



AIFC SPECIAL PURPOSE COMPANY RULES

AIFC RULES NO. GR0001 OF 2017

(with amendments as of 2 December 2018,
which commence on 2 December 2018)

Approval Date: 10 December 2017

Commencement Date: 1 January 2018

Nur-Sultan, Kazakhstan



CONTENTS

PART 1: GENERAL	3
1.1 Name.....	3
1.2 Commencement.....	3
1.3 Legislative authority	3
1.4 Special Purpose Company prescribed type of Company for Companies Regulations.....	3
1.5 Application of these Rules	3
1.6 Definitions etc.....	3
1.7 Administration of these Rules	4
PART 2: PURPOSE AND ACTIVITIES OF SPECIAL PURPOSE COMPANIES	5
2.1 Special Purpose Companies limited to Exempt Activities	5
2.2 Use of Special Purpose Companies etc.	5
2.3 Revocation of incorporation as Special Purpose Company	5
PART 3: SPECIAL PURPOSE COMPANY FORMATION AND REGISTRATION	7
3.1 Formation of special purpose companies.....	7
3.2 Articles of Association.....	7
3.3 Incorporation of Special Purpose Companies	7
3.4 Conduct of business by Special Purpose Company	8
PART 4: SHARES	9
4.1 Shareholders and Shares	9
PART 5: MEETINGS	10
5.1 Meetings.....	10
PART 6: DIRECTORS	11
6.1 Directors of Special Purpose Company.....	11
PART 7: ACCOUNTS AND AUDIT	12
7.1. Accounts and audit	12
PART 8: ANNUAL RETURNS	13
8.1. Annual returns.....	13
PART 9: REPORTING	14
9.1 Reporting.....	14
PART 10: AIFC INSOLVENCY REGULATIONS	15
10.1 Application of AIFC Insolvency Regulations to Special Purpose Companies.....	15
PART 11: DISAPPLICATION OF OTHER PROVISIONS	16
11.1 Disapplication of other provisions of Companies Regulations and Companies Rules	16
SCHEDULE 1: INTERPRETATION	17
1. Meaning of Legislation Administered by the AFSA	17
2. Definitions for these Rules.....	17



PART 1: GENERAL

1.1 Name

These Rules are the *AIFC Special Purpose Company Rules 2017* (or SPCoR).

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, including, for example, that section as it applies in relation to section 92 (Rules made in relation to these Regulations) of the AIFC Insolvency Regulations.

1.4 Special Purpose Company prescribed type of Company for Companies Regulations

For Part 11 (Other types of Company) of the AIFC Companies Regulations, a Special Purpose Company is prescribed as a type of Company.

1.5 Application of these Rules

1.5.1 These Rules apply within the jurisdiction of the AIFC.

1.5.2 If a provision of these Rules is inconsistent with a provision of any Legislation Administered by the AFSA, the provision of the Legislation Administered by the AFSA prevails to the extent of the inconsistency. However, a provision must not be treated as inconsistent with another provision merely because the provisions deal with the same matter if each provision can be obeyed without contravening the other.

1.6 Definitions etc.

1.6.1 Schedule 1 contains definitions used in these Rules.

1.6.2 Terms used in these Rules (other than terms defined in Schedule 1) have the same meanings as they have, from time to time, in the AIFC Companies Regulations, 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:

- AFSA
- AIFC
- AIFC Regulations
- AIFC Rules
- Annual General Meeting



- Articles of Association
- Commercial Licence
- Company
- Company Limited by Shares
- Contravene
- Director
- Exercise
- Function
- Incorporator
- Person
- Registrar of Companies (or Registrar)
- Security
- Share
- Shareholder
- Subsidiary
- Writing.

1.6.3 Subject to subrule 1.6.2, terms used in these Rules (other than terms defined in Schedule 1 or the AIFC Companies Regulations) 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 following definition in that Schedule is relevant to these Rules:

- Resolution for Voluntary Winding Up.

1.7 Administration of these Rules

These Rules are administered by the Registrar of Companies.



PART 2: PURPOSE AND ACTIVITIES OF SPECIAL PURPOSE COMPANIES

2.1 Special Purpose Companies limited to Exempt Activities

- 2.1.1 The Articles of Association of a Special Purpose Company must provide that the purpose of the Company is limited to conducting Exempt Activities.
- 2.1.2 A Special Purpose Company must not conduct an activity that is not an Exempt Activity.
- 2.1.3 Contravention of subrule 2.1.2 is punishable by a fine of not more than US\$ 5000.

2.2 Use of Special Purpose Companies etc.

- 2.2.1 A Special Purpose Company must not be:
 - (a) the trustee of an Investment Trust; or
 - (b) the general partner of an Investment Partnership; or
 - (c) an Investment Company.
- 2.2.2 A Special Purpose Company must not conduct activities that are the conduct of Financial Services under the AIFC Financial Services Framework Regulations unless it is authorised by the AFSA to conduct the activities.

2.3 Revocation of incorporation as Special Purpose Company

- 2.3.1 The Registrar of Companies may revoke the status of a Special Purpose Company as a Special Purpose Company if:
 - (a) the company conducts an activity that is not an Exempt Activity; or
 - (b) a Person other than a Person mentioned in subrule 4.1.2(a), (b) or (c) (Shareholders and Shares) becomes a Shareholder of the Company (except as is permitted under subrule 4.1.3); or
 - (c) the company asks the Registrar to revoke its status as a Special Purpose Company.
- 2.3.2 Before acting under subrule 2.3.1(a) or (b), the Registrar of Companies must, by Written notice given to the Special Purpose Company, tell the company:
 - (a) that the Registrar is considering whether to revoke its status as a Special Purpose Company; and
 - (b) that the company may make representations, in the way stated in the notice, about the matter within the period specified in the notice.
- 2.3.3 The Registrar of Companies must consider any representations made by the Special Purpose Company in accordance with the notice (if any) given to the company under subrule 2.3.2.
- 2.3.4 If the Registrar of Companies revokes the status of the Special Purpose Company as a Special Purpose Company, the company ceases to be incorporated as a Special Purpose Company and these Rules cease to apply to it as a Special Purpose Company, but it remains a Company Limited by Shares.



AIFC SPECIAL PURPOSE COMPANY RULES

- 2.3.5 If the Registrar of Companies revokes the status of the Special Purpose Company as a Special Purpose Company, the Registrar must make appropriate changes to the registers kept by the Registrar under these Rules and the AIFC Companies Regulations.



PART 3: SPECIAL PURPOSE COMPANY FORMATION AND REGISTRATION

3.1 Formation of special purpose companies

- 3.1.1 For section 13 (Formation of companies) of the AIFC Companies Regulations, a Person applying for the incorporation of a Special Purpose Company must be an Incorporator, a Corporate Service Provider or any law or accounting firm.
- 3.1.2 For section 13(4) of the AIFC Companies Regulations, an application for incorporation of a Special Purpose Company must also include confirmation from each Incorporator that the Special Purpose Company will only conduct Exempt Activities.
- 3.1.3 For section 13(4)(d) of the AIFC Companies Regulations, there is no minimum requirement for the initial share capital of a Special Purpose Company.

3.2 Articles of Association

- 3.2.1 The Registrar of Companies may, from time to time, adopt, and publish, model Articles of Association for Special Purpose Companies (*model articles*).
- 3.2.2 If model articles are in force under subrule 3.2.1 at the time that an application for incorporation of a Special Purpose Company is filed with the Registrar, the company must adopt those model articles as its initial Articles of Association, despite anything in section 14 (Articles of Association) of the AIFC Companies Regulations.
- 3.2.3 However, the Incorporators may choose to modify the model articles. The Registrar of Companies may object to any modification of the model articles if the Registrar considers that the modification is inappropriate having regard to the nature of a Special Purpose Company and the activities that it is permitted to conduct.
- 3.2.4 If an amendment of the Articles of Association of a Special Purpose Company is submitted to the Registrar of Companies under section 19(2) of the AIFC Companies Regulations, the Registrar may object to the amendment if the Registrar considers that the amendment is inappropriate having regard to the nature of a Special Purpose Company and the activities that it is permitted to conduct.

3.3 Incorporation of Special Purpose Companies

- 3.3.1 Despite section 15(1) (Decision on incorporation application etc.) of the AIFC Companies Regulations, if an application is made under the AIFC Companies Regulations for the incorporation of a Special Purpose Company, the Registrar of Companies must incorporate it as a Special Purpose Company if satisfied that it is eligible to be incorporated as a Special Purpose Company.
- 3.3.2 The certificate of incorporation issued under section 16(1)(a) (Effect of incorporation) of the AIFC Companies Regulations for a Special Purpose Company must state that the company is incorporated as a Special Purpose Company.
- 3.3.3 On the incorporation of a Special Purpose Company and registration of its Articles of Association, the Registrar of Companies must, in addition to entering the name of the company in the Register of Companies under section 16(1)(c) of the AIFC Companies Regulations, enter the name of the company in the Special Purpose Companies Register.
- 3.3.4 For section 204(1) (Public registers) of the AIFC Companies Regulations, the Registrar of Companies must keep and publish a separate register of current and past registrations of Special Purpose Companies (the Special Purpose Companies Register).



3.4 Conduct of business by Special Purpose Company

- 3.4.1 A Special Purpose Company must receive its corporate administration services from a Corporate Service Provider. A Special Purpose Company may receive administration services for its assets from a third party asset administration or management provider.
- 3.4.2 For the purposes of section 7 (Prohibition against conduct of business without holding Commercial Licence etc.) of the AIFC Companies Regulations, a Special Purpose Company is exempted from the requirement to hold a Commercial Licence.
- 3.4.3 Section 24(3) (Registered office and conduct of business) of the AIFC Companies Regulations does not apply to a Special Purpose Company.



PART 4: SHARES

4.1 Shareholders and Shares

- 4.1.1 A Special Purpose Company must have at least 1 Shareholder.
- 4.1.2 Subject to subrule 4.1.3, a Person must not be a Shareholder of a Special Purpose Company unless:
- (a) the Person is the Initiator or another participant in the Transaction; or
 - (b) the Person is another Special Purpose Company; or
 - (c) the Person is a Nominee holding Shares in the Special Purpose Company on trust for discretionary purposes, and the beneficiaries are wholly or mainly Persons mentioned in paragraph (a).
- 4.1.3 The Corporate Service Provider or the law or accounting firm (or a subsidiary or affiliate thereof) that is applying for the incorporation of the Special Purpose Company in accordance with subrule 3.1.1 may also be the Incorporator and Shareholder of such Special Purpose Company, provided that such Special Purpose Company is not permitted to conduct any business prior to the time that all of the issued Shares of such Special Purpose Company have been transferred to one or more Persons that are permitted to be Shareholders of a Special Purpose Company in accordance with subrule 4.1.2.
- 4.1.4 Part 6 (Class rights) of the AIFC Companies Regulations does not apply to a Special Purpose Company.



PART 5: MEETINGS

5.1 Meetings

Chapter 10 (Meetings) of Part 7 (Private Companies and Public Companies) does not apply to a Special Purpose Company.



PART 6: DIRECTORS

6.1 Directors of Special Purpose Company

- 6.1.1 A Special Purpose Company must have at least 1 Director. A Director of a Special Purpose Company may be an individual or a Body Corporate. A Director of a Special Purpose Company who is an individual is not required to reside in Kazakhstan.



PART 7: ACCOUNTS AND AUDIT

7.1. Accounts and audit

Part 10 (Accounts, reports and audit) of the AIFC Companies Regulations does not apply to a Special Purpose Company to the extent that it requires the accounts of the Special Purpose Company to be audited, unless:

- (a) the Special Purpose Company has obtained a listing on any stock exchange of Securities issued by it; or
- (b) the Special Purpose Company is a subsidiary of a Public Company, which publishes consolidated accounts and those accounts do not include the accounts of the Special Purpose Company.



PART 8: ANNUAL RETURNS

8.1. Annual returns

Section 26 (Annual returns) of the AIFC Companies Regulations does not apply to a Special Purpose Company.



PART 9: REPORTING

9.1 Reporting

- 9.1.1 In January each year after the year of its registration, a Special Purpose Company must give the Registrar of Companies a Written confirmation that since its registration or last confirmation under this paragraph, as the case may be, there has been no amendment of its Articles of Association that was required to be submitted to the Registrar that has not been submitted to the Registrar.
- 9.1.2 If any of the following changes happen in relation to a Special Purpose Company, the Special Purpose Company must file notice of the change with the Registrar of Companies, in the form required by the Registrar, within 30 days after the day the change happens:
- (a) any change relating to its registered office or contact details (including, for example, a change in the address of its registered office, a change in a telephone or fax number or a change of email address);
 - (b) any change to its Shareholders;
 - (c) any change to its name;
 - (d) any change in its principal business activities.
- 9.1.3 To remove any doubt, these Rules do not exempt a Special Purpose Company from the reporting requirements of any listing authority or rating agency involved in the Transaction.



PART 10: AIFC INSOLVENCY REGULATIONS

10.1 Application of AIFC Insolvency Regulations to Special Purpose Companies

- 10.1.1 Despite anything in the AIFC Insolvency Regulations, a Resolution for Voluntary Winding Up of a Special Purpose Company may only be passed if there are no outstanding liabilities of the Special Purpose Company.
- 10.1.2 For the application of the AIFC Insolvency Regulations to Special Purpose Company, the company is taken not to have preferential creditors.
- 10.1.3 For section 67 (Power to disclaim onerous property) of the AIFC Insolvency Regulations, ***onerous property*** does not include contracts and other property arising from the Exempt Activities of a Special Purpose Company.
- 10.1.4 Sections 9 (Moratorium), 97 (Preferences) and 99 (Invalid security interests) of the AIFC Insolvency Regulations do not apply to a Special Purpose Company.



PART 11: DISAPPLICATION OF OTHER PROVISIONS

11.1 Disapplication of other provisions of Companies Regulations and Companies Rules

11.1.1 The following provisions of the AIFC Companies Regulations do not apply to a Special Purpose Company:

- (a) Part 12 (Recognised Companies);
- (b) the provisions of Part 13 (Transfer of incorporation) about the transfer of incorporation to the AIFC (sections 151 to 155).

11.1.2 Provisions of the AIFC Companies Regulations relating to Recognised Companies, transfer of incorporation to the AIFC, Protected Cell Companies, and Investment Companies of the AIFC Companies Rules, do not apply to a Special Purpose Company.



SCHEDULE 1: INTERPRETATION

1. Meaning of Legislation Administered by the AFSA

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

- (a) the AIFC Financial Services Framework Regulations and the rules adopted under those Regulations;
- (b) any other AIFC Regulations or AIFC Rules if the Regulations or Rules declare that they are administered by the AFSA;
- (c) a provision of any other AIFC Regulations or AIFC Rules if the provision gives a Function to the AFSA or relates to the Exercise of a Function given to the AFSA by another provision of the AIFC Regulations or AIFC Rules.

2. Definitions for these Rules

In these Rules:

Corporate Service Provider means a Person authorised (however described) to conduct corporate services business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies.

Exempt Activity, in relation to a Special Purpose Company, means any of the following activities, whether undertaken in an Islamic or conventional way:

- (a) the acquisition (by way of leasing, title transfer, risk transfer or otherwise), the holding and the disposal of any asset (tangible or intangible, including, for example, receivables and Shares) in connection with and for the purpose of a Transaction;
- (b) the obtaining of any type of financing (banking or capital markets), the granting of any type of security interest over its assets, the providing of any indemnity or similar support for the benefit of its Shareholders or any of its Subsidiaries, or the entering into any type of hedging arrangements, in connection with and for the purpose of a Transaction;
- (c) the financing of the Initiator or another Special Purpose Company;
- (d) the acting as trustee or agent for any participant in the Transaction;
- (e) any other activity approved in Writing by the Registrar;
- (f) any activity ancillary to an activity mentioned in paragraphs (a) to (e).

Initiator, in relation to a Special Purpose Company, means the Person for whose Transaction the company has been established.

Investment Company means a Company that is an Investment Company under the AIFC Companies Rules.

Investment Partnership means a limited partnership under the AIFC Limited Partnership Regulations formed for the sole purpose of collective investment.

Investment Trust means a trust created under the Legislation Administered by the AFSA for the purpose of collective investment.

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



AIFC SPECIAL PURPOSE COMPANY RULES

Nominee means a Person authorised (however described) to conduct trust or fiduciary business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies.

Special Purpose Company means a Company Limited by Shares that is incorporated as Special Purpose Company (with or without other relevant Persons).

Transaction, in relation to a Special Purpose Company, means the Islamic or conventional structured finance transaction for the benefit of the Initiator in connection with which the company has been established, and includes, for example, any type of securitisations or other capital markets transaction.