



# **AMENDMENTS No. 2**

## **AIFC FOUNDATIONS REGULATIONS**

**Approval Date: 25 November 2021**

**Commencement Date: 01 January 2022**

**Nur-Sultan, Kazakhstan**



## AIFC FOUNDATIONS REGULATIONS

In this document, an underlining and blue indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

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### PART 3: ESTABLISHMENT OF AN AIFC FOUNDATION

#### 14. Creation

(2) The application filed with the Registrar under subsection (1) shall be signed by each Founder and shall include:

...

(e) the Charter of the proposed Foundation (subject to subsections 16(7) and 16(7-1) (Charter):

(f) the By-laws of the proposed Foundation (subject to subsections 17(5) and 17(5-1) (By-laws):

...

#### 16. Charter

~~(7) The Board of Directors of the AFSA may prescribe model provisions to be known as the "Standard Charter", and a Foundation may, for its Charter, adopt the whole or any part thereof as are applicable to that Foundation. A Foundation may adopt, as its Charter, the whole or any part of the Standard Charter as is applicable to the Foundation.~~

(7-1) If the Standard Charter is not adopted by a Foundation in its entirety, the Foundation must submit to the Registrar of Companies, before the charter is adopted by the Foundation, a statement by the Founder(s) that the Charter proposed to be adopted by the Foundation complies with the requirements of these Regulations and all other applicable AIFC Regulations and AIFC Rules.

(7-2) If any change to these Regulations or any other applicable AIFC Regulations or AIFC Rules results in an inconsistency between the provisions of a Foundation's Charter and the provisions of these Regulations 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 Foundation is not required to amend its Charter, unless these Regulations or any other applicable AIFC Regulations expressly require it to do so.

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#### 17. By-laws

~~(5) The Board of Directors of the AFSA may prescribe by way of AIFC Acts model provisions to be known as the "Standard By-laws", and a Foundation may adopt the whole or any part thereof as are~~



applicable to that Foundation. A Foundation may adopt, as its By-laws, the whole or any part of the Standard By-laws as are applicable to the Foundation.

(5-1) If the Standard By-laws are not adopted by a Foundation in its entirety, the Foundation must submit to the Registrar of Companies, before the By-laws are adopted by the Foundation, a statement by the Founder(s) that the By-laws proposed to be adopted by the Foundation comply with the requirements of these Regulations and all other applicable AIFC Regulations and AIFC Rules.

(5-2) If any change to these Regulations or any other applicable AIFC Regulations or AIFC Rules results in an inconsistency between the provisions of a Foundation's By-laws and the provisions of these Regulations 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 Foundation is not required to amend its By-laws, unless these Regulations or any other applicable AIFC Regulations expressly require it to do so.

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## **PART 10-1: ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING OBLIGATIONS**

### **59-1. Obligations in respect of payments and transactions**

A Foundation must carry out its payments and transactions of the third parties through a banking and financial intermediary (a regulated financial institution) based in the AIFC jurisdiction, Republic of Kazakhstan, or in a jurisdiction that is a FATF member or an equivalent jurisdiction.

### **59-2. Notification obligations**

(1) A Foundation must immediately notify the AFSA when it becomes aware of:

(a) complex or unusually large transactions, or an unusual pattern of transactions;

(b) transactions which have no apparent economic or legal purpose; and

(c) other activity which the Foundation regards as particularly likely by its nature to be related to money laundering or terrorist financing.

(2) A Foundation must inform the AFSA in writing as soon as possible if, in relation to its activities carried on as part of the AIFC or in relation to any of its branches or subsidiaries, it:

(a) receives a request for information from a regulator or agency responsible for anti-money laundering and counter-terrorism financing, or sanctions compliance in connection with potential money laundering, terrorist financing, or sanctions breaches;

(b) becomes aware, or has reasonable grounds to believe, that a money laundering event has occurred or may have occurred in or through its business;



- (c) becomes aware of any money laundering or sanctions matter in relation to the Foundation or its branch or subsidiary which could result in adverse reputational consequences to the Foundation; or
- (d) becomes aware of a significant breach of the AIFC AML regulation framework or a breach of the relevant Kazakhstan legislation by the Foundation or any of its employees.

### **59-3. Reporting and record keeping**

- (1) A Foundation must report any information about customers, third parties, their transactions, identified risks of money laundering and terrorist financing and any suspicious activities on request of the AFSA and the FIU.
- (2) The information must be filed in the form and manner prescribed by the AFSA and the FIU and must contain the information required by the AFSA and the FIU.
- (3) A Foundation must maintain the following records:
  - (a) the supporting documents (consisting of the original documents or certified copies) in respect of the customer business relationship, including transactions;
  - (b) suspicious activities and any relevant supporting documents and information, including internal findings and analysis of money laundering and terrorist financing risks; any relevant communications with the FIU;
  - (c) for at least six years from the date on which the notification or report was made, the business relationship ends or the transaction is completed, whichever occurs last.

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## SCHEDULE 1

### INTERPRETATION

In these Regulations:

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**Enforce** in relation to a Foundation means to require or compel members of the Council to execute, carry out and perform their duties under the Foundation's Charter and By-laws in relation to its non-charitable objects and to bring and prosecute proceedings to enforce the terms of the Charter and By-laws.

**FATF** means the Financial Action Task Force, an inter-governmental body whose purpose is the development and promotion of international standards to combat money laundering and terrorist financing.

**FIU** means the Financial Intelligence Unit of the Republic of Kazakhstan, a state authority carrying out financial monitoring and taking other measures on combating the legalisation (laundering) of proceeds from crime, the financing of terrorism, and the financing of proliferation of weapons of mass destruction in accordance with the Kazakhstan legislation.



**Foreign Law** means any law other than the Acting Law of the AIFC.

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**Share** means a share or stock in the share capital of any Body Corporate or any unincorporated body.

**Standard By-laws** means standard by-laws prescribed by these Regulations.

**Standard Charter** means a standard charter prescribed by these Regulations.

**Structured Product** means an instrument comprising rights under a contract where:

...

## **SCHEDULE 4**

### **STANDARD FOUNDATION CHARTER**

#### **1. INTERPRETATION**

1.1. In this Charter:

**'By-laws'** means the By-laws of the Foundation;

**'Charter'** means this Charter of the Foundation;

**'Council'** means the governing body of the Foundation;

**'Default Recipient'** is [as specified in the application];

**'Founder'** is [as specified in the application] who has transferred the Initial Property to the Foundation at the time of its establishment and has signed this Charter;

**'Guardian'** is [as specified in the application];

**'Qualified Recipient'** is [as specified in the application];

**'Regulations'** means the AIFC Foundations Regulations, as amended from time to time.

1.2. In this Charter, unless the contrary intention appears:

(i) terms have the same meanings as they have in the Regulations but excluding any statutory modification thereof not in force when this Charter becomes binding on the Foundation;

(ii) words in the singular must include the plural and words in the plural include the singular;

(iii) words relating to natural persons must include companies, entities, associations or bodies of persons whether incorporated or not;

(iv) the word "may" must be construed as permissive and the word "must" as imperative; and

(v) the headings herein are for convenience only and must not affect the construction of this Charter.

#### **2. FOUNDATION NAME**

The name of the Foundation is [as specified in the application] Foundation ("the **Foundation**").

#### **3. FOUNDATION OBJECTS**



The objects of the Foundation are [as specified in the application].

**4. INITIAL PROPERTY**

The initial property of the Foundation is [as specified in the application], which has been agreed to be transferred to the Foundation by the Founder(s).

**5. DURATION OF FOUNDATION**

Subject to sections 52 and 53 of the Regulations, the Foundation must continue in existence [as specified in the application].

**6. DEFAULT RECIPIENT**

The Default Recipient must have the entitlements specified in section 18(1) of the Regulations.

**7. AMENDMENT AND REVOCATION OF THIS CHARTER AND THE BY-LAWS**

Subject to sections 16(11) and 22(2) of the Regulations, this Charter and the By-laws may be amended:

- (a) by the Founder (where the Founder is living or in existence) at any time by notice in writing to the Foundation containing the terms of the amendment to the Charter;
- (b) at any time when the Founder is not living or in existence, by the Council if its members have unanimously approved the amendment and with the consent of the Guardian; or
- (c) by the Court pursuant to section 40 of the Regulations.

**8. DECLARATION**

Each Founder by signing this Charter declares that it/he/she requests the Council to comply with the terms of this Charter.

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## **SCHEDULE 5**

### **STANDARD FOUNDATION BY-LAWS**

#### **1. INTERPRETATION**

In these By-laws, unless the contrary intention appears the terms have the same meanings as they have in the Charter and Regulations but excluding any statutory modification thereof not in force when these By-Laws become binding on the Foundation.

#### **2. THE COUNCIL**

##### **2.1 ESTABLISHMENT OF COUNCIL**

The Foundation must have a Council consisting of the Chairman of the Council, and not less than one other member.

##### **2.2 POWERS AND FUNCTIONS OF THE COUNCIL**

- (a) Subject to the Regulations and the Charter, the Foundation must be managed by the Council. No subsequent amendment to the Charter must invalidate any act of a member of the Council or the Council.
- (b) The Council may delegate any of its functions or powers to an attorney-in-fact or to a committee of the Council, provided that the extent of such delegation must be clearly stated.
- (c) The Council must be in charge of the day-to-day administration of the Foundation and must have full powers to represent the Foundation in the pursuit of its objects. Such powers include but are not limited to the power to:
  - (i) negotiate, sign, execute all contracts, transactions, arrangements, and deals of whatever kind or nature with third parties, and any authority whatsoever, in the name of the Foundation with right to terminate and amend such contracts and agreements as required from time to time;
  - (ii) open, close and manage all bank accounts pertaining to the Foundation, to carry out all banking transaction on behalf of the Foundation including without any limitation the right to issue, sign, transfer, obtain loans with or without security, bank facilities and bank guarantees and to complete and sign all applications and documents necessary for the performance of the Foundation's corporate objectives;
  - (iii) employ all persons required for the Foundation's business, to define their salaries, benefits, remunerations and the rules and provisions related to their employment as well as the right to terminate their services;
  - (iv) sign memoranda of association in terms and conditions as it may deem fit;
  - (v) claim on behalf of the Foundation, to attach the properties of debtors, refer cases to arbitration, to appoint lawyers; and
  - (vi) take all legal proceedings for the protection of the Foundation's interests as plaintiff or defendant or as party to arbitration or otherwise.
- (d) Notwithstanding the preceding provisions of this section 2.2, the Council must not dispose of, mortgage or assign the property transferred to the Foundation by the Founder as its initial property.



- (e) The Council may accept further contributions to the Foundation from the Founder or any other persons, and must hold such property on such terms as may be agreed between the Foundation and the Founder or other contributor which terms must, if different from those set out in section 4 of these By-laws, be specified in an amendment to these By-laws.

### 2.3 APPOINTMENT AND RETIREMENT OF MEMBERS OF THE COUNCIL

- (a) The Founder must appoint the first members of the Council and the Chairman at the time of the establishment of the Foundation, and if the number of members of the Council falls below two, must appoint replacement Councillors so that there are at least two Councillors.
- (b) Subject to the preceding clause, additional members of the Council may be appointed by the Council of the Foundation by an ordinary resolution passed by the majority of existing Council members with the consent in writing of each Founder during their lifetime or its existence or, if the Founder(s) is/are no longer alive or in existence, the Guardian.
- (c) Any vacancy in the position of Chairman must be filled by election conducted by the members of the Council in such manner as they must determine.

### 2.4 DISQUALIFICATION AND REMOVAL OF MEMBERS OF THE COUNCIL

The office of a member of the Council is automatically vacated if the member:

- (i) is prohibited by the Regulations from being a member of the Council;
- (ii) becomes bankrupt;
- (iii) is, by virtue of any disability, incapable of fulfilling the functions or duties required by the office;
- (iv) without permission, does not attend three successive meetings of the Council;
- (v) resigns his or her office by notice to the Foundation;
- (vi) is removed by the Founder(s); or
- (vii) is removed by the Court pursuant to section 44(1) of the Regulations.

### 2.5 REMUNERATION AND EXPENSES OF MEMBERS OF THE COUNCIL

The members of the Council must receive such remuneration as the Council with the approval in writing of the Founder or, if there is no Founder living or in existence, the Guardian (if any) determines by resolution and must receive payment of all expenses incurred in association with the carrying out of their duties as members of the Council.

### 2.6 MEETINGS OF THE COUNCIL

- (a) Any member of the Council may call a meeting of the Council.
- (b) Subject to the Regulations, a meeting of the Council must be called by at least 14 days' notice to all the Council members.
- (c) Such notice of meeting must specify the time and place of the meeting and the general nature of the matters to be considered.
- (d) The members of the Council may unanimously waive notice of any meeting.
- (e) The proceedings of a meeting are not invalid solely because of the inadvertent failure to give notice of the meeting to, or the failure to receive notice of a meeting by any person entitled to receive such notice.

### 2.7 PROCEEDINGS OF THE COUNCIL

- (a) Subject to the provisions of these By-laws, members of the Council may regulate their





- proceedings as they think fit.
- (b) No meeting must take place unless a quorum is present. The majority of persons entitled to vote must constitute a quorum.
  - (c) If a quorum is not present, the meeting must be adjourned to a place and time determined by the Chairman. If during the meeting a quorum ceases to be present the meeting must be adjourned to a place and time determined by the members of the Council who are present.
  - (d) The Chairman must chair the meeting. If the Chairman is not present or willing to act within fifteen minutes of the stated time for commencement of the meeting, and in the absence of a nominee, another member of the Council elected by the rest of the Council present must chair the meeting.
  - (e) The Chairman may adjourn the meeting with the consent of the majority of the votes at the meeting. No matters must be considered at an adjourned meeting other than matters that might have been considered at the meeting had the adjournment not taken place. It is not necessary to give notice of the adjourned meeting unless the meeting was adjourned for fourteen days or more, in which case at least seven days' notice must be given specifying the time and place of the adjourned meeting and the general nature of the matters to be considered.
  - (f) Any matters arising at a meeting must be decided by a majority of votes with the Chairman having a second or casting vote in the case of equality of votes.
  - (g) The quorum for the transaction of the business of the Council must be two or any other number fixed by the Council.
  - (h) All acts done by a meeting of the Council, or of a committee of Council, or by a person acting as a member of the Council must be valid, notwithstanding any defect in his appointment or his disqualification from holding office, or that he was not entitled to vote, being discovered afterwards.
  - (i) A resolution in writing signed by all the Council entitled to receive notice of the meeting must be as valid and effectual as if it had been passed at a meeting of the Council. The resolution may consist of several documents in the like form each signed by one or more members of the Council.
  - (j) A member of the Council must not vote at a meeting on any resolution concerning a matter in which he has a direct or indirect conflict of interest. For the purposes of this clause, an interest of a member of the Council includes an interest of any person who is connected to the member of the Council.
  - (k) A member of the Council must not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
  - (l) The Foundation may by resolution suspend or relax any provision of these By-laws prohibiting a member of the Council from voting at a meeting.
  - (m) The chairman of the meeting must rule on any question arising at a meeting on the right of a member of the Council, other than himself, to vote and his ruling must be final and conclusive.
  - (n) No objection may be raised to the right of any member of the Council to vote except at the meeting at which the voter is to vote.

## **2.8 MINUTES**

The Council must cause minutes to be kept for recording:

- (i) all appointments of officers made by the Council; and
- (ii) all proceedings at meetings of the Council, and of committees of Council, including the names of the Council present at each such meeting.

## **3. FOUNDER AND OTHER OFFICERS AND PERSONNEL**



### **3.1 THE FOUNDER**

The Founder must have the following powers exercisable in accordance with section 22(2) of the Regulations (but subject to section 16(10) of the Regulations, if applicable):

- (a) power to amend, revoke or vary the terms of the Charter or these By-laws, or both of them, in whole or in part;
- (b) power to remove any member of the Council and appoint a replacement member of the Council in his/her place;
- (c) power to remove any Guardian and appoint a replacement Guardian in the place of the former Guardian; and
- (d) power to terminate the Foundation.

### **3.2 SECRETARY**

Subject to the Regulations, the Council may (but need not) appoint and remove a secretary and must decide on the terms, remuneration and conditions of appointment.

### **3.3 THE GUARDIAN**

- (a) The Guardian named in section 1 of the Charter must have the powers specified in section 20 of the Regulations. The following powers of the Council require the approval of the Guardian in accordance with section 20(10) of the Regulations if the Founder is not then living:
  - (i) the making of any application of property of the Foundation; and
  - (ii) the appointment of further members of the Council of the Foundation pursuant to section 2.3(b) of these By-laws.
- (b) The office of Guardian is automatically vacated if the Guardian:
  - (i) is prohibited by the Regulations from being the Guardian;
  - (ii) becomes bankrupt or insolvent;
  - (iii) resigns the office of Guardian by notice to the Foundation provided that a replacement Guardian will be appointed to take office as and from the date of such resignation;
  - (iv) is removed by the Founder; or
  - (v) is removed by the Court pursuant to section 44(1) of the Regulations.

## **4. FOUNDATION PROPERTY AND INCOME**

4.1 The assets and property of the Foundation must be under the control of the Council. The Council may subject to the approval of the Founder (if living) or the Guardian (if the Founder is not living):

- (a) determine how the property of the Foundation is applied or distributed to or, in case of several, amongst the Qualified Recipient(s);
- (b) determine whether or not the net income of the Foundation in any year must be distributed to or, in case of several, amongst the Qualified Recipient(s);
- (c) subject to the Charter, add or remove a person or class of persons as Qualified Recipients or provide for the exclusion from the category of Qualified Recipient of a person or class of persons, either revocably or irrevocably.

4.2 In each year the Council of the Foundation must determine the net income of the Foundation after taking into account all the expenses of the Foundation for that year.

4.3 Upon the termination (winding up or dissolution) of the Foundation, the whole of the property then



held by the Foundation must be applied, after discharge of any outstanding liabilities of the Foundation, [as specified in the application].

- 4.4 In the exercise of its powers and functions under this section, the Council:
- (a) may invite or call for applications from Qualified Recipient(s) in whatever manner it may prescribe;
  - (b) may act on its own motion in respect of any Qualified Recipient which has not submitted an application; and
  - (c) may rely upon assessments of applications by employees or others engaged by the Foundation.

## **5. AMENDMENT OF THESE BY-LAWS**

Subject to section 6 of the Charter and sections 16(11) and 22(2) of the Regulations, these By-laws may be amended by:

- (a) the Founder (if living or in existence) at any time by notice in writing to the Foundation containing the terms of the amendment to the By-laws;
- (b) at any time when the Founder is not living or in existence, by the Council if its members are unanimous and have the consent of the Guardian; or
- (c) by the Court pursuant to section 40 of the Regulations.

## **6. DECLARATION**

Each Founder by signing these By-laws declares that it/he/she requests the Council to comply with the terms of these By-laws.