



**AMENDMENTS No. 1
AIFC INSOLVENCY RULES
(IR)**

**Approval Date: 2 December 2018
Commencement Date: 2 December 2018**



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

1.1. Name

These Rules are the [AIFC Insolvency Rules 2017 (or IR)]

1.2. Commencement

These Rules commence on ~~1 January 2018~~ [***]

1.3. Legislative authority

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

1.4. Application of these Rules

These Rules apply within the jurisdiction of the AIFC

1.5. Definitions etc

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

1.5.2 Terms used in these Rules (other than terms defined in Schedule 4) have the same meanings as they have, from time to time, in the AIFC Insolvency Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears

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

- Administrative Receiver, in relation to a Company
- Administrator, in relation to a Company
- AFSA
- AIFC
- AIFC Regulations
- AIFC Rules
- AIFCA
- Company
- Contravention
- Court
- Creditors Voluntary Winding Up, in relation to a Company
- Document



- Exercise
- Fail
- Function
- Goes into Liquidation
- Insolvency, in relation to a Company
- Insolvency Practitioner
- Liquidator, in relation to a Company
- Members Voluntary Winding Up, in relation to a Company
- Nominee, in relation to a proposed Voluntary Arrangement for a Company
- Official Liquidator
- Person
- Provisional Liquidator, in relation to a Company
- Receiver, in relation to a Company
- Registrar of Companies (or Registrar)
- Supervisor, in relation to a Voluntary Arrangement for a Company
- Unable to Pay its Debts, in relation to a Company or Recognised Company
- Voluntary Arrangement
- Voluntary Winding Up
- Writing

1.5.3 Subject to subrule 1.5.2, terms used in these Rules (other than terms defined in Schedule 4 or the AIFC Insolvency Regulations) have the same meanings as they have, from time to time, in the AIFC Companies Regulations [or the AIFC Companies Rules](#) or the relevant provisions of those Regulations, unless the contrary intention appears

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

- Acting Law of the AIFC
- Articles of Association
- Share
- Shareholder



Note: For definitions in the AIFC Companies Rules applying to these Rules, see Schedule 4

of those Rules. The definitions in that Schedule relevant to these Rules include the following:

- Cell
- Cell Receiver
- Cell Receivership Order
- Cell Shares
- Cell Transfer Order
- Cellular Assets
- Protected Cell Company
- Non-Cellular Assets

1.6. Administration of these Rules

These Rules are administered by the Registrar of Companies



PART 9: PROTECTED CELL COMPANIES

9.1 Cell Receivership Orders

9.1.1. Subject to the provisions of this rule 9.1, if in relation to a Protected Cell Company, the Court is satisfied:

- (a) that the Cellular Assets attributable to a particular Cell of the Company are or are likely to be insufficient to discharge the claims of creditors in respect of that Cell; and
- (b) that the making of an order under this rule 9.1 would achieve one or more of the purposes set out in 9.1.3 below;

the Court may make an order (a "Cell Receivership Order") under this rule 5.1 in respect of that Cell.

9.1.2. A Cell Receivership Order may be made in respect of one or more Cells.

9.1.3. A Cell Receivership Order is an order directing that the business and Cellular Assets of or attributable to a Cell shall be managed by a person specified in the order (the "Cell Receiver") for one or more of the purposes of:

- (a) the survival as a going concern of the Cell;
- (b) the more advantageous realisation of the business and assets of or attributable to the Cell than would be achieved by the winding up of the Cell; or
- (c) the orderly winding up of the business of or attributable to the Cell and the distribution of the Cellular Assets attributable to the Cell to those entitled to have recourse thereto.

9.1.4. Where a Receiver, an Administrative Receiver or a Liquidator has been appointed to a Protected Cell Company, the Court may not make a Cell Receivership Order in relation to a Cell of the Company unless the Court is satisfied that it is desirable to do so in order to protect the interests of members or creditors, or potential members or creditors, of the Cell.

9.1.5. A Cell Receivership Order in relation to a Cell of a Protected Cell Company shall cease to be of effect, but without prejudice to prior acts, upon the appointment of a Receiver, an Administrative Receiver or Liquidator to act in respect of the Company unless the Court orders otherwise on being satisfied that it is desirable to do so in order to protect the interests of members or creditors, or potential members or creditors, of the Cell.

9.1.6. A Cell Receiver appointed under this rule 9.1 must be a person who is registered as an insolvency practitioner under Part 9 of the AIFC Insolvency Regulations.

9.2 Applications for Cell Receivership Orders

9.2.1. An application for a Cell Receivership Order in respect of a cell of a Protected Cell Company may be made by:

- (a) the Company;
- (b) the directors of the Company;
- (c) any creditor of the Company in respect of that Cell;
- (d) a member in respect of Cell Shares of that Cell;



(e) the AFSA; or

(f) the Registrar.

9.2.2. The Court, on hearing an application for a Cell Receivership Order, may make an interim order or adjourn the hearing, conditionally or unconditionally.

9.2.3. Notice of an application to the Court for a Cell Receivership Order in respect of a cell of a Protected Cell Company shall be served upon:

(a) the Company;

(b) a Liquidator, Receiver or Administrative Receiver, if any, appointed in relation to the Company;

(c) the Registrar;

(d) the AFSA; and

(e) such other persons, if any, as the Court may direct

who shall each be given an opportunity of making representations to the Court before the order is made.

9.3 Functions and powers of a Cell Receiver

9.3.1. The Cell Receiver of a Cell:

(a) may do all such things as may be necessary for one or more of the purposes set out in subrule 9.1.3; and

(b) shall have all the functions and powers of the directors in respect of the business and Cellular Assets of or attributable to the Cell.

9.3.2. The Cell Receiver may at any time apply to Court:

(a) for directions as to the extent or exercise of any function or power;

(b) for the Cell Receivership Order to be discharged or varied; or

(c) for an order as to any matter arising in the course of his Cell Receivership.

9.3.3. In exercising his functions and powers the Cell Receiver is deemed to act as the agent of the Protected Cell Company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, grossly negligent, or acts in bad faith.

9.3.4. Any person dealing with the Cell Receiver in good faith need not enquire whether the cell receiver is acting within his powers.

9.3.5. When an application has been made for, and during the period of operation of, a Cell Receivership Order:

(a) no proceedings may be instituted or continued by or against the Protected Cell Company in relation to the relevant Cell; and



- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or Cellular Assets of or attributable to the relevant Cell;

except by leave of the Court, which may be conditional or unconditional.

9.3.6. During the period of operation of a Cell Receivership Order the functions and powers of the directors of the Protected Cell Company shall cease in respect of the business and Cellular Assets of or attributable to the Cell in respect of which the order was made.

9.4 Discharge and variation of Cell Receivership Orders

9.4.1. The Court shall not discharge a Cell Receivership Order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

9.4.2. The Court, on hearing an application for the discharge or variation of a Cell Receivership Order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

9.4.3. Upon the Court discharging a Cell Receivership Order in respect of a Cell of a Protected Cell Company on the ground that the purpose for which the order was made has been achieved or substantially achieved:

- (a) the Court may direct that any payment made by the Cell Receiver to any creditor of the Company in respect of that Cell shall be deemed full satisfaction of the liabilities of the Company to that creditor in respect of that Cell; and
- (b) the creditor's claims against the Company in respect of that Cell shall be thereby deemed extinguished but nothing in this subrule 9.4.3 shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the Company.

9.4.4. Subject to the provisions of:

- (a) this Part 9 and any other applicable AIFC Regulations or AIFC Rules; and
- (b) any agreement between the Protected Cell Company and any creditor thereof as to the subordination of the Debts due to that creditor to the Debts due to the Company's other creditors;

the Company's Cellular Assets attributable to any Cell of the Company in relation to which a Cell Receivership Order has been made shall, in the winding up of the business of or attributable to that Cell, be realised and used to satisfy the liabilities attributable to that Cell, and for this purpose all such liabilities rank equally and abate proportionately until the Cellular Assets have all been exhausted.

9.4.5. Any surplus shall thereafter be distributed, unless the articles provide otherwise:

- (a) among the holders of the Cell Shares or the person otherwise entitled to the surplus; or
- (b) where there are no Cell Shares and no such persons, among the holders of the other shares;

in each case according to their respective rights and interests in or against the Company.

9.4.6. The Court may, upon discharging a Cell Receivership Order in respect of a Cell of a Protected Cell Company, direct that the Cell shall be dissolved on such date as the Court may specify.



9.4.7. Immediately upon the dissolution of a Cell of a Protected Cell Company, the Company may not undertake business or incur liabilities in respect of that Cell.

9.5 Remuneration of a Cell Receiver

The remuneration of a Cell Receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the Cellular Assets attributable to the Cell in respect of which the Cell Receiver was appointed but not from any other assets of the Protected Cell Company.

9.6 Appointment of Receivers and Liquidators to a Protected Cell Company

9.6.1. Subject to subrule 9.6.2 and any other provisions of these Rules, Parts 3, 4, 5, 9 and 10 of the AIFC Insolvency Regulations, and any other applicable AIFC Regulations or AIFC Rules, shall apply to a Protected Cell Company and, in so doing, to the Cells of such Company as if, where the context admits:

- (a) each Cell were a separate Company;
- (b) the members of each Cell were the members of that separate Company; and
- (c) the Cellular Assets attributable to a Cell were the assets of that separate Company.

9.6.2. A Receiver, Administrative Receiver, or Liquidator shall not be appointed in respect of a Protected Cell Company except by order of the Court.

9.6.3. Without limiting the application of any other provisions of the AIFC Insolvency Regulations or these Rules, a Receiver or Administrative Receiver of a Protected Cell Company may in accordance with Article 14 of the AIFC Insolvency Regulations, and a Liquidator may in accordance with Article 70 of the AIFC Insolvency Regulations, apply to the Court for:

- (a) directions as to the extent or exercise of any function or power;
- (b) a Cell Transfer Order under rule 8.18 of the AIFC Companies Rules permitting, in an appropriate case, the transfer of the Cellular Assets and liabilities of a Cell to another person, wherever resident or incorporated, and whether or not a Protected Cell Company; or
- (c) an order as to any matter arising in the course of his administration, including in relation to any Cell within the Company.

9.7 Remuneration of Receivers and Liquidators

9.7.1. The remuneration of a Receiver, an Administrative Receiver or a Liquidator of a Protected Cell Company and any expenses properly incurred by him shall be payable, in priority to all other claims:

- (a) where the appointment involves the continuation of business of a Cell within the Company, and not the winding up of that cell from the Cellular Assets attributable to that Cell but not from any other assets of the Company;
- (b) where the appointment involves the winding up of a Cell within the Company from:
 - (i) the Cellular Assets attributable to the Cell; and
 - (ii) to the extent these may be insufficient, the Non-Cellular Assets of the Company;



and

(c) in all other cases from:

(i) the Non-Cellular Assets of the Company; and

(ii) to the extent these may be insufficient, the relevant cellular assets, in such shares or proportions as the Court may direct.

9.8 Winding up of Protected Cell Companies and Cells generally

9.8.1. Subject to these Rules, Parts 3, 4, 5, 9 and 10 of the AIFC Insolvency Regulations, and any other applicable AIFC Regulations or AIFC Rules, in the winding up of a Cell of a Protected Cell Company, whether under a Cell Receivership Order or by the appointment of a Receiver, Administrative Receiver or Liquidator to the Company, the Cellular Assets attributable to a particular Cell of the Company shall be used to satisfy the liabilities attributable to that Cell, and for this purpose all such liabilities rank equally and abate proportionately until the Cellular Assets have all been exhausted.

9.8.2. Notwithstanding any law applicable in the AIFC to the contrary, in the winding up of a Protected Cell Company or of a Cell of such a Company, a Cell Receiver, Receiver, Administrative Receiver or Liquidator shall:

(a) be bound to deal with the assets of the Company or of the Cell, as the case may be, in accordance with the duties and requirements set out in rule 8.11 of the AIFC Companies Rules; and

(b) in discharge of the claims of creditors of the Company or of the Cell, apply assets to those entitled to have recourse thereto in conformity with the provisions of Part 8 of the AIFC Companies Rules

9.8.3. The Regulations in this rule 9.8 apply notwithstanding any provisions to the contrary in or under the AIFC Insolvency Regulations, and are subject to the power of the Court to make orders relating in particular to fraud or to inability to satisfy liabilities entirely