AMENDMENTS No. 3
AIFC MARKET RULES

Approval Date: 14 February 2019
Commencement Date: 14 February 2019

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

2.3.2. Directors' duties

A Director of a Reporting Entity must act:

(a) on a fully informed basis;

(b) in good faith;

(c) honestly;

(d) with due diligence and care;

(e) in the best interests of the Reporting Entity and its shareholders.

Guidance: Directors' duties

In order to meet the obligation to act with due diligence and care, a Director should (amongst other things) ensure that he has enough time and capacity available to devote to the job. See also the best practice standards in MAR Schedule 3 which apply to Directors of Reporting Entities who are subject to Corporate Governance Principles.

The directors; duties contained in the AIFC Companies Regulations applicable to companies incorporated under the regulations should also be carefully considered and adhered to. These include the duty to promote the success of the Company. This is a subjective test – in other words, the duty on a Director is to act in a way he or she considers to be in the best interests of the Reporting Entity to promote its success. Directors of Recognised Companies under the AIFC Companies Regulations should obtain appropriate advice on their duties under the law applicable to that Recognised Company.

(…)

2.3.8 Other matters requiring shareholder approval

(a) The Board of a Reporting Entity must, subject to (b), ensure that a majority of shareholders in voting approves:

(i) any alteration of the constitutional documents of the Reporting Entity including any alteration to the memorandum of association, articles of association, bylaws or any other instrument constituting the Reporting Entity;

(ii) an alteration of the issued Share capital of the Reporting Entity which is more than 25% of the existing issued Share capital;

(iii) any acquisition or disposal of an asset of the Reporting Entity where the value of the asset involved is 25% or more of the value of the net assets of the Reporting Entity as at its last published financial reports;

(iv) the appointment or removal of a Director of the Reporting Entity and the terms of such appointment;

(v) the appointment or removal of the Auditor of the Reporting Entity; ~~and~~

(vi) the placing of the Reporting Entity into voluntary liquidation;

(vii) an acquisition or series of acquisitions in any twelve month period: (a) the value of which exceeds 100% of the value of the net assets of the Reporting Entity as at its last published financial reports; or (b) which would result in a fundamental change in its business, board or voting control; and

(viii) a disposal by the Reporting Entity which, when aggregated with any other disposals over the previous twelve months with a value in excess of 75% of the value of the of the value of the net assets of the Reporting Entity as at its last published financial reports.

(b) The requirement in (a) does not apply, subject to any requirements in the constitutional documents of the Reporting Entity, in relation to the appointment or removal of a Director or Auditor of a Reporting Entity in circumstances where the immediate appointment or removal is necessary in the interests of the Reporting Entity.

Guidance: Other matters requiring shareholder approval

(1) Under MAR 2.3.8(a)(ii), an increase in the issued Share capital of a Reporting Entity which results in an increase of more than 25% of its current Share capital requires shareholder approval regardless of whether or not such an increase is within the authorised capital of the relevant Reporting Entity.

(…)

(2) The circumstances in which the immediate removal of a Director or Auditor may become necessary include matters affecting that Person's fitness and propriety, such as professional misconduct of such a Person.

Principle 3 – Board composition and resources

MAR 2.2.4:"The Board and its committees must have an appropriate balance of skills, experience, independence and knowledge of the Reporting Entity's business, and adequate resources, including access to expertise as required and timely and comprehensive information relating to the affairs of the Reporting Entity."

Balance of skills and independence

22. A major consideration that underpins the effectiveness of the Board is the availability at the Board level of the relevant skills, expertise and resources as are necessary to discharge the Board functions, taking due account of the nature, scale and complexity of the business of the Reporting Entity.It may well be that no single Director has all the knowledge, skills and expertise needed by a Board to discharge its functions. The Board should have an appropriate number and mix of individuals to ensure that there is an overall adequate level of knowledge, skills and expertise commensurate with the nature, scale and complexity of the business of the Reporting Entity.

23. In order to ensure that the Board is equipped with the necessary skills, expertise and resources appropriate to the business of the Reporting Entity, there should be a formal, rigorous and transparent procedure for the appointment of Directors to the Board. Appointments to the Board should be made on merit and against objective criteria, with due regard to the benefits of diversity on the Board. Care should be taken to ensure that appointees have enough time available to devote to the job. This is particularly important in the case of chairmanships.

24. All Directors should be submitted for re-appointment at regular intervals, subject to continued

satisfactory performance. The Board should ensure planned and progressive refreshing of the Board to ensure the on-going effectiveness of the Board, particularly the objectivity of the decision making by the Board and maintaining the skills and expertise as relevant to the Reporting Entity's business.

25. All Directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The Board should satisfy itself that there is adequate succession planning in respect of Board membership and the senior management, so as to ensure an orderly and smooth change-over of positions whilst maintaining an appropriate balance of skills and experience within the Reporting Entity and on the Board.

26A. The Board should include key executive officers such as the chief executive officer and the chief financial officer.