



**AMENDMENTS No. 1**  
**AIFC COMPANIES REGULATIONS**

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Commencement Date: 11 July 2018

Nur-Sultan, Kazakhstan



In this section, the underlining indicates new text and the striking through indicates deleted text in the proposed amendments.

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## PART 1: GENERAL

### CHAPTER 1–PRELIMINARY

1. **Name**

These Regulations are the *AIFC Companies Regulations 2017*.

2. **Date of enactment**

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

3. **Commencement**

These Regulations commence on 1 January 2018.

4. **Legislative authority**

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

5. **Application of these Regulations**

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Financial Centre Participants 2017* as in force immediately before the commencement of these Regulations are repealed.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

6. **Interpretation**

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

### CHAPTER 2–COMMERCIAL LICENCES

7. **Prohibition against conduct of business without holding Commercial Licence etc.**

- (1) A Person must not conduct business in or from the AIFC unless the Person holds a Commercial Licence and is incorporated or registered as an AIFC Participant.
- (2) Subsection (1) does not apply to a Person if the Person:
  - (a) is an exempt Person under the Rules; or



- (b) is exempted from the requirement to hold a Commercial Licence by the Registrar.
- (3) Contravention of this section is punishable by a fine.
- (4) Where a Person enters into a contract with a third party and is knowingly (or ought reasonably to know that it would be) in contravention of subsection (1), that contract may be terminated at the sole option of that third party.

## 8. Commercial Licences

- (1) The Registrar may issue a Commercial Licence subject to any conditions or restrictions.
- (2) The holder of a Commercial Licence must not Contravene a condition or restriction to which the licence is subject.
- (3) The Registrar may revoke, suspend, or vary the terms of, a Commercial Licence on the Registrar's own initiative or on the application of the licence holder.
- (4) The Registrar may exercise a power under subsection (3) in relation to a Commercial Licence on the Registrar's own initiative only if the Registrar:
  - (a) complies with the Decision-making Procedures; and
  - (b) either:
    - (i) is satisfied that the licence holder, or an officer, employee or agent of the licence holder, has Contravened, is Contravening or is likely to Contravene these Regulations; or
    - (ii) considers that the exercise of the power is necessary or desirable in the interests of the AIFC.
- (5) A Commercial Licence has effect for 1 year from the date of its issue or the shorter period decided by the Registrar.
- (6) The holder of a Commercial Licence must, at least 15 days before the day the term of the licence ends, apply to the Registrar for the renewal of the licence, unless the licence holder has:
  - (a) ceased to conduct business in the AIFC; and
  - (b) given the Registrar the notification required by the Rules.
- (7) Contravention of subsection (2) or (6) is punishable by a fine.



## PART 2: THE APPOINTMENT AND ROLE OF REGISTRAR

### 9. Appointment of Registrar

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

### 10. Registrar's Objectives and Functions

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



Documents under or for these Regulations, the Rules or any other Legislation Administered by the Registrar, whether by electronic or any other means;

- (f) Exercising any Function delegated to the Registrar under these Regulations or any other Legislation Administered by the Registrar.
- (5) The Registrar may permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of Documents or information required under or for these Regulations, the Rules or any other Legislation Administered by the Registrar and may specify the circumstances in which Persons are taken to have signed or certified Documents on an electronic or computer-based system for any purpose under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (6) The Registrar must, through the Exercise of the Registrar's Functions, assist Kazakhstan to comply with its obligations under any international treaty or other agreement to which it is a party.
- (7) The Registrar may do anything the Registrar considers necessary or desirable to be done for or in connection with, or reasonably incidental to, the Exercise of the Registrar's Functions subject to any applicable Decision-making Procedures.
- (8) The Registrar may delegate all or any of the Registrar's Functions to another Person in accordance with the Rules.
- ~~(9) The Registrar, and any delegate or agent of the Registrar, is not liable for anything done or omitted to be done in the Exercise or purported Exercise of the Registrar's Functions (including any Function delegated to the Registrar).~~
- ~~(10) Subsection (9) does not apply to an act or omission if the act or omission is shown to have been in bad faith.~~

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

#### **11. Types of companies**

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

#### **12. Legal personality**

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



## PART 4: COMPANY FORMATION AND INCORPORATION

### 13. Formation of companies

- (1) A company may be incorporated under these Regulations on the application of any 1 or more Persons in accordance with this Part.
- (2) A company must not be incorporated for an unlawful purpose.
- (3) An application for the incorporation of a company must be filed with the Registrar by the Incorporators or their duly authorised representative.
- (4) The application must state the following:
  - (a) the proposed name of the Company;
  - (b) whether the proposed Company is to be a Private Company or a Public Company;
  - (c) the nature of the business to be conducted by the proposed Company;
  - (d) the amount of the initial share capital and shareholdings of the Incorporators;
  - (e) the nominal value of each Share;
  - (f) the address of the proposed Company's registered office;
  - (g) the following information for each Incorporator:
    - (i) the full name, nationality and address of the Incorporator;
    - (ii) if the Incorporator is an individual and is to hold Shares in trust for another Person—the full name, nationality and address of the beneficial owner of the Shares;
    - (iii) if the Incorporator is a Body Corporate—the beneficial ownership information of the Body Corporate required by the Rules;
  - (h) the full name (including any previous names), nationality, address, business occupation (if any) and date of birth of the individuals who are to serve as the Directors and, if applicable, the Secretary;
  - (i) the other particulars (if any) required by the Registrar or the Rules; [and](#)
  - (j) [the particulars required by Part 16 of these Regulations.](#)
- (5) The proposed Articles of Association, signed by or on behalf of each Incorporator, must be filed with the application.

### 14. Articles of Association

- (1) A Company's Articles of Association must be in the English language and must be divided into paragraphs numbered consecutively.



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

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

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

**16. Effects of incorporation etc.**

- (1) On the incorporation of a Company and registration of its Articles of Association, the Registrar must:
  - (a) issue a certificate of incorporation confirming that the Company is incorporated as either a Private Company or a Public Company; and
  - (b) assign a number to the Company, which is to be the Company's identification number; and



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

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

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

**18. Effect of Articles of Association**

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

**19. Amendment of Articles of Association**

- (1) Subject to these Regulations and the Rules, a Company may amend its Articles of Association by Special Resolution.
- (2) Unless an amendment of the Articles of Association of a Company relates solely to a change of its name, correcting manifest errors or increasing the amount of its authorised or issued share capital, the Company must, before the amendment is made, submit to the Registrar:



- (a) the proposed amendment; and
  - (b) a certificate given by at least 1 of the Directors of the Company stating that the proposed amendment complies with the requirements of these Regulations and the Rules and all other applicable AIFC Regulations and AIFC Rules.
- (3) If the Articles of Association of a Company are amended, the rights and obligations of the Shareholders and the Company that arose under the Articles of Association before the amendment is made are not be affected unless the amendment expressly provides for it to have such an effect.
- (4) Despite anything in the Articles of Association of a Company, a Shareholder of the Company is not bound by an amendment made to the articles after the day the Shareholder became a Shareholder so far as the amendment:
- (c) requires the Shareholder to take or subscribe for more Shares than those held by the Shareholder at the end of the day immediately before the amendment is made; or
  - (d) in any way increases the Shareholder's Liability at the end of that day to contribute to the Company's share capital or otherwise to pay an amount to the Company.
- (5) Subsection (4) does not apply in relation to the Shareholder if the Shareholder, either before or after the amendment is made, agreed to be bound by it.

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

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

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

- (1) A Company must not use a name that, because of any fact, matter or circumstance, is, or is reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company).
- (2) If, because of the happening or likely happening of any fact, matter or circumstance, a Company's name is, has become, or is reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company), the Company must change its name within 30 days or, if the Registrar agrees to a longer period, that longer period.
- (3) Contravention of this section is punishable by a fine.

**22. Change of Company name**

- (1) A Company must not change its name otherwise than by Special Resolution and must not change its name to a name that is not acceptable to the Registrar.
- (2) If a Company changes its name by Special Resolution in accordance with subsection



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

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

- (1) Without limiting section 21 (Prohibition against misleading, deceptive or conflicting names), if, in the opinion of the Registrar, the name by which a Company is registered is, has become, or is reasonably likely to become, misleading, deceptive, conflicting with another name (including an existing name of another Company), or otherwise undesirable, the Registrar may direct the Company to change it.
- (2) The Registrar must comply with the Decision-making Procedures in deciding whether to give a direction under subsection (1).
- (3) A Company must comply with a direction given by the Registrar under subsection (1) within 30 days after the date specified in the direction unless the Registrar allows a longer period to comply with the direction.
- (4) Contravention of subsection (3) is punishable by a fine.

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

- (1) A Company must, at all times, have a registered office in the AIFC to which all communications and notices to the Company may be addressed.
- (2) A Document may be served on a Company by leaving it at, or sending it by post to, the registered office of the Company in the AIFC.



- (3) A Company must conduct its principal business activity in the AIFC, unless the Registrar otherwise permits.
- (4) Contravention of subsection (1) or (3) is punishable by a fine.

25. **Particulars in Company communications**

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

26. **Annual returns**

- (1) A Company must, at the same time as it applies for renewal of its Commercial Licence (and, in any event, before the end of the term of its Commercial Licence), file with the Registrar an annual return containing:
  - (a) its financial statements for the last financial year for which the Company's accounts have been prepared; and
  - (b) a statement, for each class of Shares in the Company, setting out either:
    - (i) the name and address of each Shareholder who, on the filing date, held not less than 5% of the Allotted Shares of that class and the number of Shares of that class held by the Shareholder, together with the number of Shareholders each of whom, on that date, held less than 5% of the Allotted Shares of that class and the total number of Shares held by them; or
    - (ii) the name and address of every Shareholder who, on the filing date, held any Shares of that class and the number of Shares of that class held by the Shareholder; and
  - (c) the particulars mentioned in section [13\(4\)\(j\)](#) (Formation of companies) for each Director and, if applicable, the Secretary; and
  - (d) if Shares are held by the Company as treasury Shares—the entry required by section 62(8)(a) (Treasury Shares); and
  - (e) the other information, and declarations, (if any) required by the Rules.
- (2) The annual return must be accompanied by the filing fee prescribed by the Rules from time to time.
- (3) A Shareholder ~~(or in the case of a Public Company only, any Person)~~ may request a Company to provide a copy of an annual return of the Company to the Shareholder ~~(or Person, if applicable)~~. If the Shareholder ~~(or Person, if applicable)~~ pays the reasonable



fee (if any) that the Company requires, the Company must, within 10 days after the day the request is received or the day any required payment is made (whichever is later), either give the Shareholder ~~(or, the case of a Public Company only, any Person)~~ a written copy of the annual return or make a written copy of the annual return available for the Shareholder ~~(or, in the case of a Public Company only, any Person)~~ at the Company's registered office.

(4) A Person may request a Public Company to provide a copy of an annual return of the Public Company to the Person. If the Person pays the reasonable fee (if any) that the Public Company requires, the Public Company must, within 10 days after the day the request is received or the day any required payment is made (whichever is later), either give the Person a written copy of the annual return or make a written copy of the annual return available for the Person at the Public Company's registered office.

(5) Contravention of subsection (1) or (4) is punishable by a fine.

## 27. **Company Records**

(1) This section applies to Records that a Company is required to keep under these Regulations and the Rules.

(2) The Company may keep the Records in the form of a bound or loose-leaf book, or photographic film, or may enter or record the Records by a system of mechanical or electronic data processing or any other medium that is capable of reproducing any required information in intelligible written form within a reasonable time.

(3) The Company must take reasonable precautions:

(a) to prevent the loss or destruction of Records; and

(b) to prevent the falsification of entries in them; and

(c) to facilitate the detection and correction of inaccuracies in them.

(3) If any Records are kept otherwise than in intelligible written form, any duty imposed on the Company under these Regulations and the Rules to allow inspection and copying of, or to require the giving or production of, information or Documents is to be treated as a duty to allow inspection and copying of, or to require the giving or production of, information or Documents in intelligible written form.

## 28. **Filing of Special Resolutions and certain other Resolutions and agreements**

(1) This section applies to the following Resolutions and agreements in relation to a Company:

(a) any Special Resolution;

(b) any Ordinary Resolution or agreement agreed to by all the Shareholders of the Company that, if not agreed to by all the Shareholders, would not have been effective for its purpose, unless passed as a Special Resolution;

(c) any Ordinary Resolution or agreement agreed to by all the Shareholders of a class of Shares that, if not agreed to by all those Shareholders, would not have been effective for its purpose, unless passed by some particular majority or



otherwise in some particular way;

- (d) any Ordinary Resolution or agreement that effectively binds all the Shareholders of a class of Shares, although not agreed to by all those Shareholders.
- (2) A reference in subsection (1) to the Shareholders of a Company, or to the Shareholders of class of Shares in a Company, does not include a reference to the Company itself if the Company is a Shareholder, or a Shareholder of that class of Shares, only because it holds Shares as treasury Shares.
- (3) A Company must file a written copy of every Resolution or agreement to which this section applies or, if a Resolution or agreement is not in Writing, a written memorandum setting out its terms with the Registrar within 15 days after the day it is passed or made.
- (4) Contravention of subsection (3) is punishable by a fine.



## PART 7: PRIVATE COMPANIES AND PUBLIC COMPANIES

(...)

### CHAPTER 9—DIRECTORS AND SECRETARIES

#### 74. **Directors**

- (1) A Private Company must have at least 1 director and a Public Company must have at least 2 directors.
- (2) A Person must not be a Director if the Person:
  - (a) is not a natural person; or
  - (b) is under 18 years old; or
  - (c) is disqualified from being a Director because of:
    - (i) having been convicted of a criminal offence, involving dishonesty or moral turpitude, in any jurisdiction in the past 10 years; or
    - (ii) having been found guilty of insider trading or the equivalent in any jurisdiction at any time; or
    - (iii) having been judged disqualified by any court; or
    - (iv) having been disqualified by the AFSA; or
    - (v) a disqualification specified in the Articles of Association; or
  - (d) is an undischarged bankrupt.

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

- (1) The first directors of a Company must be elected by the Incorporators. Subsequent directors must be elected by the Shareholders by Ordinary Resolution, or as otherwise provided by the Articles of Association, for the term that the Shareholders decide.
- (2) Each director holds office until the director's successor takes office or until the director's earlier death, resignation or removal by Ordinary Resolution or as otherwise provided by the Articles of Association.
- (3) A vacancy created by the death, resignation or removal of a director may be filled by Ordinary Resolution or, if the vacancy is not filled by an Ordinary Resolution, by the remaining directors. However:
  - (a) any director appointed by the remaining directors is subject to reappointment by Ordinary Resolution at the next General Meeting; and
  - (b) if an Ordinary Resolution of reappointment of the director is not passed at the next General Meeting—the director ceases to be a director at the conclusion of the General Meeting.



- (4) The number of directors must be fixed by the Articles of Association subject to the requirements of section 74(1) (Directors).
- (5) If, at a General Meeting, it is proposed that 2 or more persons be appointed as directors, the appointments must be made by a separate Resolution in respect of each person, unless unanimously agreed otherwise by the Shareholders at the meeting.

**76. Duties of Directors**

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

**77. Duty to act within powers**

A Director of a Company must:

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

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

- (1) A Director of a Company must act in the way the Director [honestly](#) considers, in good faith, would be most likely to promote the success of the Company for the benefit of its Shareholders as a whole and, in doing so, must have regard, among other matters, to:
  - (a) the likely consequences of any decision in the long term; and
  - (b) the interests of the Company's Employees; and
  - (c) the need to foster the Company's business relationships with suppliers, customers and others; and
  - (d) the impact of the Company's operations on the community and the environment; and
  - (e) the desirability of the Company maintaining a reputation for high standards of



business conduct; and

- (f) the need to act fairly as between Shareholders of the Company.
- (2) To the extent that the purposes of the Company consist of or include purposes other than the benefit of its Shareholders, the reference in subsection (1) to ***the benefit of its Shareholders*** has effect as if it included those other purposes.
- (3) The duty imposed under this section has effect subject to any law applicable to the Company requiring Directors, in certain circumstances, to consider or act in the interests of the Company's Creditors or customers.

**79. Duty to exercise independent judgement**

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

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

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

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

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

- (1) A Director of a Company must avoid a situation in which the Director has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company.
- (2) The duty under subsection (1) applies in particular to the exploitation of any property, information or opportunity.
- (3) The duty under subsection (1) does not apply to a conflict of interest arising in relation to a transaction or arrangement if the requirements of section 83 (Duty to declare interest in proposed transaction or arrangement) or 85 (Duty to declare interest in existing transaction or arrangement) are met.
- (4) A Director of a Company does not Contravene the duty under subsection (1) if:
  - (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or



- (b) the Directors of the Company have authorised the situation in accordance with the Articles of Association and any applicable provisions of these Regulations and the Rules.
- (5) A Company's Articles of Association may include alternative procedures for avoiding conflicts of interests. A Director does not Contravene the provisions of this section by acting in accordance with the alternative procedures.

- (6) In this section:

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

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

- (1) A Director of a Company must not accept a benefit from a third party if the benefit is given to the Director:
  - (a) because of the Director's position as a Director of the Company; or
  - (b) for doing (or not doing) anything as a Director of the Company;

unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- (2) In this section:

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

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

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

**84. Breaches of Directors' duties**

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

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

- (1) If a Director of a Company has, directly or indirectly, an interest in a transaction or arrangement entered into by the Company or a Subsidiary of the Company and the Director is aware that the interest conflicts or may conflict, to a material extent, with the interests of the Company or Subsidiary, the Director must unless the Director has



previously declared such interest under section 83 (Duty to declare interest in proposed transaction or arrangement), declare to the other Directors of the Company the nature and extent of the Director's interest in accordance with this section.

- (2) The declaration must be made as soon as practicable after the Director becomes aware of the circumstances that gave rise to the duty to make the declaration.
- (3) The declaration must be made:
  - (a) at a meeting of the Directors; or
  - (b) by a general Written notice given to the other Directors.
- (4) A declaration made at a meeting of the Directors under subsection (3)(a) must be tabled at, and recorded in the minutes of, the meeting.
- (5) A declaration made by way of a general Written notice given to the other Directors under subsection (3)(b) must be tabled at, and recorded in the minutes of, the first meeting of the Directors after the declaration is made or, if it is not reasonably practicable to do so at that meeting, at the next earliest meeting of the Directors.
- (6) A notice given to the Company by a Director that the Director is to be regarded as interested in a transaction or arrangement with a specified Person is sufficient declaration of the Director's interest in any transaction or arrangement entered into with the Person after the notice is given.
- (7) If a declaration of interest for section 83 or this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made, in the same way as the initial declaration.
- (8) If a Director of a Company Fails to declare an interest of under this section or section 83, the Company, a Shareholder of the Company or the Registrar may apply to the Court for an order under this subsection. On the application, the Court may make any order that it considers appropriate, including, for example, either or both of the following:
  - (a) an order setting aside the relevant transaction or arrangement;
  - (b) an order directing the Director to account to the Company for any benefit, gain or profit obtained because of the relevant transaction or arrangement.
- (9) However, a transaction or arrangement is not voidable, and a Director is not accountable, under subsection (8) in relation to it if, despite a Failure to comply with this section:
  - (a) the transaction or arrangement is ratified by the Company under section 86 (Ratification on interest in existing transaction or arrangement) at a General Meeting; and
  - (b) the nature and extent of the Director's interest in the transaction or arrangement were declared in reasonable detail in the notice calling the General Meeting.
- (10) Also, without limiting the Court's power to order a Director to account for any profit, gain or benefit realised, the Court must not set aside a transaction or arrangement unless it is satisfied that:



- (a) the interests of third parties who have acted in good faith would be unfairly prejudiced if the transaction or arrangement were not set aside; or
- (b) the transaction or arrangement was not reasonable and fair in the interests of the Company at the time it was made.

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

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

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

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

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

- (1) Subject to subsection (4), a Company must not provide financial assistance of any of the following kinds to a Director:
  - (a) making a loan, issuing a Debt Security or granting a credit facility or other similar form of financial assistance;
  - (b) giving a guarantee or security or indemnity in connection with a loan, Debt Security, credit facility or other similar form of financial assistance, whether the financial assistance is provided by the Company or another Person;
  - (c) any other form of financial assistance prescribed by the Rules,



unless:

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

**88. Validity of acts of Director**

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

**89. Secretary**

- (1) A Public Company must have at least 1 Secretary.
- (2) The Directors of a Public Company must take all reasonable steps to ensure that the Secretary (or each joint Secretary) of the Company is a Person who appears to them to have the necessary knowledge and experience to discharge the Functions of Secretary



of the Company and who:

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

**90. Register of Directors and Secretaries**

- (1) Every Company must keep, at its registered office, a Register of its Directors and, if applicable, a Register of its Secretaries. The Company must ensure that a register contains the particulars required by the Rules.
- (2) If a Company is required to keep a register under subsection (1), the Company must ensure that the register is open to inspection, during business hours and without charge, by the Registrar or any Shareholder or Director of the Company.
- (3) The Company may, by its Articles of Association or a decision in General Meeting, impose reasonable restrictions on the availability of a register for inspection under subsection (2), but must nevertheless ensure that the register is open for inspection for at least 2 hours on each day that its registered office is open.
- (4) If a Company Fails to make a register available for inspection under subsection (2) by the Registrar or a Shareholder or Director of the Company, the Registrar may, by Written notice given to the Company, direct the Company to immediately make the register available for inspection by that Person. The Company must comply with the direction.
- (5) Contravention of this section is punishable by a fine.

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

- (1) A Person dealing with a Company is entitled to assume that anyone who appears, from the information that is available to the public in the Register, or a register kept by the Company under these Regulations, to be a Director or Secretary of the Company:
  - (a) has been duly appointed; and



- (b) has authority to Exercise the Functions customarily Exercised by a Director or Secretary of a similar Company.
- (2) A Company is not entitled to assert in proceedings in relation to dealings of the Company that any assumption under subsection (1) is incorrect.
- (3) However, a Person is not entitled to make an assumption under subsection (1) if at the time of the dealing with the Company the Person knew or could have reasonably suspected that the assumption was incorrect.

92. **Disqualification orders**

- (1) Without limiting any other powers available to the Registrar, if the Registrar considers that it is in the public interest that an individual should not, without the leave of the Court, be a Director of, or in any way (whether directly or indirectly) be concerned or take part in the management of, a Company, the Registrar may apply to the Court for an order to that effect against the ~~person~~ Person.
- (2) The Court may make the order applied for if satisfied that the ~~person's~~ Person's conduct (including, for example, any Breach by the person of any 1 or more of the duties under sections 77 to 83 and section 85) makes the person unfit to be concerned or take part in the management of a Company.
- (3) An order under subsection (2) may be made:
  - a) in the case of a first offence, for the period, not longer than 15 years; or
  - b) in the case of a repeated offence, for an unlimited period, as the Court considers appropriate.
- (4) A ~~person~~ Person must not Contravene an order under subsection (2).
- (5) Contravention of subsection (4) is punishable by a fine.



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

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

#### **127. Application of Part 10**

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

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

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

### **CHAPTER 2—ACCOUNTS AND REPORTS**

#### **129. Accounting Records of Companies**



- (1) Every Company must keep Accounting Records that are sufficient to show and explain its transactions so as to:
  - (a) disclose with reasonable accuracy the financial position of the Company at any time; and
  - (b) enable the Directors to ensure that any accounts prepared by the Company under this Part comply with the requirements of these Regulations and the Rules.
- (2) A Company must ensure that its Accounting Records are:
  - (a) kept at the place that the Directors consider appropriate, except so far as the Rules otherwise require; and
  - (b) preserved by the Company for at least 6 years after the day they are created or, if the Rules prescribe another period, the other period; and
  - (c) open to inspection by an Officer or Auditor of the Company at all reasonable times; and
  - (d) otherwise kept and maintained as required by the Rules.
- (3) If a Company, for whatever reason, ceases to exist or ceases to be a Company within the meaning of these Regulations, the Directors ~~at the time that~~ immediately before the Company ceases to exist or ceases to be a Company shall ensure that its Accounting Records are ~~present~~ preserved for ~~the period prescribed in Section 130(2)(b) subsection (2)(b)~~ at least 6 years from the date of cessation.
- (4) If a Public Company keeps its Accounting Records outside of the AIFC, the Company must keep in the AIFC its returns in relation to the business it conducts in or from the AIFC.
- (5) Contravention of this section is punishable by a fine.

**130. Financial years**

- (1) The first financial year of a Company starts on the day it is incorporated and lasts for a period not exceeding 18 months decided by the Directors.
- (2) However, if a Foreign Company has become a Company under section 151 (Transfer of incorporation to AIFC), the first financial year of the Company under these Regulations may, at the option of the Directors, be taken to have started at the end of the previous financial year of the Company in the jurisdiction from which it was continued as a Company. If the Directors exercise that option, the first financial year of the Company under these Regulations is the period of 12 months from the date it is taken to have started.
- (3) The second or any subsequent financial year of a Company starts at the end of the Company's previous financial year and lasts for 12 months or some other period, which is within 7 days either shorter or longer than the 12 months, as may be decided by the Directors.

**131. Accounts**



- (1) The Directors of every Company must ensure that accounts are prepared in relation to each financial year of the Company and that the accounts comply with the requirements in this section.
- (2) The accounts must:
  - (a) be prepared in accordance with accounting principles or standards prescribed by the Rules or otherwise approved by the Registrar; and
  - (b) show a true and fair view of the profit or loss of the Company for the period and of the state of the Company's affairs at the end of the period; and
  - (c) comply with any other requirements of these Regulations and the Rules.
- (3) The Directors of a Company must approve the Company's accounts and must ensure that they are signed on their behalf by at least 1 Director.
- (4) The Directors of a Company must ensure that, within 6 months after the end of each financial year of the Company, the accounts for that year are:
  - (a) prepared and approved by the Directors; and
  - (b) examined and reported upon by an Auditor; and
  - (c) if the Company is a Public Company—laid before a General Meeting, together with a copy of the Auditor's report and Directors' report, for discussion and, if considered appropriate, approval by the Shareholders; and
  - (d) for all Companies—sent, together with (if applicable) a copy of the Auditor's report or Directors' report (or both), to every Shareholder, other than a Shareholder for whom the Company does not have a current postal address.
- (5) A Company must file with the Registrar, within 14 days after the day subsection (4)(d) is complied with in relation to a financial year, a copy of the accounts and the Auditor's report for the financial year and, if the Company is a Public Company, a copy of the Directors' report prepared under section 133 (Directors' reports for Public Companies) for the financial year.
- (6) Unless otherwise provided in its Articles of Association, a Private Company and its Directors are not required to comply with subsections (4)(b) and (5) if the Company, during the current year for which the accounts are being prepared and, if the Company has existed for more than 1 financial year, the year immediately before that financial year, has:
  - (a) an annual turnover of not more than U.S. \$5,000,000; and
  - (b) an average of not more than 20 Shareholders.
- (7) However, the Shareholders representing not less than 10% of the nominal value of the share capital of a Private Company to which subsection (6) applies may, by Written notice given to the Company no earlier than the start of any financial year and no later than 1 month before the end of the financial year, require the Company to obtain an audit of its accounts for financial year. The Directors of the Company must ensure that the request is complied with.



- (8) If a provision of this section requires the Directors of a Company to do something, each of the Directors are severally liable if the thing is not done as required by this section.
- (9) Contravention of this section is punishable by a fine.

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

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

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

- (1) The Directors of a Public Company must prepare a Directors' report for each financial year of the Company.
- (2) The Directors' report for a financial year must:
  - (a) state the names of the persons who, at any time during the financial year, were Directors; and
  - (b) state the principal activities of the Company during the financial year; and
  - (c) state the amount (if any) that the Directors recommend should be paid by way of dividend or other Distribution; and
  - (d) include a business review containing:
    - (i) a fair view of the Company's business; and
    - (ii) a description of the risks and uncertainties facing the Company; and
    - (iii) an analysis of the development, performance and position of the Company's business; and
    - (iv) the other information necessary for an understanding of the development, performance and position of the Company's business; and
  - (e) state that the Directors are not aware of any relevant audit information of which the Company's Auditor is not aware, and that they have taken all reasonable steps to become aware of such relevant audit information; and
  - (f) include the other matters prescribed by the Rules.
- (3) The Directors' report must be signed on behalf of the Directors by a Director or the Secretary of the Company.



- (4) Each Director of a Company must ensure that the requirement of this section are complied with in relation to the Company in relation to each financial year of the Company.
- (5) Contravention of subsection (4) is punishable by a fine.

(...)

## PART 14: POWERS AND REMEDIES

### CHAPTER 1—POWERS OF INVESTIGATION

#### 158. Application and interpretation of Part 14

- (1) In this Part, a reference to a **Company** includes a reference to a Recognised Company, except where expressly provided otherwise.
- (2) In this Part, a reference to a **Regulated Entity** is a reference to a Company or to any other entity that is was registered, incorporated or otherwise formed under Legislation Administered by the Registrar, and includes, for example, any of the following entities:
  - (a) a General Partnership or Recognised Partnership under the AIFC General Partnership Regulations;
  - (b) an Incorporated Organisation under the AIFC Non-profit Incorporated Organisations Regulations;
  - (c) a Limited Liability Partnership or Recognised Limited Liability Partnership under the AIFC Limited Liability Partnership Regulations;
  - (d) a Limited Partnership or Recognised Limited Partnership under the AIFC Limited Partnership Regulations.
- (3) In this Part, a reference to a **Regulated Relevant Person** for a Regulated Entity is a reference to:
  - (a) a Person who is a director, officer, partner, member, employee, or agent, (however described) of the Regulated Entity;
  - (b) ~~the~~an Auditor, or former auditor, of the Regulated Entity; or
  - (c) any other Person who is concerned in any way with the Regulated Entity's management.
- (4) In the application of subsection (3) to a Regulated Entity that is a Company:
  - (a) a reference to a director includes a reference to a Director (as defined in Schedule1);
  - (b) a reference to an employee includes a reference to an Employee (as defined in Schedule 1).
- (5) Without limiting the powers available to the Registrar of Companies, the Registrar may exercise any power given to the Registrar under these Regulations, the Rules, or any



other Legislation Administered by the Registrar, in relation to an entity that has ceased to be a Regulated Entity, or in relation to any Person who was a [Regulated](#) Relevant Person for a Regulated Entity or an entity that has ceased to be a Regulated Entity, within 3 years after the day the Registrar becomes aware of an act or omission that gives rise to the right to exercise the power.

- (6) For this section, the Registrar of Companies becomes aware of an act or omission in relation to a Contravention if the Registrar has information from which the Contravention can reasonably be inferred.

159. **Appointment of Inspectors**

- (1) The Registrar of Companies may appoint a Person as an inspector to investigate and report on the affairs of a Regulated Entity (the **relevant Regulated Entity**), if the Registrar considers it necessary or desirable to do so in pursuit the Registrar's Objectives.
- (2) The Person appointed as an Inspector may, with the consent of the Registrar of Companies, also investigate and report on the affairs of another Regulated Entity that, in the Registrar's opinion, is or was related to the relevant Regulated Entity.
- (3) The Registrar of Companies must inform the AFSA before appointing an Inspector under subsection (1) to investigate and report on the affairs of a Regulated Entity licensed, registered or recognised by the AFSA.
- (4) The Registrar of Companies may also appoint a Person as an inspector to investigate and report on an alleged Contravention of these Regulations.

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

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



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



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

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

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



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

**162. Obstructing or hindering Inspectors**

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

**163. Inspectors' reports**

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



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

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

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

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

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

- (1) This section applies if a Regulated Entity, or a [Regulated](#) Relevant Person for a Regulated Entity, Fails to comply with a requirement (however expressed and including, to remove any doubt, a requirement applying for the benefit of a Person other than the Registrar of Companies):
- (a) under a provision of these Regulations, the Rules or any other Legislation Administered by the Registrar; or
  - (b) made by the Registrar under these Regulations, the Rules or any other



Legislation Administered by the Registrar.

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

166. **General power to obtain information**

- (1) The Registrar of Companies may, by Written notice, require any Regulated Entity, or any [Regulated](#) Relevant Person for a Regulated Entity, to give specified information, produce specified Documents, or ensure that specified information or Documents are given or produced, to the Registrar. The Regulated Entity or [Regulated](#) Relevant Person must comply with the requirement within the time specified in the notice.
- (2) The Registrar may, by Written notice, require any Regulated Entity to allow the Registrar to enter any premises of the Regulated Entity during normal business hours, or at any other time agreed between the Registrar and the Regulated Entity, for the purpose of inspecting and copying information or Documents, in any form, on the premises. The Regulated Entity must comply with the requirement.
- (3) The Registrar of Companies may exercise a power under subsection (1) or (2) if the Registrar considers that it is necessary or desirable to do so for the Exercise of the Registrar's Functions under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (4) Information or a Document given, produced or obtained because of the exercise by the Registrar of Companies of powers under subsection (1) or (2) is admissible in evidence in any proceedings, if the information or Document complies with any requirements



relating to the admissibility of evidence in the proceedings.

- (5) Subsections (1) and (2) do not apply to information or a Document if the information or Document is subject to legal professional privilege.
- (6) The Registrar of Companies may apply to the Court for an order to require a Person to comply with a requirement under subsection (1) or (2), and the Court may make the orders that it considers appropriate.

**167. Powers to strike off names of Companies from Register**

- (1) The Registrar of Companies may strike the name of a Company off the Register if the Registrar has reason to believe that:
  - (a) the Company is not conducting business or is not in operation;
  - (b) the Company is Contravening these Regulations; or
  - (c) it is prejudicial to the interests of the AIFC for the Company to remain in the Register.
- (1A) The Registrar of Companies may conclude that a Company is not conducting business or is not in operation where:
  - (a) the annual return of the Company has not been filed by the relevant date pursuant to section 26; or
  - (b) a fee due to the Registrar has not been paid on the date due,  
and in each case, the Company has failed to file the annual return, pay the fee due or to respond to correspondence with the Registrar and a period of 12 months has elapsed since the date on which the annual return was due to be filed or the relevant fee was due to be paid.
- (2) The Registrar of Companies may also strike the name of a Company off the Register if the Company is being wound up in a creditors voluntary winding up and:
  - (a) the Registrar has reason to believe either that:
    - (i) no liquidator is acting; or
    - (ii) the affairs of the Company are fully wound up; and
  - (b) the returns required to be made by the liquidator have not been made for a period of at least 6 consecutive months.
- (3) In deciding whether to strike the name of a Company off the Register under subsection (1) or (2), the Registrar of Companies comply with the Decision-making Procedures and must also:
  - (a) publish a notice in the Appointed Publications of the Registrar's intention to strike the name of the Company off the Register and dissolve the Company before doing so; and



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



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

168. **Restoration of a Company**

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



Company and all other Persons in the same position (as nearly as may be) as if the Company's name had not been struck off the Register and the Company had not been dissolved.

- (6) If the Court makes an order under subsection (1) to restore a Company to the Register, the applicant for the order must deliver a copy of the order to the Registrar of Companies within 14 days after the day the order is made or, if the Court allows a longer period, that longer period.
- (7) The Registrar of Companies must, as soon as practicable after receiving a copy of the Court order, restore the Company to the Register.
- (8) The restoration of the Company takes effect on a copy of the Court's order being delivered to the Registrar of Companies.
- (9) The Registrar of Companies may, without the need ~~for to make~~ an application to the Court, reinstate a Company that has been struck off [the Register of Companies](#) where ~~the~~[by the Registrar of Companies](#) where the Registrar of Companies is satisfied that the ~~striking off of that Company was in error and the strike off procedure was carried out by the Registrar itself~~[should be restored to the Register](#).

### CHAPTER 3—GENERAL CONTRAVENTIONS

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

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

#### 170. Involvement in Contraventions of these Regulations

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



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

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

## CHAPTER 4—ENFORCEMENT

### 171. Enforceable agreements

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



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

**172. Administrative censures**

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

**173. Administrative imposition of fines**

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

**CHAPTER 5—APPLICATIONS TO COURT**

**174. Orders for compensation**

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



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

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

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

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

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

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



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

**176. Compulsory winding up**

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

**177. Appointment of receivers**

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



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

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

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

179. **Effect of provisions**

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



**PART 15: GENERAL PROVISIONS**

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

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

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

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

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



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

**182. Publication of proposed Rules**

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



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

## CHAPTER 2-THE REGISTRAR

### 183. Reporting by Registrar

- (1) The Registrar must report to the Board of Directors of the AFSA in the way that the Board of Directors of the AFSA may direct [to enable the Board of Directors of the AFSA to compile a report on the activities of the AFSA including a report on the financial operations of the Registrar on a consolidated or individual basis.](#)
- ~~(2) The Board of Directors of the AFSA must provide the Governor with a Written report on the Exercise of the Registrar's Functions and the Registrar's financial activities.~~
- ~~(3) A report must be prepared and provided before the end of the first quarter of the financial year of the Registrar or within any other period required by Governor and must relate to the previous financial year.~~
- ~~(4) A report must be published by the Board of Directors of the AFSA without undue delay and within the time the Governor may direct.~~

### 184. Record keeping

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

### 185. Conflicts of interest

- (1) This section applies to an individual (a relevant person) who is the Registrar or an officer, employee, delegate, agent of the Registrar.
- (2) A relevant person must disclose all material conflicts of interest that the person has in



Exercising the person's Functions. The disclosure must be made without undue delay to the person to whom the relevant person reports.

- (3) A relevant person must not take part in the making of a decision on a matter in relation to which the person has a material conflict of interest.
- (4) Contravention of subsection (3) in relation to a decision does not invalidate the decision.

186. **Confidential information**

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

187. ~~Financial year of Registrar~~ Intentionally omitted.

~~The financial year of the Registrar commences on 1 January in each calendar year or, if the Governor specifies a different date, that date.~~

188. **Annual budget of Registrar**

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



- (a) approve the estimates; or
- (b) on reasonable grounds, reject them

189. **Funding and fees**

- (1) ~~For each financial year of the Registrar, t~~The office of the Board of Directors of the AFSA shall provide financial resources to the Registrar from the annual budget available to the AFSA~~must provide financial resources to the Registrar to the extent necessary to ensure that the Registrar is able adequately~~ to enable the Registrar to Exercise the Registrar's Functions in an adequate manner.
- (2) The Rules may require the payment to the AFSA of fees in respect of:
  - (a) the Exercise by the Registrar of prescribed Functions under or for these Regulations, the Rules or any other Legislation Administered by the Registrar, including the receipt by the Registrar of any Document that is required to be given or delivered to, or filed with, the Registrar (however described); and
  - (b) the inspection of Documents or other material held by the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (3) The Registrar may charge a fee for any services provided by the Registrar otherwise than under an obligation imposed on the Registrar by or under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (4) If a fee is prescribed or charged under this section for the Exercise of a Function, or the provision of services, by the Registrar, no action need be taken by the Registrar until the fee is paid and, if the fee is payable on the receipt by the Registrar of a Document required to be given or delivered to, or filed with, the Registrar (however described), the Registrar is taken not to have received the Document until the fee is paid.

190. **Accounts and Audit of Registrar**

- ~~(1)~~ The Registrar must keep proper accounts of the Registrar's financial activities and provide such information to the Board of Directors of AFSA as they may require to enable the AFSA to satisfy any accounting and audit requests applicable to it.
- ~~(2)~~ ~~The Registrar, before the end of the first quarter of the Registrar's financial year, prepares financial statements for the previous financial year in accordance with the accounting standards prescribed by the Rules.~~
- ~~(3)~~ ~~The financial statements for a financial year must, in any event, give a true and fair view of the financial activities of the Registrar as at the end of the financial year and of the results of the Registrar's operations and cash flows in the financial year.~~
- ~~(4)~~ ~~The Registrar must submit the financial statements prepared for a financial year to the Board of Directors of the AFSA for their approval.~~

191. **Audit for Registrar Intentionally omitted.**

- ~~(1)~~ ~~The Board of Directors of the AFSA must appoint auditors to conduct an audit in relation to the Registrar's financial statements for each financial year of the Registrar.~~



- ~~(2) — The Board of Directors of the AFSA must, as soon as reasonably practicable after the preparation and approval of the Registrar's financial statements for a financial year, give the statements to the relevant auditor for audit.~~
- ~~(3) — The auditor must prepare a report on the financial statements and give the report to the Board of Directors of the AFSA.~~
- ~~(4) — The report must, if appropriate, include a statement by the auditor about whether or not, in the auditor's opinion, the financial statements to which the report relates give a true and fair view of the state of the financial activities of the Registrar as at the end of the financial year to which the financial statements relate and of the results of the Registrar's operations and cash flows in that financial year.~~
- ~~(5) — An auditor has a right of access, at all reasonable times, to all information that is held or controlled by the Registrar, or any officer, employee or agent of the Registrar, and that is reasonably required by the auditor for the purposes of the audit.~~
- ~~(6) — The auditor is entitled reasonably to require from the officers, employees and agents of the Registrar the information and explanations that the auditor consider necessary for the purposes of the audit.~~
- ~~(7) — A Person must not, without reasonable excuse, intentionally engage in conduct that obstructs or hinders the auditor in the Exercise of the auditor's Functions under this section.~~
- ~~(8) — The Board of Directors of the AFSA must, before the end of the first quarter of the financial year of the Registrar or within the other period that the Governor may require, submit to the Governor copies of:
  - ~~(a) — the approved financial statements of the Registrar for the previous financial year; and~~
  - ~~(b) — the auditor's report on the financial statements.~~~~
- ~~(1) — In this section:  
  
**auditor** means a Person who is registered by the Registrar as an auditor under these Regulations.~~

192. **Taxation**

The income of the Registrar is subject to taxation in accordance with the Constitutional Statute.

193. **Liability**

- (1) The Registrar may be sued in the Registrar's corporate capacity.
- (2) However, the Registrar, the AFSA, or an officer, employee, delegate or agent of the Registrar or AFSA, cannot be held liable for anything done or omitted to be done in the Exercise or purported Exercise of the Functions of the Registrar or the Board of Directors of the AFSA under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (3) Subsection (2) does not apply in relation to an act or omission if the act or omission is



shown to have been in bad faith.

194. **Independent review of Registrar**

- (1) The Governor may appoint an independent Person (the **reviewer**) to review and report to the Governor on any aspect of the efficiency and effectiveness of the Registrar in the use of the Registrar's resources.
- (2) The office of the Governor must meet the reasonable expenses incurred by the reviewer in conducting the review and preparing the report.
- (3) The reviewer has a right of access, at all reasonable times, to all information that is held or controlled by any officer, employee or agent of the Registrar and that is reasonably required by the reviewer for the purposes of the review.
- (4) The reviewer is entitled reasonably to require from the Registrar, and the officers, employees and agents of the Registrar, the information and explanations that the reviewer considers necessary for the purposes of the review.
- (5) A Person must not, without reasonable excuse, intentionally engage in conduct that obstructs or hinders the reviewer in the Exercise of the reviewer's Functions under this section.

**CHAPTER 3—MISCELLANEOUS**

195. **Waivers and modifications of certain provisions**

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



- (b) others who may be likely to become subject to a similar notice.
- (6) The Registrar may withdraw or vary a notice under subsection (2), on the Registrar's own initiative or on the application of the Person to whom the notice applies.

196. **Obligation of disclosure to Registrar**

- (1) A Regulated Entity or auditor of a Regulated Entity must disclose to the Registrar any matter that reasonably tends to show:
  - (a) that the Regulated Entity has or may have Contravened these Regulations; or
  - (b) anything else prescribed by the Rules or any other Legislation Administered by the Registrar.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) Subsection (1) does not require disclosure of a privileged communication.
- (4) A Regulated Entity must establish and maintain appropriate systems and internal procedures to enable it to comply with subsection (1).
- (5) Any provision in an agreement between a Regulated Entity and a Relevant Person for the Regulated Entity or an auditor, is void so far as it purports to hinder any Person from causing or assisting a Regulated Entity to comply with an obligation under subsection (1).
- (6) A Person must not be subjected to detriment, loss or damage merely because the Person does anything to cause or assist a Regulated Entity to comply with an obligation under subsection (1).
- (7) The Court may, on the application of an aggrieved Person, make any order for relief if the Person has been subjected to any detriment, loss or damage referred to in subsection (6).
- (8) In this section:

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

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

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

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

197. **Disclosures to Registrar**

- (1) A Person is not liable to any proceedings, subject to any Liability, or in Breach of any



duty, merely because the Person gives or produces any information or Document to the Registrar in good faith, and in the reasonable belief that the information or Document is relevant to any of the Functions of the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.

- (2) This section applies whether the information or Document is given or produced under a requirement at law or otherwise.

198. **Whistleblowing** ~~[intentionally omitted]~~

~~(1) If a Person discloses to the Registrar a matter mentioned in subsection 196(1)(a) (Obligation of disclosure to Registrar) to the Registrar, to the auditor of a Company or a member of the audit team, or to a Director or other Officer of a Company and the disclosure complies with subsection (2), the Person is entitled to the protection set out in subsection (3).~~

~~(2) The disclosure complies with this subsection if it:~~

- ~~(a) discloses the identity of the Person making the disclosure; and~~
- ~~(b) is based on a reasonable suspicion that the relevant Company has or may have Contravened these Regulations; and~~
- ~~(c) is made in good faith.~~

~~(3) If a Person makes disclosure under subsection (1):~~

- ~~(a) the Person must not be subject to any civil or contractual Liability for making the disclosure; and~~
- ~~(b) no contractual, civil or other remedy or right may be enforced against the Person by another Person for making the disclosure or any consequence resulting from the disclosure; and~~
- ~~(c) the Person must not be dismissed from the Person's current employment, and must not otherwise be subject to any action by the Person's employer, or any related party of the employer, that is reasonably likely to cause detriment to the Person.~~

~~(4) Contravention of subsection (3)(c) is punishable by a fine.~~

~~(5) In this section:~~

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

~~[intentionally omitted]~~

199. **Irregularities**

- (1) In this section:



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

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

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

if the thing or procedure is essentially of a procedural nature.

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

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

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

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



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

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

203. **Publication by AFSA**

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



Board of Directors of the AFSA may decide.

**204. Public registers**

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

**205. Language**

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



## PART 16: ULTIMATE BENEFICIAL OWNERS

### CHAPTER 1-EXEMPTIONS

206. The requirements in this Part 16 do not apply to a Relevant Person which:
- (1) has its securities listed or traded on a Recognised Exchange;
  - (2) is regulated by a Financial Services Regulator in a Relevant Jurisdiction;
  - (3) is a Recognised Company, Recognised Foundation, Recognised General Partnership, Recognised Limited Partnership or Recognised Limited Liability Partnership, which satisfies the Registrar of Companies that it is subject to equivalent international standards, which ensure adequate transparency of ownership information in its home jurisdiction;
  - (4) is a Non-Profit Incorporated Organisation which does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes;
  - (5) is wholly owned by a government or government agency of a Relevant Jurisdiction; or
  - (6) is established under a law of Kazakhstan to perform governmental functions.
- 206A. Notwithstanding Chapters 2 to 5, where a person referred to in section 206(1) to (6) beneficially owns or controls (directly or indirectly) at least 25% of a Relevant Person, the Relevant Person shall:
- (1) not be required to make any further inquiry as to its Ultimate Beneficial Ownership, to the extent that such ownership is directly or indirectly held by or through such an entity; and
  - (2) record the following information in respect of each such entity on its Beneficial Ownership Register:
    - (a) full legal name;
    - (b) registered address;
    - (c) the category under section 206 that applies to the entity; and
    - (d) if the entity:
      - (i) has its securities listed or traded on a Recognised Exchange, the name of the Recognised Exchange;
      - (ii) is regulated by a Financial Services Regulator in a Relevant Jurisdiction, the name of such regulator;
      - (iii) is wholly owned by a government or government agency, its name and the Relevant Jurisdiction; or
      - (iv) is established under a law of Kazakhstan to perform governmental functions, the name of such law.



## CHAPTER 2—BENEFICIAL OWNERSHIP OF RELEVANT PERSONS

### 207. Ultimate Beneficial Owner

- (1) For the purposes of this Part 16, an “Ultimate Beneficial Owner” of a Relevant Person means a natural person (other than a person acting solely in the capacity of a professional adviser or professional manager) who:
  - (a) in relation to a ~~C~~company, owns or controls (directly or indirectly):
    - (i) Shares or other Ownership Interests in the Relevant Person of at least ~~the Relevant Percentage~~25%;
    - (ii) voting rights in the Relevant Person of at least ~~the Relevant Percentage~~25%; ~~or~~
    - (iii) the right to appoint or remove the majority of the Directors of the Relevant Person; or
    - (iv) has the legal right to exercise or actually exercises, significant control or influence over the activities of the ~~C~~company; or
  - (b) in relation to a partnership, has the legal right to exercise, or actually exercises, significant control or influence over the activities of the partnership; or
  - (c) [in relation to a {foundation}] or a Non-Profit Incorporated Organisation, has the legal right to exercise, or actually exercises, significant control or influence over the activities of the Governing Body, person or other arrangement administering the property or carrying out the objects of the foundation, or Non-Profit Incorporated Organisation.
- (2) Beneficial ownership may be traced through any number of persons or arrangements of any description.
- (3) If two (2) or more natural persons jointly own or control an interest in a Relevant Person in accordance with subsection (1), each of them is treated for the purposes of these Regulations as owning or controlling that interest.
- (4) If no natural person is identified as an Ultimate Beneficial Owner of a Relevant Person under subsection (1), any natural person upon whose instructions the Relevant Person or its Governing Body is required or is accustomed to act, shall be an Ultimate Beneficial Owner.
- (5) If there is no Ultimate Beneficial Owner of a Relevant Person under either of subsection (1) or (4), each:
  - (a) natural person that is a member of its Governing Body; and
  - (b) Ultimate Beneficial Owner of a body corporate member of its Governing Body,  
shall be deemed to be an Ultimate Beneficial Owner of the Relevant Person.



208. **Ultimate Beneficial Ownership Information**

- (1) Each Relevant Person shall at all times take reasonable steps to obtain, maintain and hold adequate, accurate and current UBO Details in relation to each of its Ultimate Beneficial Owners and (if applicable) the information required under section 206A(2).
- (2) A Relevant Person shall be taken to have obtained, and shall hold, all information in relation to its Ultimate Beneficial Owners which is supplied to the Registrar of Companies in connection with its application for incorporation, formation, registration or continuation, as the case may be.
- (3) A Relevant Person who is provided with a share transfer or other document relating to a change in ownership shall not register, recognise or give effect to that transfer or document, unless it is also provided with a statement by or on behalf of the transferee, which states:
  - (a) whether the transfer will result in a change in the Ultimate Beneficial Ownership of the Relevant Person;
  - (b) if it will result in such a change, the nature of the change; and
  - (c) provides the UBO Details in respect of each new Ultimate Beneficial Owner, as a result of the change.

209. **Notice in respect of Ultimate Beneficial Ownership**

- (1) Without prejudice to the generality of section ~~199~~208(1), a Relevant Person shall, subject to subsection (3), give any person it has reasonable cause to believe is an Ultimate Beneficial Owner and whose UBO Details are not correctly or fully recorded on its Beneficial Ownership Register, the notice referred to in subsection (2).
- (2) The notice referred to in subsection (1) is a notice that:
  - (a) states that it is given under these Regulations;
  - (b) sets out the relevant UBO Details that the Relevant Person reasonably knows or believes to be the relevant particulars and leaves a space in the appropriate place to indicate that a relevant particular is not known;
  - (c) requests the addressee to:
    - (i) state whether or not he or she is a beneficial owner of the Relevant Person;
    - (ii) confirm or correct any particulars that are included in the notice; and
    - (iii) supply any particulars that are missing; and
  - (d) states that should the addressee fail to comply with the notice within thirty (30) days of receipt of the notice, the notified particulars will be entered in the Beneficial Ownership Register maintained by the Relevant Person.
- (3) A Relevant Person is not required to give a notice under subsection (1), if:



- (a) it has already been supplied with all the required UBO Details by that person or with the knowledge of that person; or
- (b) the Relevant Person has made an inquiry (whether formal or informal) as to a natural person's status as an Ultimate Beneficial Owner of it, and thirty (30) days has not elapsed since the making of those enquiries.
- (4) For the purpose of identifying natural persons who are Ultimate Beneficial Owners, a Relevant Person is entitled to rely in good faith, without further enquiry, on the response of a person to whom a notice in writing was given under subsection (1), unless the Relevant Person has reason to believe that the response is misleading or false.
- (5) A Relevant Person who fails to comply with subsection (1) shall be liable to a fine.

### **CHAPTER 3: BENEFICIAL OWNERSHIP REGISTER**

#### **210. Requirements relating to Beneficial Ownership Register**

- (1) A Relevant Person shall keep and maintain a Beneficial Ownership Register within the time specified in ~~Sections 201(2) and 201(3)~~ subsections (2) and (3), in which the UBO Details in respect of each of its Ultimate Beneficial Owners and (if applicable) the information required under section 206A(2), shall be recorded. The Relevant Person shall record any changes to this information in the Beneficial Ownership Register within thirty (30) days of becoming aware of such change.
- (2) Each Relevant Person in existence at the [Commencement Date] shall establish a Beneficial Ownership Register within ninety (90) days of such commencement.
- (3) Each Relevant Person which comes into existence on or after the [Commencement Date] shall establish a Beneficial Ownership Register within thirty (30) days of its incorporation or registration.
- (4) Subject to section 206A(2), the Relevant Person shall cause the following information to be entered in its Beneficial Ownership Register in respect of each Ultimate Beneficial Owner:
  - (a) full legal name;
  - (b) residential address and, if different, an address for service of notices under these Regulations;
  - (c) date and place of birth;
  - (d) nationality;
  - (e) information identifying the person from their passport or other government-issued national identification document acceptable to the Registrar of Companies, including:
    - (i) identifying number;
    - (ii) country of issue; and
    - (iii) date of issue and of expiry;



- (f) the date on which the person became an Ultimate Beneficial Owner of the Relevant Person; and
- (g) the date on which the person ceased to be an Ultimate Beneficial Owner of the Relevant Person.
- (5) If after having exhausted all reasonable means:
  - (a) no natural person is identified as the Ultimate Beneficial Owner of the Relevant Person; or
  - (b) there is reasonable doubt that that any natural person so identified is an Ultimate Beneficial Owner of the Relevant Person.

the Relevant Person shall enter on its Beneficial Ownership Register, the UBO Details of the natural persons who are deemed to be the Ultimate Beneficial Owners pursuant to section ~~Section 201~~207(5).

- (6) If a Relevant Person causes an entry to be made in its Beneficial Ownership Register naming a natural person as an Ultimate Beneficial Owner, and the information and particulars were not provided either by that natural person or with his or her knowledge, the Relevant Person shall within thirty (30) days of making the entry, notify the person whose name has been included in the Beneficial Ownership Register of that fact.
- (7) A Relevant Person who fails to comply with ~~Section 201~~subsection (1) shall be liable to the fine.

211. **Application to the Court to rectify the Beneficial Ownership Register**

- (1) If:
  - (a) the name of any person is, without sufficient cause, entered in or omitted from; or
  - (b) no entry is made in; or
  - (c) unnecessary delay takes place in:
    - (i) entering the name of any person in; or
    - (ii) removing the name of any person who has ceased to be a beneficial owner from,

a Relevant Person's Beneficial Ownership Register, the person aggrieved or any other interested party may apply to the AIFC Court for rectification of the Beneficial Ownership Register.

- (2) Where an application is made under ~~Section 202~~subsection (1), the AIFC Court may either:
  - (a) refuse the application; or
  - (b) order rectification of the Beneficial Ownership Register and if appropriate order payment by the Relevant Person of compensation for any loss sustained by any



- party aggrieved.
- (3) On such an application, the AIFC Court may:
- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the Beneficial Ownership Register; and
  - (b) decide any question necessary or expedient to be decided for rectification of the Beneficial Ownership Register.
- (4) The reference in ~~Section 202~~ subsection (1) to “any other interested party” is a reference to:
- (a) any member of the Relevant Person;
  - (b) any person who is an Ultimate Beneficial Owner of the Relevant Person; and
  - (c) any person named as an Ultimate Beneficial Owner of the Relevant Person.

#### **CHAPTER 4: NOMINEE DIRECTORS**

##### **212. Duty of Nominee Directors**

- (1) A Nominee Director shall inform the company that he is a nominee and provide all the required particulars referred to in ~~S~~section 213(1)(a) to (e) of the person for whom the Nominee Director is a nominee within:
- (a) sixty (60) days of the [Commencement Date], where the company is incorporated, registered or continued prior to the [Commencement Date]; or
  - (b) thirty (30) days of the later of:
    - (i) the date of incorporation or registration of the company; or
    - (ii) the Nominee Director becoming a nominee.
- (2) A Nominee Director shall inform the company of any change to the particulars provided under subsection (1) within thirty (30) days of the change.
- (3) A Nominee Director shall also inform the company that he ceased to be a nominee within thirty (30) days of the cessation.
- (4) For the purposes of this Chapter 4, a Director is a Nominee Director if he is under an obligation to act in accordance with the directions, instructions or wishes of another person.
- (5) A Nominee Director who fails to comply with subsection (1) shall be liable to a fine.

##### **213. Register of Nominee Directors**

- (1) A company which has one (1) or more Nominee Directors shall keep and maintain a Register of Nominee Directors in which there shall be entered, the following information obtained pursuant to ~~Section 203~~section 212(1) or otherwise known by it, shall be



entered in relation to the person on whose behalf, each Nominee Director acts:

- (a) full legal name;
- (b) residential address and, if different, an address for service of notices under these Regulations;
- (c) date of birth;
- (d) nationality;
- (e) information identifying the person from their passport or other government-issued national identification document acceptable to the Registrar, including:
  - (i) identifying number;
  - (ii) country of issue; and
  - (iii) date of issue and of expiry,and, in respect of each Nominee Director:
- (f) the date on which the Nominee Director became a Nominee Director of the Company; and
- (g) the date on which the Nominee Director ceased to be a Nominee Director of the Company.

- (2) A company which fails to comply with ~~Section 204~~ subsection (1) shall be liable to a fine.

## **CHAPTER 5: PROVISION OF INFORMATION TO REGISTRAR OF COMPANIES**

### **214. Access to Registers**

- (1) A Relevant Person must not disclose, or make available for inspection, the Beneficial Ownership Register, the Register of Nominee Directors or any particulars contained in either register to any person, except:
  - (a) as provided in these Regulations;
  - (b) as required under any applicable law administered in the AIFC; or
  - (c) with the consent of the relevant Ultimate Beneficial Owner or Nominee Directors, as the case may be.
- (2) Each Relevant Person in existence at the [Commencement Date] shall within ninety (90) days of such date provide to the Registrar of Companies the names and other required particulars of:
  - (a) any person whose name is included in its Beneficial Ownership Register; and
  - (b) any Nominee Directors whose name is included in its Register of Nominee Directors.



- (3) Each Relevant Person which is incorporated, registered or converted after the [Commencement Date] shall be deemed to have provided to the Registrar the UBO Details of any Ultimate Beneficial Owners as part of the application for incorporation, registration or conversion.
- (4) A Relevant Person who fails to comply with subsection (2) shall be liable to a fine.

215. **Notification to the Registrar of Companies**

- (1) A Relevant Person which makes a change in its Beneficial Ownership Register or Register of Nominee Directors, shall within thirty (30) days of the date of making the change, notify the Registrar of Companies of the particulars of the change.
- (2) The Registrar of Companies may pursuant to ~~Sections 205~~ subsection (1) and section 214(2) require the provision of such further information in relation to any Ultimate Beneficial Owner on the Beneficial Ownership Register or Nominee Directors on the Register of Nominee Directors, as the Registrar of Companies may require.
- (3) A Relevant Person who fails to comply with ~~Section 206~~ subsection (1) shall be liable to a fine.

216. **Notices issued by the Registrar of Companies**

- (1) The Registrar of Companies may, by notice in writing served on a Relevant Person or any other person (without prejudice to any lien claimed by such a person on any documents produced by him) who may have information or documents related to Ultimate Beneficial Owners or Nominee Directors, whichever is applicable, to:
  - (a) provide; or
  - (b) produce for the purposes of inspection; or
  - (c) furnish, to the Registrar of Companies' officers, servants or agents authorised for the purposes of inspection under this ~~Section 207~~ section, on production of evidence of such authority,

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

- (2) The powers conferred on the Registrar of Companies by ~~Section 207~~ subsection (1) to require a person to provide information or produce any documents includes the power:
  - (a) where the documents are produced, to take copies of them or extracts from them, in circumstances where the Registrar of Companies is satisfied that the taking of such copies or extracts is necessary for the proper exercise of powers under or in relation to these Regulations;
  - (b) where the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are;
  - (c) to attend at such time and place as may be required and explain and answer questions relating to any matters in relation to which the production of the



- information may be required; and
- (d) where required by the urgency of the situation or other relevant circumstances, to attend at the Relevant Person's place of business or its registered office in the AIFC, without prior notice and to request any such information or documents to be produced immediately.
- (3) A person to whom a notice or other request is directed is not required to provide any information that is subject to legal professional privilege.
- (4) A statement made by a person in response to a requirement imposed by or under subsections (1) or (2) may be used in evidence against him in:
- (a) proceedings other than criminal proceedings; and
- (b) in criminal proceedings:
- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person; or
- (ii) for:
- (A) an offence under these Regulations;
- (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency;
- (C) perjury; or
- (D) perverting the course of justice.
- (5) If a Relevant Person is in the process of being wound up or dissolved, the liquidator or other person responsible for the winding up of the affairs of the Relevant Person shall deliver to the Registrar of Companies the Beneficial Ownership Register and (if applicable) the Register of Nominee Directors of the Relevant Person or a true copy thereof, within thirty (30) days of his or her appointment.
- (6) In the case where a Relevant Person is in the process of being struck off the Register under Chapter 2 of Part 14 of these Regulations, the members of the Governing Body shall deliver to the Registrar of Companies the Beneficial Ownership Register and (if applicable) the Register of Nominee Directors of the Relevant Person or a true copy thereof, within thirty (30) days of an application for strike off made by the Relevant Person or a notice of strike off issued by the Registrar of Companies.
- (7) A Relevant Person who fails to comply with a notice issued under **Section 207** subsection (1) shall be liable to a fine.
- (8) A Relevant Person who fails to comply with subsections (5) or (6) shall be liable to a fine.

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

### **217. Obligations of the Registrar of Companies**



- (1) The Registrar of Companies shall collect and process information relating to Ultimate Beneficial Owners and Nominee Directors obtained by him under these Regulations only for the purposes of regulation in relation to money laundering and terrorism financing, unlawful organisations and sanctions compliance in the AIFC, or to comply with any other applicable laws in the AIFC.
- (2) Except as required for the purpose of ~~Section 208~~ subsection (1) or for the purposes of ~~Section 208~~ section 217(4), the Registrar of Companies shall:
  - (a) not retain in his possession such information; and
  - (b) shall make arrangements for its secure destruction.
- (3) The Registrar of Companies shall, unless the Relevant Person consents to such disclosure, disclose such information only at the request of a regulator, a law enforcement agency or other government authority prescribed by ~~law~~ any law administered by the AIFC, and then only to the regulator, agency or authority which made the request, for the purpose of such a request.
- (4) In the case of a Relevant Person that has been wound up, dissolved, terminated or struck off, the Registrar of Companies shall retain any records delivered to him pursuant to section ~~Section 207~~ 216(5) relating to that legal person as at the date of its dissolution, termination or striking off (as the case may be) for a period of 6 years after that date.

## CHAPTER 7: ENFORCEMENT

### 218. Removal of Ultimate Beneficial Owner

- (1) Where the Registrar of Companies is notified or becomes aware that an Ultimate Beneficial Owner of a Relevant Person is:
  - (a) the subject of a sanction imposed by any:
    - (i) government;
    - (ii) entity that is a representative, constituent part or extension of a sovereign state or political subdivision thereof; or
    - (iii) entity that is established under international law or the laws of any two (2) or more sovereign states; or
  - (b) involved or has been involved in any proceedings that are law enforcement related or criminal, civil, regulatory, tax or administrative in nature, and  
the Registrar of Companies considers that having such a person as an Ultimate Beneficial Owner of a Relevant Person in the AIFC is:
    - (c) contrary to the law of Kazakhstan or any other Legislation administered by the Registrar of Companies; or
    - (d) prejudicial to the interests of the AIFC,  
the Registrar of Companies may by notice in writing served on a Relevant Person,



require the Relevant Person to remove such a person as an Ultimate Beneficial Owner of the Relevant Person within the time specified in the notice.

- (2) A Relevant Person who fails to comply with a notice issued under subsection (1) shall be liable to a fine.

218A. **Strike off**

If a Relevant Person, fails to comply with a requirement of this Part 16 or notice thereunder, the Registrar of Companies may, after following any relevant procedures set out in these Regulations, strike the Relevant Person off the Register.



**PART 17: WHISTLEBLOWING**

**CHAPTER 1–INTERPRETATION**

219. **Meaning of protected report, protected reporter, worker and employer**

In this Part:

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

- (1) it is about a Centre Participant or a person connected with a Centre Participant;
- (2) it is made to the Centre Participant itself or a person specified or referred to in section 220(1);
- (3) if it is made to an authority or officer, the authority or officer is responsible for matters of the kind reported;
- (4) it is given in good faith;
- (5) it gives information that the reporter reasonably believes shows that any of the following has happened, is happening, or is likely to happen:
  - (a) a criminal offence (whether under the law of the Republic of Kazakhstan or of another jurisdiction);
  - (b) a person is in contravention of a legal requirement, or is failing to comply with any legal obligation to which he is subject;
  - (c) the endangering of the health and safety of an individual;
  - (d) a breach of a Centre Participant’s policies and procedures (including, for example, a breach of any code of conduct or policy in relation to ethical behaviour); or
  - (e) the deliberate concealment of a matter referred to in any of (a) to (d).

**protected reporter** means a worker who makes a protected report.

**worker** means:

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



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

**employer** means:

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

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

**220. Protected reports and protected reporters**

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



- (a) must treat the individual who made the report as a protected reporter; and
- (b) must treat the report as a protected report;

until the Centre Participant has decided, acting reasonably and on the basis of a proper investigation, that the report is not a protected report.

- (3) If a Centre Participant becomes aware that an individual has made a report that purports to be a protected report about the Centre Participant to a person specified or referred to in subsection (1), then the Centre Participant must treat the individual as a protected reporter until the Centre Participant establishes, acting reasonably and on the basis of a proper investigation, that the report is not a protected report.

221. **Right not to suffer detriment**

- (1) A protected reporter has the right:

- (a) not to be subjected to any detriment by any act, or any deliberate failure to act, done by:
  - (i) his employer;
  - (ii) another worker of the protected reporter's employer in the course of that other worker's employment; or
  - (iii) an agent of the protected reporter's employer acting with the employer's authority.

on the ground that the protected reporter has made a protected report; and

- (b) not to be dismissed where the reason (or, if more than one, the principal reason) for the dismissal is that protected reporter made a protected report.

- (2) Where a protected reporter is subjected to detriment by anything done as mentioned in subsections (1)(a)(ii) or (iii), that thing is treated as also done by the worker's employer and it is immaterial, for the purposes of this subsection (2), whether the thing is done with the knowledge or approval of the worker's employer.

- (3) A protected reporter may present a complaint to the AIFC Court that he has been subjected to a detriment in contravention of subsection (1)(a) or he has been dismissed in contravention of subsection (1)(b).

- (4) In proceedings against a protected reporter's employer in respect of anything alleged to have been done as mentioned in subsection (1)(a)(ii), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker from doing that thing or from doing anything of that description.

- (5) A worker or agent of a protected reporter's employer is not liable by reason of subsections (1)(a)(ii) or (iii) for an act that subjects the protected reporter to detriment if:

- (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this section; and



(b) it is reasonable for the worker or agent to rely on the statement,  
but this does not prevent the employer from being liable by reason of subsection (2).

(6) A protected reporter must not be subject to any civil or contractual Liability for making a protected report and no contractual, civil or other remedy or right may be enforced against the protected reporter by another Person for making the protected report or any consequence resulting from the protected report.

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

222. **Remedies where detriment is suffered**

(1) Where the AIFC Court finds a complaint made under section 221(3) well-founded, the AIFC Court:

(a) shall make a declaration to that effect; and

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

(2) The amount of the compensation awarded shall be such as the AIFC Court considers just and equitable in all the circumstances having regard to:

(a) the infringement to which the complaint relates;

(b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right; and

(c) the extent to which the complainant has taken steps reasonably available to him to mitigate the loss referred to in subsection (2)(b).

(3) The loss shall be taken to include:

(a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) Where the AIFC Court finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

**CHAPTER 3—WHISTLEBLOWING POLICIES**

223. **Whistleblowing policy**

(1) A Centre Participant must establish a written policy on whistleblowing that:

(a) is approved by its Governing Body;

(b) complies with this Part; and



(c) is appropriate for the nature, scale and complexity of the Centre Participant's business.

(2) A Centre Participant that is a Branch, or is a member of a group, may rely on the whistleblowing policy of its head office, or a group-wide protected reporting policy, provided that the policy substantially complies with this Part.

224. **Content of whistleblowing policy**

(1) A Centre Participant's whistleblowing policy must comply with all of the following requirements:

(a) it must provide two or more independent channels for making a protected report, which may include any two of the following non-exhaustive examples:

(i) a dedicated email address to which reports may be sent;

(ii) a dedicated telephone number over which reports may be made; and

(iii) designated individual(s) within the Centre Participant to whom reports may be made.

(b) if appropriate, it must provide for a report to be made in a language other than English;

(c) it must recognise that a report may be made by anybody with the necessary information (not only by an officer or employee of the Centre Participant);

(d) it must allow a protected report to be made anonymously;

(e) to the extent that a protected reporter's identity is disclosed voluntarily or is revealed to, or inferred by, the Centre Participant following an investigation of the protected report, the policy must provide for the identity of that protected reporter to be kept confidential (so far as possible);

(f) it must provide for reasonable measures to protect a protected reporter, anyone who assists in investigating a protected report, and anyone who cooperates with the investigation, against retaliation or detriment;

(g) it must explicitly recognise a protected reporter's right (and, in certain cases, obligation) to report to or communicate with the entities or individuals listed in Section 220(1);

(h) it must provide a suitable set of guiding principles, and clear procedures, for the assessment, investigation and escalation of a protected report;

(i) it must provide for the investigation of a protected report to be independent of the individual or business unit concerned, for example through the appointment of a third party investigator;

(j) it must provide for a protected report to be acknowledged by the Centre Participant, and for the protected reporter who made it to be kept informed (to the extent that is appropriate in the circumstances) about the progress and outcome of the investigation;



- (k) it must provide for the reporting, monitoring and investigation of retaliation, attempts at retaliation and threats of retaliation against, and any other actions causing detriment to, the protected reporter and any persons that assist in the conduct of the investigation;
  - (l) it must provide for retaliation, an attempt at retaliation, or a threat of retaliation and any other actions causing detriment to the protected reporter or a person assisting an investigation into a protected report to be treated as gross misconduct;
  - (m) it must provide for appropriate reporting to the Centre Participant's governing body and the AFSA about protected reports, the investigation of such reports and the outcome of the investigations.
- (2) The Centre Participant must set out the policy clearly in a document, and must ensure that all of the firm's officers and employees have access to, and understand, the document.
  - (3) The policy must also clearly set out statements of:
    - (a) the benefits to the Centre Participant of the whistleblowing policy; and
    - (b) the Centre Participant's commitment to it.

225. **Implementation of whistleblowing policy**

- (1) The Governing Body of a Centre Participant must ensure that the Centre Participant's whistleblowing policy is fully implemented.
- (2) In particular, the Centre Participant's Governing Body must take reasonable steps to ensure that a protected reporter, anyone who assists in investigating a protected report, and anyone who cooperates in the investigation, are protected against retaliation and any other action causing detriment.
- (3) A Centre Participant must nominate an appropriately senior individual to oversee the implementation of the whistleblowing policy.
- (4) A Centre Participant that receives a protected report must notify the AFSA within five business days.
- (5) A Centre Participant's Governing Body must ensure that the whistleblowing policy is reviewed and, if necessary, updated at least once every three years by:
  - (a) the Centre Participant's internal auditor; or
  - (b) an independent and objective external reviewer.
- (6) A Centre Participant must provide regular training for all of its officers and employees on its whistleblowing policy and any relevant procedures contained in the policy. In particular, the Centre Participant must provide appropriate specialist training for the officers and employees who are responsible for key elements of the policy.
- (7) A Centre Participant may outsource the implementation of its whistleblowing policy. If the Centre Participant does so, it must ensure that the outsourcing agreement:



- (a) nominates the individual referred to in subsection (3); and
  - (b) otherwise provides appropriately for the implementation of the firm's obligations under the policy.
- (8) In the event that the Centre Participant outsources the implementation of its whistleblowing policy, its rights and obligations under this Part shall remain unaltered, notwithstanding anything to the contrary in the outsourcing agreement.

**SCHEDULE 1: INTERPRETATION**

Note: See section 6.

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

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

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

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

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



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



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

### 3. Provision of information

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

### 4. Definitions for these Regulations

In these Regulations:

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

- (a) cheques;
- (b) Records of electronic funds transfers;
- (c) invoices;
- (d) contracts;
- (e) the general and subsidiary ledgers, journals entries and other adjustment to the financial



statements that are not reflected in journal;

- (f) worksheets and spreadsheets supporting costs allocations, computations, reconciliations and disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Beneficial Ownership Register** shall be construed in accordance with section 201;



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

**Breach** includes Contravene.

**Commencement Date** means [●].

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

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

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

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

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

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

**Contravene** includes Fail to comply with.

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

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

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

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

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

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

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

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



Distributions).

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

**Employee**, of a Company, means an individual who is appointed or employed by the Company and whose services are provided to, or for the purposes of, the Company, and includes an Officer of the Company.

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

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

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

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

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

**Fail** includes refuse.

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

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

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

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

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

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

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

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



**Guidance** means:

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

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

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

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

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

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

**Liability** includes any debt or obligation.

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

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

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

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

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

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

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

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

**[Nominee Director](#)**, has the meaning given in [section 212\(4\)](#).

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

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



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

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

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

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

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

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

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

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

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

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

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

**Recognised Exchange** means any investment exchange recognised by AFSA as adhering to standards of corporate governance and disclosure no less extensive than comparable to those of the AIFC.

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



**Register** means the Register of Companies maintained by the Registrar under these Regulations.

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

**Registrar** means the Registrar of Companies.

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

**Register of Nominee Directors**, has the meaning given by section 213 (Register of Nominee Directors).

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

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

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

~~**Relevant Percentage** means 25%~~

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

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

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

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

**Rules** means rules adopted by the Board of Directors of the AFSA under section 181, whether for these Regulations or any other Legislation Administered by the Registrar.

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



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

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

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

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

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

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

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

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

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

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

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

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

**UBO Details** is a reference to the particulars set out in Section 201(4) of these Regulations.

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

**Writing** includes:

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