findings of fact;



- (c) include a copy of the relevant materials which were considered in making the proposed decision;
  - (d) inform the Person that they may make representations to the AFSA concerning the proposed decision; and
  - (e) specify how and by when any representations may be made.
- (3) For the purposes of sub-paragraph (2)(c), the AFSA:
- (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
  - (b) is not required to provide material that is the subject of legal professional privilege.
- (4) If the AFSA does not receive any representations within the period specified in the Preliminary Notice, it may proceed to make the proposed decision and give the Person a Decision Notice in accordance with paragraph 5.
- (5) If the AFSA receives representations within the period specified in the Preliminary Notice, it must consider the representations in making the decision.
- (6) If, after considering the representations, the AFSA decides:
- (a) to make the proposed decision (either as proposed or with variations), then it must give the Person a Decision Notice under paragraph 5; or
  - (b) not to make the proposed decision, then it must as soon as practicable notify the Person in writing that it has decided not to make the decision.
- (7) If the AFSA concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of direct or indirect users of financial services or otherwise prejudicial to the interests of the AIFC:
- (a) the requirements in sub-paragraphs (1) to (6) do not apply; and
  - (b) the AFSA must provide the Person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.

## 5. Decision Notice

- (1) If the AFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a “Decision Notice”) specifying:
- (a) the decision;
  - (b) the reasons for the decision, including its findings of fact;
  - (c) the date on which the decision is to take effect;
  - (d) if applicable, the date by which any relevant action must be taken by the Person; and
  - (e) the Person’s right to seek review of the decision by the AIFC Court.



- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of sub-paragraph (2), the AFSA:
  - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
  - (b) is not required to provide material that is the subject of legal professional privilege.

**6. Opportunity to make representations after a decision**

- (1) If this paragraph applies under paragraph 4(7), the AFSA must:
  - (a) provide the Relevant Person with an opportunity to make representations to the AFSA in person or in writing within a period of 14 days, or such further period as may be agreed, from the date on which the Decision Notice is given to the Person under paragraph 5; and
  - (b) inform the Relevant Person in the Decision Notice that they may make representations concerning the decision and specify how and by when any representations may be made.
- (2) If the AFSA does not receive any representations within the period specified in the Decision Notice, it must inform the Person in writing that the decision is to stand (subject to any right of the Person to refer the matter to the AIFC Court for review).
- (3) If the AFSA receives representations within the period specified in the Decision Notice, it must consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (4) If after considering representations received the AFSA decides:
  - (a) to confirm the decision, it must as soon as practicable notify the Person in writing that the decision is to stand (subject to any right of the Person to refer the matter to the AIFC Court for review); or
  - (b) to withdraw the decision, it must as soon as practicable notify the Person in writing that the decision has been withdrawn; or
  - (c) to vary the decision, it must as soon as practicable give the Person an amended Decision Notice under paragraph 5.
- (5) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
  - (a) if the Person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made; or
  - (b) in respect of an amended Decision Notice given under sub-paragraph (4)(c).





## 7. Third party rights

- (1) If any of the reasons contained in a Decision Notice relate to a matter which:
  - (a) identifies a Person (a "Third Party") other than the Person to whom the Decision Notice is given; and
  - (b) in the opinion of the AFSA, is prejudicial to the Third Party,the AFSA must give a notice or a copy of the Decision Notice, or extracts of its relevant parts, to the Third Party.
- (2) The notice copied to the Third Party must specify a reasonable period within which the party may make representations to the AFSA.
- (3) A copy of the notice is not required to be given to a Third Party if the AFSA considers it impractical to do so.
- (4) The Third Party may refer to the AIFC Court:
  - (a) the decision in question or any aspect of the decision, so far as it relates to the party; or
  - (b) any opinion expressed by the AFSA in relation to the party.
- (5) The copy of the Decision Notice must advise the Third Party's right to make a reference to the AIFC Court.
- (6) If the Third Party refers the matter to the AIFC Court, the Third Party may apply to the AIFC Court to stay the action specified in the Decision Notice.
- (7) The Third Party must be given a copy of any discontinuance applicable to the proceedings to which the Decision Notice relates.



## SCHEDULE 2: Appeal to the AIFC Court

### 1. Time frame for instituting an appeal

- (1) An appeal under section 11 may be instituted:
  - (a) within a period of 28 days after the date of the decision, including by way of a Decision Notice, given to the Person by the AFSA, and
  - (b) by serving a Claim Form on the AFSA, in accordance with the service provisions of the AIFC Court Rules, stating the grounds and material facts on which the appellant relies.
- (2) An appeal does not operate as a stay of the decision being appealed.

### 2. Power of AIFC Court to dismiss appeal for want of prosecution

- (1) The AFSA may, where an appeal under section 11 has been instituted, apply to the AIFC Court, for an order that the appeal be dismissed for want of prosecution; and on hearing the application the AIFC Court may:
  - (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the AIFC Court may direct), or
  - (b) make such other order as the AIFC Court considers just.
- (2) The provisions of this paragraph are without prejudice to the AIFC Court Regulations, the AIFC Court Rules and the inherent powers of the AIFC Court.

### 3. Power of AIFC Court to set aside or confirm decision

On an appeal under section 11 the AIFC Court may:

- (a) set the decision of the AFSA aside and, if the AIFC Court considers it appropriate to do so, remit the matter to the AFSA with such directions as the AIFC Court thinks fit;
- (b) confirm the decision, in whole or in part;
- (c) suspend or modify the operation of the decision on such terms as the AIFC Court thinks just, pending the determination of the appeal.

### 4. Appeal of decision to publish a statement to be held in private

- (1) An appeal against a decision to publish a statement in respect of a Person will be held in private unless:
  - (a) the parties agree that all or part of the hearing should be held in public, or
  - (b) the AIFC Court so orders.
- (2) Where an appeal against a decision to publish a statement is upheld the AFSA will, if the appellant so requests, publish a statement of that fact.