



AIFC SECURITY REGULATIONS

AIFC REGULATIONS No. 7 of 2017

**December 20, 2017
Astana, Kazakhstan**



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PART 1: GENERAL

1. Name

These Regulations are the *AIFC Security 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 article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

5. Application of these Regulations

These Regulations apply within the jurisdiction of the AIFC.

6. Interpretation

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

7. Administration of these Regulations

These Regulations are administered by the Security Registrar.



PART 2: SCOPE OF THESE REGULATIONS

8. Scope

- (1) These Regulations apply to:
 - (a) a transaction, irrespective of its form, that creates a Security Interest by contract; and
 - (b) a sale of a Receivable or Promissory Note.
- (2) The application of these Regulations to a Security Interest is not affected by the fact that the obligation secured by the Security Interest is itself secured by a transaction or interest to which these Regulations do not apply.
- (3) However, these Regulations do not apply to:
 - (a) a Security right arising by operation of law; or
 - (b) a sale of a Receivable or Promissory Note as part of a sale of the business out of which it arose; or
 - (c) an assignment of a Receivable or Promissory Note that is for the purpose of collection only; or
 - (d) an assignment of a right to payment under a contract to an assignee who is also obliged to perform under the contract; or
 - (e) an assignment of a Receivable or Promissory Note to an assignee in full or partial satisfaction of pre-existing indebtedness; or
 - (f) a transfer of an interest in, or an assignment of, a claim under a policy of insurance and any subsequent assignment of the right to payment.
- (4) Subject to section 37(4) (Security Registry), these Regulations apply to Security Interests created by natural persons.



PART 3: APPOINTMENT AND ROLE OF SECURITY REGISTRAR

9. Appointment of Security Registrar etc.

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

10. Security Registrar's Objectives and Functions

- (1) The Security Registrar must pursue the following objectives (the Security Registrar's **Objectives**) in Exercising the Registrar's Functions:
 - (a) to promote good practices and observance of the requirements of these Regulations, the Rules and any other Legislation Administered by the Security Registrar;
 - (b) to administer these Regulations, the Rules and any other Legislation Administered by the Security 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 Security Registrar;
 - (d) to maintain a reliable and up-to-date Security Registry, and provide public access to the Security Registry, in accordance with these Regulations, the Rules and any other Legislation Administered by the Security Registrar.
- (2) The Security 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 Security 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 AIFCA for its consideration;
 - (b) preparing and adopting non-binding guidance for AIFC Participants, and advising the Board of Directors of the AIFCA 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 Security Registrar;
 - (d) issuing or prescribing procedures and requirements relating to these Regulations, the Rules or any other Legislation Administered by the Security Registrar;
 - (e) specifying procedures for the Filing, or lodgement (however described) with the Security Registry or the Security Registrar, of Financing Statements, Continuation Statements or Termination Statements in relation to Security Interests, or any other Documents, under or for these Regulations, the Rules or



- any other Legislation Administered by the Security 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 Security Registrar.
- (5) The Security 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.



PART 4: ATTACHMENT AND EFFECTIVENESS OF SECURITY INTERESTS AND COLLATERAL

11. Effectiveness of Security Agreement

- (1) A Security Agreement is effective against Purchasers of the Collateral and against creditors of the Debtor.
- (2) If there are 2 or more Security Interests in existence in relation to the same Collateral, the order of priority of the Security Interests is decided in accordance with these Regulations by:
 - (a) the existence and timing of perfection of the Security Interests; and
 - (b) if none of the Security Interests is perfected—on the existence and timing of attachment of the Security Interests.

12. Attachment and enforceability of Security Interests in Collateral, Proceeds and Supporting Obligations

- (1) A Security Interest attaches to Collateral when it becomes enforceable against the Debtor, unless an agreement expressly postpones the time of attachment.
- (2) A Security Interest is enforceable against the Debtor and third parties if:
 - (a) value has been given; and
 - (b) the Debtor has rights in the Collateral or the power to transfer rights in the Collateral to a Secured Party; and
 - (c) either or both of the following conditions are met:
 - (i) the Debtor is bound by a Security Agreement that provides a description of the Collateral;
 - (ii) the Collateral is a negotiable Document of Title, a Negotiable Instrument, money, a Deposit Account or Financial Property and the Secured Party has control under the Debtor's Security Agreement.
- (3) A Person (the **first Person**) becomes bound as Debtor by a Security Agreement previously entered into by another Person, as Debtor, if:
 - (a) the Security Agreement becomes effective to create a Security Interest in the first Person's Property; or
 - (b) the first Person becomes generally liable for the obligations of the other Person, including the obligations secured under the Security Agreement.
- (4) If, under subsection (3), a Person becomes bound as Debtor by a Security Agreement entered into by another Person:
 - (a) another agreement is not necessary to make a Security Interest in the property enforceable under subsection (2)(c)(i); and
 - (b) the Security Agreement satisfies subsection (2)(c)(i) in relation to existing or after-acquired property of the Person to the extent the property is described in the agreement.



- (5) The attachment of a Security Interest in Collateral gives the Secured Party the rights to Proceeds provided by section 24 (Secured Party's rights on disposal of Collateral and in Proceeds) and is also attachment of a Security Interest in a Supporting Obligation for the Collateral.
- (6) The attachment of a Security Interest in a right to payment or performance secured by a Security Interest or other interest in personal or real property is also attachment of a Security Interest in the Security Interest or other interest.

13. Title to Collateral immaterial

The provisions of these Regulations relating to Collateral apply whether the Debtor, the Secured Party or a third party has title to the Collateral.

14. After-acquired Collateral and future advances

- (1) A Security Agreement may create or provide for a Security Interest in after-acquired Collateral.
- (2) A Security Agreement may provide that Collateral secures, or that a Receivable or Promissory Note is sold in connection with, future advances or other value.
- (3) In this section:

after-acquired Collateral, in relation to a Security Interest, means Collateral acquired or created by a Debtor after the attachment of the Security Interest.

15. Use or disposal of Collateral etc.

- (1) A Security Interest is not invalid or ineffective because:
 - (a) the Debtor has the right or ability to:
 - (i) use, commingle, or dispose of, all or part of the Collateral, including returned or reposessed Goods; or
 - (ii) collect, compromise, enforce, or otherwise deal with, the Collateral; or
 - (iii) accept the return of the Collateral or make repossessions; or
 - (iv) use, commingle or dispose of Proceeds; or
 - (b) the Secured Party Fails to require the Debtor to account for Proceeds or replace the Collateral; or
 - (c) the Secured Party grants a Security Interest in the Collateral.
- (2) This section does not affect the requirements of control if attachment, perfection or enforcement of a Security Interest depends on control of the Collateral by the Secured Party.

16. Duties of Secured Party having control of Collateral to release control etc.

- (1) This section applies if a Security Interest lapses by fulfilment or expiry of any secured obligation.



- (2) The Debtor may, by Written notice given to the Secured Party having control of Collateral, require the Secured Party to:
 - (a) take the steps necessary to release control of the Collateral; and
 - (b) provide Written notice of the release to any relevant Bank, intermediary, broker, custodian or issuer unless otherwise agreed by the Debtor.
- (3) The Secured Party must comply with the requirement within 10 days after the day the Secured Party is given the notice.

17. Duties of Secured Party to release Account Debtor

- (1) This section applies if a Security Interest in a Receivable or General Intangible lapses by fulfilment or expiry of any secured obligation while the Receivable or General Intangible continues in being.
- (2) The Debtor may, by Written notice given to the Secured Party, require the Secured Party to release each Account Debtor whose obligation to make payment under Collateral has been assigned to the Secured Party from any further obligation to the Secured Party.
- (3) The Secured Party must give each of those Account Debtors a Written notice that releases the Account Debtor from any further obligation to the Secured Party under the Security Interest within 10 days after the day the Secured Party is given the Debtor's notice.
- (4) This section does not apply to an assignment constituting the sale of a Receivable.



PART 5: PERFECTION AND PRIORITY

CHAPTER 1—PERFECTION

18. Perfection of Security Interests and scope of perfection

- (1) Subject to section 21 (Continuing of perfection), a Security Interest is perfected if:
 - (a) it has attached; and
 - (b) the applicable requirements for perfection in this Chapter have been satisfied.
- (2) Perfection of a Security Interest in Collateral also perfects a Security Interest in a Supporting Obligation for the Collateral.
- (3) Perfection of a Security Interest in a right to payment or performance also perfects a Security Interest in any other interest securing the right.

19. When Filing required to perfect Security Interest

- (1) A Security Interest is not perfected unless a Financing Statement relating to it is Filed.
- (2) However, the Filing of a Financing Statement is not necessary to perfect a Security Interest if the Security Interest is:
 - (a) perfected on attachment under section 20 (Security Interest perfected on attachment); or
 - (b) perfected under section 21 (Continuing of perfection); or
 - (c) perfected under section 22 (Temporary perfection without Filing or control); or
 - (d) perfected under section 24 (Secured Party's rights on disposal of Collateral and in Proceeds); or
 - (e) of a kind prescribed by the Rules.
- (3) Without limiting subsection (2)(e), the Rules may make provision for or in relation to Security Interests that may be perfected by possession or control of Collateral (whether by the Security holder or a third party) without Filing a Financing Statement.
- (4) Without limiting subsection (3), the Rules may make provision for or in relation to the following matters for Security Interests mentioned in subsection (3):
 - (a) the means and timing of attachment and perfection of the Security Interests;
 - (b) rules for determining the priority of the Security Interests and priority of other interests that take priority over or free of the Security Interests;
 - (c) rights and remedies (including enforcement) on default by Debtors relating to the Security Interests.

20. Security Interest perfected on attachment

The following Security Interests are perfected when they attach:



- (a) an assignment of a Receivable where the Receivable does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (b) a sale of a Receivable or Promissory Note.

21. Continuing of perfection

- (1) A Security Interest is perfected continuously if it is originally perfected by one method under these Regulations and is later perfected by another method under these Regulations without an intermediate period when it was unperfected.
- (2) If a Secured Party assigns a perfected Security Interest, a Filing under these Regulations is not required to continue the perfected status of the assigned Security Interest.

22. Temporary perfection without Filing or control

- (1) A perfected Security Interest in Goods, or a Document of Title to Goods, remains perfected for 20 days without Filing if the Secured Party makes the Goods, or the Document of Title, available to the Debtor for the purpose of:
 - (a) ultimate sale or exchange; or
 - (b) loading, unloading, storing, shipping, transhipping, manufacturing, processing, or otherwise dealing with, the Goods before their ultimate sale or exchange.
- (2) A perfected Security Interest in a Certificated Security or Negotiable Instrument remains perfected for 20 days without Filing or control if the Secured Party delivers the Certificated Security or Negotiable Instrument to the Debtor for the purpose of:
 - (a) ultimate sale or exchange; or
 - (b) presentation, collection, enforcement, renewal, or registration of transfer.
- (3) After the 20-day period mentioned in subsection (1) or (2) ends, perfection depends on compliance with these Regulations.

23. Perfection by Filing and control

- (1) A Security Interest in a negotiable Document of Title, a Negotiable Instrument, money, Financial Property or a Deposit Account is perfected by:
 - (a) Filing a Financing Statement relating to the Security Interest; and
 - (b) control of the Collateral.
- (2) However, a Security Interest remains perfected under subsection (1) only while the Secured Party retains control of the Collateral.
- (3) For this section, if the Debtor does not have possession or control of Financial Property, a Secured Party retains control of the Financial Property even if a further Security Interest or any other interest is granted in the Financial Property.

24. Secured Party's rights on disposal of Collateral and in Proceeds

- (1) Unless otherwise agreed by the Secured Party:



- (a) a Security Interest continues in Collateral even if it is sold, exchanged, licensed or otherwise disposed of; and
 - (b) a Security Interest attaches to any identifiable Proceeds of Collateral.
- (2) A Security Interest in identifiable Proceeds is a perfected Security Interest if the Security Interest in the original Collateral was perfected and remains perfected for 20 days after the day the Security Interest attaches under subsection (1).
- (3) However, the Security Interest in identifiable Proceeds remains perfected after the 20-day period mentioned in subsection (2) if:
- (a) the following conditions are satisfied:
 - (i) a Filed Financing Statement covers the original Collateral;
 - (ii) the Proceeds are Collateral in which a Security Interest may be perfected by Filing; or
 - (b) the Proceeds are identifiable Cash Proceeds; or
 - (c) the Security Interest in the Proceeds is perfected otherwise than under subsection (2) when the Security Interest attaches to the Proceeds or within 20 days after the day it attaches.

CHAPTER 2—PRIORITY

25. Interests that take priority over or take free of Security Interest

- (1) A Security Interest is subordinate to the rights of a Person entitled to priority under section 26 (Priorities among conflicting Security Interests in same Collateral).
- (2) A buyer (other than a Secured Party), licensee, lessee or other transferee of property takes free of a Security Interest if the buyer, licensee, lessee or transferee gives value without knowledge of the Security Interest and before it is perfected.
- (3) If a buyer, licensee, lessee or other transferee of Property (the **transferee**) acquires the Property from a Person (the **transferor**) who is in the business of selling, licensing, leasing or otherwise transferring Property of that kind, and the transferee acquires the Property in good faith and in the ordinary course of the transferor's business, the transferee takes the Property free of any Security Interest created by the transferor, even if the Security Interest was perfected and the transferee knew of its existence.

26. Priorities among conflicting Security Interests in same Collateral

- (1) Except as otherwise provided in this Chapter:
 - (a) conflicting perfected Security Interests rank according to priority in time of perfection; and
 - (b) a perfected Security Interest has priority over a conflicting unperfected Security Interest; and
 - (c) the first Security Interest to attach has priority if conflicting Security Interests are unperfected.



- (2) For this Chapter, the priority of a Security Interest in Collateral also determines the priority of a perfected Security Interest in Proceeds of, and any Supporting Obligation supporting, the Collateral.

27. Priority of Security Interests in transferred Collateral

A Security Interest created by a Debtor is subordinate to a Security Interest in the same Collateral created by another Person if:

- (a) the Debtor acquired the Collateral subject to the Security Interest created by the other Person; and
- (b) the Security Interest created by the other Person was perfected when the Debtor acquired the Collateral; and
- (c) there is no period afterwards when the Security Interest is unperfected.

28. Priority of Security Interests created by New Debtor

A Security Interest created or acquired by a New Debtor that is perfected by a Filed Financing Statement effective under section 39 (Effectiveness of Financing Statement if New Debtor becomes bound by Security Agreement) in Collateral in which the New Debtor has or acquires rights is subordinate to a Security Interest in the same Collateral that is perfected otherwise than by a Filed Financing Statement that is effective solely under that section.

29. Priority of Security Interests in Deposit Account

The following rules determine priority between conflicting Security Interests in the same Deposit Account:

- (a) subject to paragraphs (b) and (c), Security Interests perfected under section 23 (Perfection by Filing and control) rank according to priority in time of perfection;
- (b) subject paragraph (c), a Security Interest held by the Bank with which the Deposit Account is maintained has priority over a conflicting Security Interest held by another Secured Party irrespective of the date of creation;
- (c) a perfected Security Interest under which the Secured Party has obtained control under section 2(1)(c) (Control of Deposit Account) of Schedule 1 with the consent of the Bank has priority over a Security Interest held by the Bank with which the Deposit Account is maintained.

30. Priority of Security Interests in Financial Property

The following rules determine priority between conflicting Security Interests in the same Financial Property:

- (a) subject to paragraphs (b) and (c), conflicting Security Interests held by Secured Parties each of which has control under section 3 (Control of Financial Property etc.) of Schedule 1 rank according to priority in time of perfection;
- (b) a Security Interest held by an Investment Intermediary in an Investment Entitlement, or an Investment Account maintained with the Investment Intermediary, has priority over a conflicting Security Interest held by another Secured Party;



- (c) a Security Interest held by a Commodity Broker in a Commodity Contract, or a Commodity Account maintained with the Commodity Broker, has priority over a conflicting Security Interest held by another Secured Party.

31. Priority of Purchaser of a negotiable Certificate of Title or Negotiable Instrument

- (1) A Purchaser of a negotiable Certificate of Title or Negotiable Instrument (the *negotiable document*) has priority over a perfected Security Interest in the negotiable document if the Purchaser gives value and takes possession of the negotiable document in good faith and without knowledge that the purchase Breaches the rights of the Secured Party.
- (2) However, subsection (1) does not prejudice the rights of:
 - (a) a holder in due course of a Negotiable Instrument; or
 - (b) a holder of a negotiable Document of Title duly negotiated; or
 - (c) a Purchaser of a Security from an Investment Intermediary who gives value, obtains control of the Security, and does not act in collusion with the Investment Intermediary in relation to a Breach of the Investment Intermediary's obligations; or
 - (d) a Person claiming through a Person mentioned paragraph (a), (b) or (c).

32. Transfer of money

A transferee of money or funds from a Deposit Account takes the money or funds free of a Security Interest.

33. Priority of Security Interest perfected by Filed Financing Statement providing seriously misleading information

If a Security Interest is perfected by a Filed Financing Statement that provides information that is seriously misleading at the time the initial financing statement is Filed:

- (a) the Security Interest is subordinate to a conflicting perfected Security Interest in the Collateral to the extent that the holder of the conflicting Security Interest gives value in reasonable reliance on the incorrect information; and
- (b) a Purchaser, other than a Secured Party, of the Collateral takes free of the Security Interest to the extent that, in reasonable reliance on the incorrect information, the Purchaser gives value and receives delivery of the Collateral in good faith.

34. Priority subject to subordination

These Regulations do not prevent subordination by agreement by a Person entitled to priority.



PART 6: RIGHTS OF THIRD PARTIES

35. Alienability of Debtor's rights

- (1) Except as otherwise provided in Part 8 (Default and enforcement), these Regulations do not prohibit the transfer of a Debtor's rights in Collateral voluntarily or involuntarily.
- (2) A Debtor may assign the Debtor's rights against an Account Debtor to an assignee. The assignment may provide that the Account Debtor must not assert any claim or defence that the Account Debtor has or may have against the Debtor, subject to any claim or defence that may not be waived.

36. Secured Party not liable for Debtor

The existence of a Security Interest or authority given to a Debtor to dispose of or use Collateral does not of itself subject a Secured Party to liability for the Debtor's acts or omissions.



PART 7: THE SECURITY REGISTRY AND FILING

37. Security Registry

- (1) The Governor must establish a Security Registry.
- (2) The Security Registry is administered and maintained by the Security Registrar in accordance with these Regulations and the Rules.
- (3) To perfect a Security Interest in the AIFC, it must be Filed in the Security Registry.
- (4) The Security Registrar must not accept a Filing in respect of a Security created by a natural person unless the person has provided the information required by the Rules to the Registrar.

38. Effect of certain events on effectiveness of Financing Statement

- (1) A Filed Financing Statement remains effective in relation to Collateral that is sold, exchanged, leased, licensed, or otherwise disposed of, and in which the Security Interest continues, even if the Secured Party knows of or consents to the disposal.
- (2) Subject to section 39 (Effectiveness of Financing Statement if New Debtor becomes bound by Security Agreement), a Financing Statement does not become ineffective if, after the initial financing statement is Filed, the information provided in the Financing Statement becomes misleading in any respect.
- (3) However, if the name of a Debtor changes with the result that a Filed Financing Statement becomes seriously misleading:
 - (a) the Financing Statement continues to be effective to perfect a Security Interest in Collateral acquired by the Debtor before, or within 4 months after the day of, the change; and
 - (b) the Financing Statement ceases to be effective to perfect a Security Interest in Collateral acquired by the Debtor more than 4 months after the day of the change, unless an amendment of the Financing Statement that makes the Financing Statement not seriously misleading is Filed within that 4-month period.

39. Effectiveness of Financing Statement if New Debtor becomes bound by Security Agreement

- (1) A Filed Financing Statement naming an Original Debtor is effective to perfect a Security Interest in Collateral in which a New Debtor has or acquires rights to the extent that the Financing Statement would have been effective against the Original Debtor.
- (2) However, if the difference between the name of the Original Debtor and that of the New Debtor causes a Filed Financing Statement that is effective under subsection (1) to be seriously misleading:
 - (a) the Financing Statement is effective to perfect a Security Interest in Collateral acquired by the New Debtor before, and within 4 months after the day, the New Debtor becomes bound under section 12(3) (Attachment and enforceability of Security Interests in Collateral, Proceeds and Supporting Obligations); and
 - (b) the Financing Statement is not effective to perfect a Security Interest in Collateral acquired by the New Debtor more than 4 months after the day the New Debtor



becomes bound under section 12(3) unless an initial financing statement providing the name of the New Debtor is Filed within the 4-month period.

40. Persons entitled to File Financing Statement etc.

- (1) A Person may File an initial financing statement, an amendment that adds to the Collateral covered by a Financing Statement, or an amendment that adds a Debtor to a Financing Statement, only if the Debtor authorises the Filing in a Written record or the Filing is authorised under subsection (2) or (3).
- (2) By becoming bound as a Debtor by a Security Agreement, the Debtor or New Debtor authorises the Filing of an initial financing statement, and any amendment, covering the Collateral, and any Proceeds of the Collateral, provided for in the Security Agreement.
- (3) By acquiring Collateral in which a Security Interest subsists, a Debtor authorises the Filing of an initial financing statement, and any amendment, covering the Collateral and Proceeds of the Collateral.
- (4) A Person may File an amendment other than an amendment authorised to be Filed under this section only if:
 - (a) each Secured Party authorises the Filing; or
 - (b) the amendment is a Termination Statement for a Financing Statement for which the Secured Party has Failed to send or File a Termination Statement as required by section 42 (Termination statement).

41. Amendment of Financing Statement

- (1) A Person may amend a Financing Statement by Filing an amendment.
- (2) A Financing Statement that is amended by an amendment that adds Collateral or a Debtor is effective for the added Collateral or Debtor only from the time of the Filing of the amendment.

42. Termination statement

- (1) This section applies in relation to a Filed Financing Statement if:
 - (a) there is no obligation secured by the Collateral covered by the Financing Statement (unless the Financing Statement is for a Receivable that has been sold); or
 - (b) the Financing Statement covers a Receivable that has been sold, but in relation to which the Account Debtor or other Person obligated has discharged the Person's obligation; or
 - (c) the Debtor did not authorise the Filing of the initial financing statement.
- (2) The Debtor may, by Written notice given to the Secured Party, require the Secured Party to cause the Secured Party to give the Debtor, for the Financing Statement, a Termination Statement for Filing or to File a Termination Statement.
- (3) The Security Party must comply with the requirement within 20 days after the day the Secured Party is given the notice.



- (4) On the Filing of the Termination Statement, the Financing Statement ceases to be effective.

43. Duration and effectiveness of Financing Statement etc.

- (1) Subject to subsections (4) and (5), a duly Filed Financing Statement is effective for 5 years after the day the initial financing statement is Filed.
- (2) The Financing Statement ceases to be effective at the end of the 5-year period unless a Continuation Statement is Filed in accordance with subsection (3) for the Financing Statement before the end of that period. If the Security Interest becomes unperfected when the Financing Statement ceases to be effective, it is taken never to have been perfected as against a Purchaser of the Collateral for value whose purchase takes place after the loss of perfection in good faith.
- (3) A Continuation Statement for the Financing Statement may be Filed only within 6 months before the end of the 5-year period mentioned in subsection (1) or (4).
- (4) On the Filing of a Continuation Statement in accordance with subsection (3), the effectiveness of the initial financing statement continues for 5 years (or a further period or further periods of 5 years) commencing on the day the Financing Statement would have become ineffective in the absence of the Filing.
- (5) If the Financing Statement relates to real property or fixtures, the Financing Statement remains effective as a Financing Statement until the Security Interest is released or satisfied or its effectiveness otherwise terminates.

44. Refusal to accept record

The Security Registrar may refuse to accept a Written record (however described) for Filing if the record does not comply with any requirement under this Part or comply with any requirement (including as to format or medium) under the Rules.

45. Rules about Financing Statements etc.

The Rules may provide for or in relation to the following:

- (a) the criteria for the effective Filing of Financing Statements under or for these Regulations, including, for example, requirements about their form, content and medium and the identification of the Debtor, the Secured Party and the Collateral;
- (b) standard forms for use in Filing Financing Statements;
- (c) the effectiveness of Financing Statements, including providing that they are effective only if they comply with the Rules and are accepted by the Security Registrar;
- (d) the adoption of guidance about what constitutes a seriously misleading Financing Statement;
- (e) the indexing and publication of Financing Statements either individually or collectively;
- (f) the Filing of correction statements by Persons affected by Financing Statements;
- (g) excluding or limiting the liability of the Security Registry.

46. Rules about Debtors' rights to accounts etc.



- (1) The Rules may give Debtors rights to require from Secured Parties:
 - (a) accounts of unpaid obligations secured by Collateral; and
 - (b) details of the Collateral subject to Security Interests.
- (2) The Rules may:
 - (a) prescribe how frequently Debtors may make requirements mentioned in subsection (1) and the times within which Secured Parties must comply; and
 - (b) permit or prohibit the charging of fees by Secured Parties in connection with the requirements; and
 - (c) prescribe fines for failure by Secured Parties to comply with the requirements.



PART 8: DEFAULT AND ENFORCEMENT

CHAPTER 1—RIGHTS ON DEFAULT

47. Rights after default

- (1) After default, a Secured Party has the rights and remedies provided in this Part and the Rules and, except as otherwise provided in section 48 (Waiver and variation of rights and duties), those provided by agreement of the parties.
- (2) After default, a Debtor and an Obligor have the rights provided in this Part and the Rules and by agreement of the parties.

48. Waiver and variation of rights and duties

To the extent that they give rights to a Debtor or Obligor and impose duties on a Secured Party, the Debtor or Obligor may not waive or vary:

- (a) Rules made for section 46 (Rules about Debtor's rights to accounts etc.) that deal with requiring accounts and lists of Collateral; and
- (b) the requirements of this Part.

CHAPTER 2—COLLECTION AND ENFORCEMENT

49. Collection and enforcement by Secured Party

- (1) Subject to subsection (4), after default, a Secured Party:
 - (a) may notify a Person obligated on the Collateral to make payment or otherwise render performance to or for the benefit of the Secured Party; and
 - (b) may take any Proceeds to which the Secured Party is entitled under these Regulations; and
 - (c) may enforce the obligations of a Person (the **obligated Person**) who is an Account Debtor or a Person obligated on the Collateral, and exercise the rights of the Debtor in relation to:
 - (i) the obligations of the obligated Person to make payment or otherwise render performance to or for the benefit of the Debtor; and
 - (ii) any Property that secures the obligations of the obligated Person; and
 - (d) if the Secured Party holds a Security Interest in a Deposit Account perfected by control under section 2(1)(a) (Control of Deposit Account) of Schedule 1—may apply or cause the Bank to apply the balance of the Deposit Account to the obligation secured by the Deposit Account.
- (2) If necessary to enable a Secured Party to exercise the right to enforce a Security Interest in real property, the Secured Party may File in the Security Registry:
 - (a) a copy of the Security Agreement that creates or provides for the relevant Security Interest; and
 - (b) the Secured Party's Written statement that:



- (i) a default has occurred; and
 - (ii) the Secured Party is entitled to enforce the Security Interest.
- (3) A Secured Party may deduct from the collections made under this section reasonable expenses of collection and enforcement, including reasonable legal expenses incurred by the Secured Party.
- (4) If, when the Secured Party proposes to take action under subsection (1), there is a Filed Financing Statement (the **other Financing Statement**) relating to the Debtor that may disclose the priority of another Security Interest in the Collateral, the Secured Party:
- (a) must notify the Secured Party named in the other Financing Statement (the **other Secured Party**) of its proposal in Writing; and
 - (b) must not take action under that subsection until the earlier of the following:
 - (i) receipt of a Written consent from the other Secured Party;
 - (ii) the elapse of 14 days after the day the other Secured Party was notified under paragraph (a).
- (5) If, within the 14-day period mentioned in subsection (4)(b)(ii), the other Secured Party notifies the Secured Party that the other Secured Party has priority in the Collateral and objects to the Secured Party's proposal, the Secured Party must not take action under subsection (1) in relation to the Collateral unless the Court sets the objection aside or authorises the Secured Party to take the action despite the objection.
- (6) For subsection (4), a Financing Statement may disclose the priority of another Security Interest if:
- (a) the initial financing statement to which it relates is earlier than that Filed by the Secured Party; or
 - (b) the Financing Statement is made by a Bank, an Investment Intermediary or a Commodity Broker.

50. Application of Proceeds of collection or enforcement

- (1) A Secured Party must apply, or pay over for application, the Cash Proceeds of collection or enforcement under section 49 (Collection and enforcement by Secured Party) in the following order:
- (a) to the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable legal expenses incurred by the Secured Party;
 - (b) to the satisfaction of obligations secured by a Security Interest having priority over the Security Interest under which the collection or enforcement is made if the Secured Party receives a Written demand for Proceeds before the distribution of the Proceeds is completed;
 - (c) to the satisfaction of obligations secured by the Security Interest under which the collection or enforcement is made;



- (d) to the satisfaction of obligations secured by any subordinate Security Interest or other interest in the Collateral subject to the Security Interest under which the collection or enforcement is made if the Secured Party receives a Written demand for Proceeds before the distribution of the Proceeds is completed.
- (2) If requested by a Secured Party, a holder of a prior or subordinate Security Interest or other interest must provide reasonable proof of the interest within a reasonable time. Unless the holder complies with the request, the Secured Party need not comply with the holder's demand under subsection (1).
- (3) After applying, or paying over for application, under this section the Cash Proceeds of collection or enforcement, a Secured Party must account to a Debtor for, and pay to the Debtor, any surplus, and the Obligor is liable for any deficiency.
- (4) Subsection (3) does not apply if the underlying transaction is a sale of a Receivable or Promissory Note.

CHAPTER 3—DISPOSAL OF COLLATERAL

51. Secured Party's right to take possession after default

- (1) After default, a Secured Party may take possession of the Collateral and dispose of it under section 52 (Disposal of Collateral after default).
- (2) If, when the Secured Party proposes to take action under subsection (1), there is a Filed Financing Statement (the **other Financing Statement**) relating to the Debtor that may disclose the priority of another Security Interest in the Collateral, the Secured Party:
 - (a) must notify the Secured Party named in the other Financing Statement (the **other Secured Party**) of its proposal in Writing; and
 - (b) must not take action under that subsection until the earlier of the following:
 - (i) receipt of a Written consent from the other Secured Party;
 - (ii) the elapse of 14 days after the day the other Secured Party was notified under paragraph (a).
- (3) If:
 - (a) the other Secured Party has a prior Security Interest in the Collateral; and
 - (b) within the 14-day period mentioned in subsection (2)(b)(ii), the other Secured Party notifies the Secured Party that the other Secured Party has priority in the Collateral and objects to the Secured Party's proposal;the Secured Party must not take action under subsection (1) in relation to the Collateral.
- (4) For subsection (2), a Financing Statement may disclose the priority of another Security Interest if:
 - (a) the initial financing statement to which it relates is earlier than that Filed by the Secured Parties; or
 - (b) the Financing Statement is made by a Bank, an Investment Intermediary or a Commodity Broker.



52. Disposal of Collateral after default

- (1) After default, a Secured Party may sell, lease, license, or otherwise dispose of, any or all of the Collateral in its present condition or after any commercially reasonable preparation or processing.
- (2) Every aspect of a disposal of Collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a Secured Party may dispose of the Collateral by public or private proceedings, by 1 or more contracts, as a unit or in parcels, and at any time and place and on any terms.
- (3) A Secured Party may purchase Collateral:
 - (a) at a public sale; or
 - (b) at a private sale, if the purchase is made on arm's length terms.

53. Notice before disposal of Collateral

- (1) After default, if a Secured Party proposes to dispose of Collateral under section 52 (Disposal of Collateral after default), the Secured Party must give each of the following a Written notice of disposal no later than 10 days before the earliest day for disposal specified in the notice:
 - (a) the Debtor;
 - (b) any other Person from whom the Secured Party has received, before the relevant day, Written notice of a claim of an interest in the Collateral;
 - (c) any other Secured Party who held a perfected Security Interest in the Collateral before the relevant day;
 - (d) any other Secured Party of whom the Secured Party is aware.
- (2) However, subsection (1) does not apply to the extent that the Collateral is perishable.
- (3) Also, if the Collateral is or includes a negotiable Document of Title, a Negotiable Instrument, money, Financial Property or a Deposit Account controlled by the Secured Party, subsection (1) applies as if the reference to 10-day period mentioned in that subsection were a reference to the shorter of the following periods:
 - (a) the 10-day period;
 - (b) any period agreed between the Secured Party and the Debtor (whether or not in the Security Agreement).
- (4) In this section:

relevant day means the earlier of the following days

 - (a) the day the Secured Party gives the Debtor a Written notice of disposal under subsection (1);
 - (b) the day the Debtor waives the right to be given a Written notice of disposal.



54. Application of Proceeds of disposal of Collateral

- (1) A Secured Party must apply, or pay over for application, the Cash Proceeds of disposal under section 52 (Disposal of Collateral after default) in the following order:
 - (a) to the reasonable expenses of retaking, holding, preparing for disposal, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable legal expenses incurred by the Secured Party;
 - (b) to the satisfaction of obligations secured by a Security Interest having priority over the Security Interest under which the disposal is made if the Secured Party receives a Written demand for Proceeds before the distribution of the Proceeds is completed;
 - (c) to the satisfaction of obligations secured by the Security Interest under which the disposal is made;
 - (d) to the satisfaction of obligations secured by any subordinate Security Interest or other interest in the Collateral subject to the Security Interest under which the disposal is made if the Secured Party a Written demand for Proceeds before the distribution of the Proceeds is completed.
- (2) If requested by a Secured Party, a holder of a prior or subordinate Security Interest must provide reasonable proof of the interest within a reasonable time. Unless the holder complies with the request, the Secured Party need not comply with the holder's demand under subsection (1).
- (3) After applying, or paying over for application, under this section the Cash Proceeds of disposal:
 - (a) the Secured Party must account to the Debtor for, and pay to the Debtor, any surplus; and
 - (b) the Obligor is liable for any deficiency in the satisfaction of obligations under subsection (1).
- (4) Subsection (3) does not apply if the underlying transaction is a sale of a Receivable or Promissory Note.

55. Rights of transferee of Collateral

- (1) A Secured Party's disposal of Collateral after default in accordance with this Part:
 - (a) transfers to a transferee for value all of the Debtor's rights in the Collateral; and
 - (b) discharges the Security Interest under which the disposal is made; and
 - (c) discharges any subordinate Security Interest.
- (2) Subsection (1) does not apply if the transferee is not acting in good faith.

56. Assignments, transfers or subrogation not to constitute disposal

An assignment or transfer of Collateral to an assignee or transferee of the rights of a second party, or subrogation of another Obligor to the rights of a Secured Party in relation to Collateral, is not a disposal of Collateral for section 51 (Secured Party's right to take possession after



default).

CHAPTER 4—ACCEPTANCE OF COLLATERAL

57. Acceptance of Collateral in full or partial satisfaction of obligation etc.

- (1) A Secured Party may accept part of or all Collateral in full or partial satisfaction of the obligation it secures only if:
 - (a) each Debtor and Secured Party consents to the acceptance; and
 - (b) the Secured Party gives notice of the proposal in accordance with section 58 (Notice of proposal to accept Collateral); and
 - (c) the Secured Party does not receive, before the relevant day, Written notice of objection to the proposal from:
 - (i) a Person to whom the Secured Party is required to give notice of the proposal under that section; or
 - (ii) any other Person, other than the Debtor, holding an interest in the Collateral.
- (2) In subsection (1) (c):
relevant day means the later of the following:
 - (a) the day the Debtor (or the last of the Debtors) consents to the acceptance;
 - (b) 10 days after the day (or the last of the days) notice of the proposal was given under section 58.
- (3) An acceptance of Collateral under this section is effective only if it complies with the conditions set out in section 53 (Notice before disposal of Collateral).

58. Notice of proposal to accept Collateral

If a Secured Party proposes to accept Collateral in full or partial satisfaction of the obligation it secures, the Secured Party must give Written notice of the proposal to:

- (a) any Person from whom the Secured Party received, before the Debtor consented to the acceptance, Written notice of a claim of an interest in the Collateral; and
- (b) any other Secured Party who held a Security Interest in the Collateral perfected by the Filing of a Financing Statement before the Debtor consented to the acceptance; and
- (c) any other Secured Party of whom the Secured Party is aware.

59. Effect of acceptance of Collateral

A Secured Party's acceptance of Collateral in full or partial satisfaction of the obligation it secures:

- (a) discharges the obligation to the extent consented to by the Debtor; and
- (b) transfers to the Secured Party all of a Debtor's rights in the accepted Collateral; and



- (c) discharges the Security Interest that is the subject of the Debtor's consent and any subordinate Security Interest in the accepted Collateral.

60. Right to redeem Collateral

- (1) A Debtor, or any Secured Party, may redeem Collateral.
- (2) To redeem Collateral, a Person must tender:
 - (a) fulfilment of all obligations secured by the Collateral; and
 - (b) the reasonable expenses mentioned in section 54(1)(a) (Application of Proceeds of disposal of Collateral).
- (3) A redemption may occur at any time before a Secured Party:
 - (a) has collected Collateral under section 49 (Collection and enforcement by Secured Party); or
 - (b) has disposed of Collateral or entered into a contract for its disposal under section 52 (Disposal of Collateral after default); or
 - (c) has accepted Collateral in full or partial satisfaction of the obligation it secures under section 59 (Effect of acceptance of Collateral).

61. Remedies for Secured Party's Failure to comply with these Regulations

- (1) If it is established that a Secured Party is not acting in accordance with a requirement under these Regulations, the Court may order or restrain collection, enforcement, or disposal of Collateral, on the conditions it considers appropriate.
- (2) A Debtor, holder of a subordinate Security Interest or Obligor may bring an action for damages for any loss suffered as a result of the Failure of a Secured Party to comply with the Secured Party's obligations under this Part.
- (3) In any action brought against a Secured Party alleging loss suffered as a result of the Failure of a Secured Party to comply with obligations under this Part, the Secured Party must show that any purchase of Collateral (other than by public sale) or acceptance of Collateral was made on arm's length terms.



PART 9: MISCELLANEOUS

CHAPTER 1—ENFORCEMENT OF THESE REGULATIONS

62. Enforceable agreements

- (1) The Security Registrar 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 Security Registrar.
- (3) If the Security Registrar 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) 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 Security 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.

63. Administrative censures

- (1) The Security Registrar 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 Security Registrar must comply with the Decision-making Procedures.
- (3) The Security Registrar may censure a Person by any means, including by way of publishing a notice of censure in any way the Registrar considers appropriate.

64. Administrative imposition of fines

- (1) If the Security Registrar 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.
- (2) In deciding whether to impose a fine on a Person and, if so, the amount of the fine to be imposed, the Security Registrar must comply with any applicable the Decision-making Procedures and any limits for fines set by the Rules.

CHAPTER 2—RULES

**65. Power to adopt rules etc.**

- (1) The Board of Directors of the AIFCA may adopt rules prescribing matters:
 - (a) required or permitted by these Regulations, or any other AIFC Regulations that are Legislation Administered by the Security Registrar, to be prescribed 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 Security 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 Security 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 Security Registrar; or
 - (c) 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
 - (d) setting limits for fines and other penalties that may be imposed for Contraventions of these Regulations; or
 - (e) the giving of waiver and modification notices under section 72 (Waivers and modifications of certain provisions), including the procedures for the making of application for, or giving of, notices; or
 - (f) with respect to any of the following:
 - (i) forms, procedures and requirements under these Regulations, the Rules or any other Legislation Administered by the Security Registrar;
 - (ii) the Security Registry, including its establishment and maintenance;
 - (iii) the conduct of the Security Registrar and the Security Registrar's 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 the Rules 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 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.

66. Publication of proposed rules

- (1) Before making rules under section 65 (Power to adopt rules etc.), the Board of Directors of the AIFCA 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 AIFCA considers:
 - (a) that any delay likely to arise because of complying with those subsections is prejudicial to the interests of the AIFCA; 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 3—GENERAL

67. Fees

- (1) The Rules may require the payment to the AIFCA of fees for or in relation to:
 - (a) the Exercise by the Registrar of Functions under or for these Regulations, the Rules or any other Legislation Administered by the Security Registrar, including for or in relation to the Filing, or lodgement (however described) with the Security



Registry or Security Registrar, of a Financing Statement, Continuation Statement or Termination Statement in relation to a Security Interest or any other Document; and

- (b) the inspection of Documents or other material held in the Security Registry or by the Security Registrar under or for these Regulations, the Rules or any other Legislation Administered by the Security Registrar.
- (2) The Security 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 Security Registrar.
- (3) If a fee is prescribed or charged under this section for the Exercise of a Function, or the provision of services, by the Security Registrar, no action need be taken by the Registrar until the fee is paid and, if the fee is payable for or in relation to the Filing or lodgement (however described) of a Document, the Document is taken not to have been Filed or lodged until the fee is paid.

68. Direction to comply with Legislation Administered by the Security Registrar

- (1) This section applies if a Person 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):
 - (a) under a provision of these Regulations, the Rules or any other Legislation Administered by the Security Registrar; or
 - (b) made by the Security Registrar under these Regulations, the Rules or any other Legislation Administered by the Security Registrar.
- (2) The Security Registrar may direct the Person to comply with the requirement within the time stated in the requirement.
- (3) If the Person Fails to comply with the direction under subsection (2), the Security Registrar may apply to the Court for 1 or more of the following orders:
 - (a) an order directing the Person, or a director, officer, partner, employee or agent of the Person, to comply with the direction or with any relevant provision of these Regulations, the Rules or any other Legislation Administered by the Security Registrar;
 - (b) an order directing the 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 Security Registrar imposing penalties on a Person 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.



69. General power to obtain information

- (1) The Security Registrar may, by Written notice, require any Person to give specified information, produce specified Documents, or ensure that specified information or Documents are given or produced, to the Registrar. The Person must comply with the requirement within the time specified in the notice.
- (2) The Security Registrar may, by Written notice, require any Person to allow the Registrar to enter any business premises of the Person during normal business hours, or at any other time agreed between the Registrar and the Person, for the purpose of inspecting and copying information or Documents, in any form, on the premises. The Person must comply with the requirement.
- (3) The Security Registrar 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 Security Registrar.
- (4) Information or a Document given, produced or obtained because of the exercise by the Security Registrar 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 Security Registrar 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.

70. Giving false or misleading information to Security Registrar etc.

- (1) A Person must not:
 - (a) make a statement, or give information, to the Security 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 Security 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 Security Registrar.
- (2) Contravention of this section is punishable by a fine.

71. Notification of Security Registrar's decisions and reasons

- (1) This section applies if, under these Regulations, the Rules or any other Legislation Administered by the Security Registrar:
 - (a) the Security 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 Security 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 Security 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 Security 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 Security Registrar expressly provides that the Security 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.

72. 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 Security Registrar, that 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 Security 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 Security 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 Security 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 Security 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.

73. Language

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

**SCHEDULE 1: INTERPRETATION**

Note: See section 6.

1. Control of negotiable documents and money

A Secured Party has control of negotiable Documents of Title, Negotiable Instruments or money if the Secured Party or an agent or representative other than the Debtor has possession of them.

2. Control of Deposit Account

- (1) A Secured Party has control of a Deposit Account if:
 - (a) the Secured Party is the Bank with which the Deposit Account is maintained; or
 - (b) the Debtor, Secured Party and Bank have agreed that the Bank will comply with the instructions of the Secured Party relating to the funds in the Deposit Account without further consent by the Debtor; or
 - (c) the Secured Party becomes the Bank's customer in relation to the Deposit Account.
- (2) Subsection (1) applies even if the Debtor retains the right to direct the disposal of funds from the Deposit Account.

3. Control of Financial Property etc.

- (1) Control of a Certificated Security, Uncertificated Security or Investment Entitlement is determined in accordance with the AIFC Personal Property Regulations.
- (2) A Secured Party has control of a Commodity Contract if:
 - (a) the Secured Party is the counterparty to the Commodity Contract; or
 - (b) the Commodity Customer, Secured Party and Commodity Broker have agreed that the Commodity Broker will comply with the instructions of the Secured Party relating to the Commodity Contract without further consent by the Commodity Customer.
- (3) A Secured Party having control of all Investment Entitlements or Commodity Contracts carried in an Investment Account or Commodity Account has control over the Investment Account or Commodity Account.

4. Attachment and perfection

- (1) Attachment of a Security Interest occurs on fulfilment of the conditions set out in section 12(2) (Attachment and enforceability of Security Interests in Collateral, Proceeds and Supporting Obligations).
- (2) Perfection of a Security Interest occurs on the fulfilment of the applicable requirements of Chapter 1(Perfection) of Part 5 (Perfection and priority) in relation to a Security Interest that has attached.

5. Meaning of *Legislation Administered by the Security Registrar*

Each of the following is *Legislation Administered by the Security 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 Security Registrar;
- (c) a provision of any other AIFC Regulations or AIFC Rules if the provision gives a Function to the Security Registrar or relates to the Exercise of a Function given to the Security Registrar by another provision of the AIFC Regulations or AIFC Rules.

6. 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 Security 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 Security Registrar; or
 - (c) otherwise Contravenes these Regulations, the Rules or any other Legislation Administered by the Security Registrar.
- (2) This section does not apply to anything done, or omitted to be done, by the Governor, AFSA, AIFCA or Security Registrar.

7. Definitions for these Regulations

In these Regulations:

Account Debtor, in relation to a Receivable or General Intangible, means a Person obliged to make payment under the Receivable or General Intangible.

AFSA means the Astana Financial Services Authority.

AIFC means the Astana International Financial Centre.

AIFCA means the Astana International Financial Centre Authority.

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.

Bank means a Person who conducts:

- (a) the business of both taking money on deposit (otherwise than as part-payment for identified goods or services) and making advances of money; or
- (b) any other business (including a business mentioned in paragraph (a)) prescribed by the Rules.



Breach includes Contravene.

Cash Proceeds, in relation to Collateral, includes Proceeds that are cheques and value credited to a Deposit Account.

Certificated Security means a Security whose existence is embodied in a physical certificate.

Collateral, in relation to a Security Interest, means Property subject to the Security Interest.

Commodity Account, in relation to a Commodity Broker and a Commodity Customer, means an account maintained by the Commodity Broker in which a Commodity Contract is carried for the Commodity Customer.

Commodity Broker means a Person who in the course of business transacts Commodity Contracts or provides clearance or settlement services relating to Commodity Contracts.

Commodity Contract means:

- (a) a commodity futures contract, an option on a commodity futures contract or a commodity option; or
- (b) an interest in any a contract or option mentioned in paragraph (a);

but does not include a Future.

Commodity Customer, in relation to a Commodity Broker, means a Person for whom the Commodity Broker maintains an account in which a Commodity Contract is carried for the Person.

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

Continuation Statement means an amendment of a Financing Statement that:

- (a) identifies, by its file number in the Security Registry, the initial financing statement to which it relates; and
- (b) indicates that it is a Continuation Statement for, or that it is Filed to continue the effectiveness of, the Financing Statement.

Contravene includes Fail to comply with.

Contravenes these Regulations has the meaning given by section 6 of this Schedule (When does a Person *Contravene* these Regulations).

Court means the Astana International Financial Centre Court.

Debtor means:

- (a) in relation to a Security Interest—a Person whose property is subject to the Security Interest; or
- (b) in relation to a Receivable or Promissory Note—a seller of the Receivable or Promissory Note.

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



Registrar.

Deposit Account means a money account held with a Bank other than an account evidenced by a Negotiable Instrument.

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

Document of Title, in relation to Goods, means a document of title relating to the Goods that evidences the entitlement of the holder to receive, possess and dispose of the document and Goods.

Entitlement Holder, in relation to an Investment Intermediary, means a Person identified in the records of the Investment Intermediary as the Person having an Investment Entitlement against the Investment Intermediary in relation to an Investment.

Exercise a Function includes perform the Function.

Fail includes refuse.

Filed means filed in the Security Registry.

Financial Property means an Investment, Investment Entitlement or Commodity Contract.

Financing Statement, in relation to a Security Interest, means the Filed initial financing statement relating to the Security Interest, and includes any Filed amendment, or any other Filed record, notice or correction statement, relating to the initial financing statement, but does not include a Continuation Statement or Termination Statement relating to the Security Interest.

Function includes authority, duty and power.

Future means rights under a contract for the sale of a commodity or other property of any description under which delivery is to be made at a future date and at a price agreed on when the contract is made if:

- (a) the contract is made for investment and not commercial purposes; and
- (b) when the contract is made, the seller does not intend to deliver the property and the buyer does not intend to take delivery of the property.

General Intangible means any personal property other than a Receivable, a Deposit Account or a right in relation to a Deposit Account, a Document of Title, Goods, a Negotiable Instrument, Financial Property and money, and includes things in action and intellectual property rights.

Goods means all things that are movable when a Security Interest attaches, other than the following:

- (a) a Receivable;
- (b) a Deposit Account;
- (c) Financial Property;
- (d) a Document of Title;
- (e) a General Intangible;



- (f) a Negotiable Instrument;
- (g) any Document evidencing anything mentioned in paragraphs (a) to (f);
- (h) money.

Governor means the Governor of the Astana International Financial Centre.

Guidance means:

- (a) guidance adopted by the Registrar under section 10(4)(b) (Security Registrar's Objectives and Functions); or
- (b) guidance adopted by Rules made for section 45(d) (Rules about Financing Statements etc.); or
- (c) a standard or code of practice adopted as guidance by the Board of Directors of the AIFCA under section 65(5) (Power to adopt rules etc.).

Investment includes any financial product declared to be an investment under the Rules, but does not include any financial product that is declared not to be an investment under the Rules.

Investment Account means an account to which an Investment is or may be credited.

Investment Entitlement, in relation to an Entitlement Holder and an Investment Intermediary, means the rights of the Entitlement Holder against the Investment Intermediary in relation to an Investment.

Investment Intermediary means a Person who in the ordinary course of business conducts transactions in Investments.

Legislation Administered by the Security Registrar has the meaning given by section 5 of this Schedule.

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.

Negotiable Instrument means any instrument (whether or not in tangible form) or any other Writing that:

- (a) evidences a right to the payment of a monetary obligation; and
- (b) is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment;

but does not include money or an Investment.

New Debtor means a Person who becomes bound as Debtor under section 12(3) (Attachment and enforceability of Security Interests in Collateral, Proceeds and Supporting Obligations) by a



Security Agreement previously entered into by another Person.

Objectives, of the Security Registrar, has the meaning given by section 10(1) (Security Registrar's Objectives and Functions).

Obligor means a Person (who may be a Debtor) who, in relation to an obligation secured by a Security Interest, owes, secures, or is otherwise accountable for, payment or other performance of the obligation.

Original Debtor means a Person who, as Debtor, entered into a Security Agreement to which another Person has become bound under section 12(3) (Attachment and enforceability of Security Interests in Collateral, Proceeds and Supporting Obligations).

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

Proceeds, in relation to Collateral, means the following Property:

- (a) whatever is acquired on the sale, lease, licence, exchange or other disposal of the Collateral;
- (b) whatever is collected on, or distributed on account of, the Collateral;
- (c) rights arising out of the Collateral to the extent of its value.

Promissory Note means a Negotiable Instrument that evidences an unconditional promise to pay a monetary obligation other than in relation to a Deposit Account or other deposit.

Purchaser, in relation to property, means a Person who has acquired, or is in the process of acquiring, title (whether contingent or absolute) to the property other than as a recipient of a gift or other voluntary transfer.

Receivable means a right to payment of a monetary obligation, other than a right to payment under:

- (a) a Deposit Account; or
- (b) a Negotiable Instrument; or
- (c) a right in respect of Financial Property.

Registrar means the Security Registrar.

Rules means rules adopted by the Board of Directors of the AIFCA under section 65 (Power to adopt rules etc.).

Secured Party means:

- (a) in relation to a Security Interest—a Person in whose favour the Security Interest is created or provided for under the Security Agreement for the Security Interest, whether or not any obligation to be secured is outstanding; or
- (b) in relation to a Receivable or Promissory Note—a Person to whom the Receivable or Promissory Note has been sold.

Security includes any financial product declared to be a security under the Rules, but does not



include any financial product that is declared not to be a security under the Rules.

Security Agreement means an agreement that creates or provides for a Security Interest.

Security Interest means an interest in real or personal property that secures payment or performance of an obligation.

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

Security Registry means the Security Registry established under section 37 (Security Registry).

Supporting Obligation means a secondary obligation (including a secondary obligation by way of surety, letter of credit or guarantee) that supports the payment or performance of a Receivable, a Document of Title, a General Intangible, a Negotiable Instrument or Financial Property.

Termination Statement means an amendment of a Financing Statement that:

- (a) identifies, by its file number in the Security Registry, the initial financing statement to which it relates; and
- (b) indicates either that it is a Termination Statement or that the Financing Statement is no longer effective.

Uncertificated Security means a Security that is not represented by a certificate.

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.