



**AIFC PERSONAL PROPERTY REGULATIONS**

**AIFC REGULATIONS No. 15 OF 2017**

**December 20, 2017  
Astana, Kazakhstan**

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## AIFC PERSONAL PROPERTY REGULATIONS

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## AIFC PERSONAL PROPERTY REGULATIONS

### PART 1: GENERAL

1. **Name**

These Regulations are the *AIFC Personal Property 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 used in these Regulations.



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### **PART 2: APPLICATION**

#### **7. Application of these Regulations**

These Regulations apply to property of any kind (other than Real Property) that may be owned and Transferred under the Acting Law of the AIFC, irrespective of whether the property may owned or Transferred under the law of any other jurisdiction.



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### PART 3: TRANSFERS OF PROPERTY

#### 8. General rules about Transfers of Property

- (1) If there is a consensual Transfer of Property, title is Transferred to the Transferee at the time that the Transferor and the Transferee mutually intend it to be Transferred.
- (2) In establishing the intention of the Transferor and the Transferee regarding the intended time of Transfer, regard must be had to the terms of any contract or other agreement or arrangements between the Transferor and the Transferee, the conduct of the Transferor and the Transferee, and the circumstances of the case.
- (3) If the Transferor and the Transferee both intend that title to the Property should pass but intend it to pass at a different times (or, if there are multiple Transferors and Transferees, there are differences of intention about the time of Transfer between any of Transferors or Transferees), title passes at the last of the intended times, and until that time no title passes.
- (4) A purported Transfer is ineffective without the consent of the Transferee. The Transferee's consent may be explicit or implied, and may be given immediately or retrospectively.
- (5) If a Person (**A**) intends to Transfer Property to another Person (**B**) without B's knowledge or consent, B may accept the attempted Transfer when B discovers it and, if B does so, title to the Property is Transferred to B as if B had intended the Property to be Transferred at the same time as A. However, if A rescinds the attempted Transfer at any time before B's discovery of it, B cannot subsequently accept the Transfer.
- (6) Title to Property may not cease to exist. Once a Person acquires title to Property, the Person remains the owner of the Property until it is either Transferred or destroyed.
- (7) A Person (the *first Person*) may abandon Property if the Person intends that any other Person who appropriates it may become owner of it at the time of appropriation. However, until an appropriation is made by another Person the first Person remains the owner of the Property.

#### 9. Gifts

If Property is Transferred by a Person to another Person by way of gift, it is presumed that the intention of the parties is that title to the Property should be Transferred to the other Person unless a contrary intention can be proved.

#### 10. Partly effective Transfers

- (1) If Property is Transferred by a Person who is not its owner, and who does not Transfer it under the authority or with the consent of the owner, the Transferee acquires no better title to the Property than the Transferor had.
- (2) If a Transferee enters into a Transfer of Property as described in subsection (1) in circumstances where, as a direct result of anything said or done by the owner, the Transferee believes in Good Faith that the Transferor either is the owner or is acting under the authority or with the consent of the owner, the Transferee acquires the title that the Transferee would have acquired had the Transferor been acting under the authority or with the consent of the owner.
- (3) If a Contract of Sale is for unascertained Property, title to the Property is not Transferred to the Transferee unless and until the Property is ascertained.



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- (4) If by a Contract of Sale the Transferor purports to effect a present Sale of future Property, the contract operates as an agreement to Sell the Property.

### 11. **Transferor with voidable title**

If the Transferor of Property has a voidable title to the Property, but the Transferor's title had not been avoided at the time of the Transfer, the Transferee acquires a good title to the Property if the Transferee buys it in Good Faith and without notice of the Transferor's defect of title.

### 12. **Transferor with incomplete title**

- (1) This section applies if a Person owns Property in which there is an existing Third Party Property Interest and is in possession of the Property or of documents of title to it.
- (2) The Delivery or Transfer by the Person, or by an agent acting for the Person, of the Property, or documents of title to it, to any Person receiving the Property, or documents of title, in Good Faith and without actual or deemed notice of the existence of the Third Party Property Interest has the same effect as if the Person making the Delivery or Transfer were expressly authorised by the owner of the Third Party Property Interest to make the Delivery or Transfer.

### 13. **Transferor with no title**

- (1) This section applies if a Person obtains possession of Property or documents of title to Property with the consent of the owner or lawful possessor of the Property or documents.
- (2) The Delivery or Transfer by the Person, or by an agent acting for the Person, of the Property, or documents of title to it, to any Person receiving the Property or documents in Good Faith and without actual or deemed notice of any Third Party Property Interest has the same effect as if the Person making the Delivery or Transfer were expressly authorised by the owner of the Property to make the Delivery or Transfer.

### 14. **Application of Part 2**

This Part is subject to the provisions of the following Parts:

- (a) Part 5 (Investment transactions: general);
- (b) Part 6 (Transfers of Investments);
- (c) Part 7 (Transfers of Certificated and Uncertificated Investments).



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### PART 4: RIGHTS OF PARTIES

#### 15. **Meaning of *Unpaid Transferor***

- (1) For this Part, the Transferor of Property under a Contract of Sale is an *Unpaid Transferor* if:
  - (a) the whole of the price has not been paid or tendered; or
  - (b) the Transferor has received a bill of exchange or another negotiable instrument as conditional payment, but the condition on which it was received has not been fulfilled because of the dishonour of the instrument or otherwise.

- (2) In subsection (1):

*Transferor* includes any Person who is in the position of a Transferor, including, for example, an agent of the Transferor to whom a bill of lading has been Endorsed or a consignor or agent who has personally paid (or is directly responsible for) the price.

#### 16. **Unpaid Transferor's rights**

- (1) Subject to these Regulations, any other AIFC Regulations and any AIFC Rules, if the Transferor of Property is an Unpaid Transferor, then, even though title to the Property may have passed to the Transferee, the Transferor has, as an Unpaid Transferor, by implication of law:
  - (a) a lien on the Property or right to retain it for the price while the Transferor is in possession of it; and
  - (b) if the Transferee is or becomes insolvent—a right to stop the Property in transit after parting with possession of it; and
  - (c) a right of resale, subject to any limits or conditions prescribed by the Rules.
- (2) If title to the Property has not passed to the Transferee, the Transferor has, an Unpaid Transferor and in addition to any other rights or remedies, a right to withhold Delivery similar to, and coextensive with, the Transferor's rights of lien or retention and stoppage in transit if title had passed to the Transferee.

#### 17. **Specific performance**

- (1) In any Action for a Failure to perform any legal obligation to Deliver Property, the Court may, on the Claimant's application, by its judgement or decree direct that the contract must be performed specifically, without giving the defendant the option of retaining the Property on payment of damages.
- (2) The Claimant's application may be made at any time before judgement or decree.
- (3) The judgement or decree may be unconditional, or on the terms and conditions about damages, payment of the price and otherwise as the Court considers just.





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### PART 5: INVESTMENT TRANSACTIONS: GENERAL

#### 18. **Transfer Authority for Investments etc.**

- (1) A Person has *Transfer Authority* for an Investment or bill of exchange if the Person has the necessary authority and documentation to transfer title to the Investment or bill.
- (2) For bearer Investments, any Person with physical possession of the Investment has *Transfer Authority*.
- (3) For bills of exchange and Investments Transferred by Endorsement, a Person has *Transfer Authority* if the Person has authority to Endorse the bill or Investment to a third party.
- (4) For registered Investments, a Person has *Transfer Authority* if the Person is in possession of, or has authority to execute, an Instruction to the relevant registrar (however described) to register the Investments in the name of a Transferee.
- (5) For Investments held in an Investment Account, a Person has *Transfer Authority* if the Person is entitled to give the Investment Intermediary an entitlement order.

#### 19. **Acquisition of Investment**

A Person acquires an Investment if:

- (a) the Person is a Purchaser to whom the Investment is Delivered; or
- (b) the Person otherwise acquires an Investment Entitlement to the Investment.

#### 20. **Notice of Third Party Property Interest in Certificated Investment**

- (1) A Purchaser of a Certificated Investment has notice of a Third Party Property Interest if the certificate:
  - (a) has been Endorsed or otherwise designated for a purpose or use not involving Transfer; or
  - (b) is a Bearer Security and has on it an unambiguous statement that it is the Property of a Person other than the Transferor, but the mere writing of a name on the certificate is not such a statement.
- (2) The filing under the AIFC Security Regulations of a financing statement relating to a security interest is not notice of a Third Party Property Interest in an Investment.

#### 21. **Meaning of Control**

- (1) A Person has *Control* of a Bearer Security in physical form if the physical form of the Security has been Delivered to the Person, and the Person has possession of that form, the Person retains *Control* of the Bearer Security while the Person retains possession of the physical form of the Security.
- (2) A Person has *Control* of an Investment in Registered Form if the Person is registered as the owner of the Investment or has Transfer Authority in relation to it.



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- (3) A Person has *Control* of an Uncertificated Investment if:
  - (a) the Investment is held in an Investment Account in the Person's name; or
  - (b) the issuer has agreed to comply with instructions given by or on behalf of a Purchaser without further consent by the registered owner.
- (4) A Person has *Control* of an Investment Entitlement if:
  - (a) the Person becomes the Entitlement Holder; or
  - (b) the Investment Intermediary who maintains the Investment Account to which the Investment Entitlement is credited has agreed to comply with Instructions given by the Person without further consent by the Entitlement Holder.
- (5) However, if an interest in an Investment Entitlement is granted by the Entitlement Holder to the Entitlement Holder's own Investment Intermediary, the Investment Intermediary has *Control* of the Investment Entitlement.
- (6) If a Person satisfies the requirements of subsection (3)(b) in relation to an Uncertificated Investment, the Person has *Control* of the Uncertificated Investment even if the registered owner retains the right to make substitutions for the Uncertificated Investment, to give Instructions to the issuer or otherwise to deal with the Uncertificated Investment.
- (7) The issuer of an Uncertificated Investment may not enter into an agreement of the kind mentioned in subsection (3)(b) (a *relevant agreement*) without the consent of the registered owner, but the issuer is not required to enter into a relevant agreement even though the registered owner directs. If the issuer has entered into a relevant agreement, the issuer is not required to confirm the existence of the agreement to another Person unless the registered owner requests.
- (8) If a Person satisfies the requirements of subsection (4)(b) in relation to an Investment Entitlement, the Person has *Control* of the Investment Entitlement even if the Entitlement Holder retains the right to make substitutions for the Investment Entitlement, to give Instructions to the Investment Intermediary or otherwise to deal with the Investment Entitlement.
- (9) The Investment Intermediary for an Investment Entitlement may not enter into an agreement of the kind mentioned in subsection (4)(b) (a *relevant agreement*) without the consent of the Entitlement Holder, but the Investment Intermediary is not required to enter into a relevant agreement even though the Entitlement Holder directs. If the Investment Intermediary has entered into a relevant agreement, the Investment Intermediary is not required to confirm the existence of the agreement to another Person unless the Entitlement Holder so requests.

### 22. **No requirement for writing etc.**

- (1) This section applies to Persons who are parties to an agreement, or subject to the business rules of an Authorised Market Institution, if they have agreed, or the business rules provide, that records of holdings or entitlements, contracts for purchase, Contracts of Sale or instructions for debit or credit relating to Investments, Investment Entitlements, or assets held in an Investment Account, may be made otherwise than in writing.



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- (2) The absence of signed writing or record authenticated by a party against whom enforcement is sought does not invalidate the enforceability of the holding, entitlement, contract or instruction if it was created or transmitted in accordance with the agreement or business rules.



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### PART 6: TRANSFERS OF INVESTMENTS

#### 23. Effectiveness of Endorsement or Instruction

- (1) An Endorsement or Instruction is effective if:
  - (a) it is made by a Person with Transfer Authority; or
  - (b) it is made by a Person with Transfer Authority as an agent, including, for an Instruction or entitlement order, a Person who has Control under section 21(3)(b) or (4)(b) (Meaning of *Control*); or
  - (c) the Person with the right to Transfer the Investment is prevented from asserting its ineffectiveness.
- (2) Such an Endorsement or Instruction is effective even if:
  - (a) the Person making or giving it has Failed to comply with any condition or requirement relating to the Person's power to make the Endorsement or give the Instruction, including any AIFC Regulations or AIFC Rules requiring the Court's approval of the transaction; or
  - (b) the Endorsement is made or the Instruction given by an agent and the agent's action in making the Endorsement or giving the Instruction or entitlement order, or using the proceeds of the transaction, is otherwise a breach of duty.
- (3) If an Investment is registered in the name of or specially Endorsed to a Person described as a representative, or if an Investment Account is maintained in the name of a Person described as a representative, an Endorsement or Instruction made by the Person is effective even though the Person is no longer serving in the described capacity.
- (4) Effectiveness of an Endorsement or Instruction is decided as of the date the Endorsement or Instruction is made or given, and an effective Endorsement or Instruction does not become ineffective because of any later change of circumstances.

#### 24. Effect of issuer's restriction on Transfer of Securities

A restriction on the Transfer of a Security imposed by the issuer is taken to be a Third Party Property Interest, and is ineffective against any Person other than a Person who had notice of the restriction unless:

- (a) the Security is a Certificated Investment and the restriction is noted conspicuously on the Security certificate; or
- (b) the Security is Uncertificated Investment and the registered owner has been notified of the restriction.



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### PART 7: TRANSFERS OF CERTIFICATED AND UNCERTIFICATED INVESTMENTS

#### 25. **Rights of Purchaser**

- (1) On Delivery of a Certificated Investment or Uncertificated Investment to a Purchaser, the Purchaser acquires all rights in the Investment that the Transferor had or had power to Transfer.
- (2) A Purchaser of a limited interest acquires rights only to the extent of the interest purchased.
- (3) A Purchaser of an Investment who has notice of a Third Party Property Interest takes subject to the interest.

#### 26. **Right of Transferee of Security to Transfer Authority for registration etc.**

- (1) Unless otherwise agreed between the Transferor and Transferee of a Security, the Transferor must, on demand, give the Transferee proof of the Transferor's authority to Transfer the Security or any Transfer Authority (or evidence of Transfer Authority) that may be necessary to obtain registration of the Transfer of the Security. However, if the Transfer is not for value, the Transferor need not comply with the demand unless the Transferee pays (or offers to pay) the Transferor's necessary expenses.
- (2) If the Transferor Fails to comply with the demand within a reasonable time, then, without prejudice to any other right or remedy, the Transferee may reject or rescind the Transfer.



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### PART 8: INVESTMENT ENTITLEMENTS

#### 27. Acquisition and disposal of Investment Entitlements

- (1) An Investment Entitlement is acquired by an Account Holder against an Investment Intermediary by the credit of the Investment Entitlement to the Account Holder's Investment Account maintained by the Investment Intermediary.
- (2) No further step or operation is necessary to make the acquisition of an Investment Entitlement effective against third parties.
- (3) An Investment Entitlement is disposed of by an Account Holder by the debit of the Investment Entitlement to the Account Holder's Investment Account.
- (4) Without affecting any requirement that no credit or debit be made without a corresponding debit or credit, a debit or credit of an Investment Entitlement to an Investment Account is not ineffective because it is not possible to identify an Investment Account to which a corresponding credit or debit has been made.
- (5) Debits and credits to Investment Accounts in relation to Investments of the same description may be made on a net basis.
- (6) This section does not prevent any other method provided by law for acquiring or disposing of Investment Entitlements, but the priority of an interest created by any other method is subject to the provisions of section 32 (Recognition of and priority among competing interests).

#### 28. Rights in Investment Entitlements

- (1) The credit of an Investment Entitlement to an Investment Account maintained by an Investment Intermediary (the *relevant intermediary*) gives the Account Holder:
  - (a) subject to subsection (2), the right to receive and exercise the rights attached to the Investment, including, for example, dividends, interest and other distributions and voting rights; and
  - (b) the right, by instructions to the relevant intermediary, to cause the Investment Entitlement (or part of it) to be debited to the Investment Account and credited to an Investment Account of another Account Holder (whether with the relevant intermediary or another Investment Intermediary) or to be delivered into the possession or Control of a Secured Party; and
  - (c) the right, by instructions to the relevant intermediary, to cause the Investment Entitlement (or part of it) to be debited to the Investment Account and credited to the Account Holder's Investment Account with another Investment Intermediary; and
  - (d) the right, by instructions to the relevant intermediary, to withdraw Investments so that the Account Holder may hold them otherwise than through an Investment Account, to the extent permitted by the laws under which the Investment is constituted, the terms of the Investment and the account agreement; and
  - (e) any other rights given under any other the provisions of AIFC Regulations and AIFC Rules applying to Investment Accounts and Investment Intermediaries.



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- (2) Credit of an Investment Entitlement to an Investment Account of an Account Holder who is acting in the capacity of Investment Intermediary in relation to the Investment Entitlement only gives a particular right under subsection (1)(a) if that Account Holder, or another Investment Intermediary through which, directly or indirectly, the Account Holder holds the Investment Entitlement, is entitled to that right under the laws under which the Investment is constituted and the terms of the Investment.
- (3) The rights given to an Account Holder under subsection (1):
  - (a) are effective against the relevant intermediary and third parties; and
  - (b) may be enforced against the relevant intermediary and, subject to the laws under which the Investment is constituted and the terms of the Investment, the issuer of the Investments.
- (4) Subsection (3) does not limit, or otherwise affect, section 40 (Position of issuers of Investments) or section 41 (Set-off and netting).

### 29. **Exercise of rights in Investment Entitlements**

- (1) An Investment Intermediary must take appropriate measures to enable the Investment Intermediary's Account Holders to receive and exercise the rights mentioned in section 28(1) (Rights in Investment Entitlements).
- (2) However, to the extent that a right mentioned in section 28(1) is dependent on the actions of the Investment Intermediary, the Account Holder is not entitled to the right to the extent that giving effect to the right:
  - (a) is not within the power of the Investment Intermediary; or
  - (b) would require the Investment Intermediary to act in a way that is not permitted by law or by the terms of the relevant Investment; or
  - (c) would require the Investment Intermediary to establish an Investment Account with another Investment Intermediary; or
  - (d) is waived by the Account Holder by agreement with the Investment Intermediary.
- (3) Also, any obligation of the Investment Intermediary in relation to a right of the Account Holder mentioned in section 28(1) is satisfied if the Investment Intermediary acts in relation to the obligation:
  - (a) if the Investment Intermediary is an Authorised Market Institution—in accordance with its business rules; or
  - (b) if the Investment Intermediary is authorised (however described) to conduct business in the AIFC—in accordance with the account agreement or, if there is no account agreement, in accordance with reasonable commercial standards; or
  - (c) in accordance with any other agreement between the Account Holder and the Investment Intermediary; or



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(d) by placing the Account Holder in a position to exercise the right directly.

### 30. **Investment Accounts: authority, timing, conditionality and reversals**

- (1) A debit or credit of an Investment Entitlement to an Investment Account maintained by an Investment Intermediary (the *relevant intermediary*) for an Account Holder is not effective unless the relevant intermediary is authorised to make the debit, credit or designating entry by:
  - (a) the Account Holder; or
  - (b) an Investment Intermediary administering the Investment Entitlement with the Account Holder's authority; or
  - (c) an Authorised Market Institution acting under its business rules,
- (2) Except as otherwise provided by the business rules of an Authorised Market Institution, a debit or credit of an Investment Entitlement to an Investment Account takes effect when it is made.
- (3) If a debit or credit of an Investment Entitlement to an Investment Account is made conditionally under the terms of an account agreement or the business rules of an Authorised Market Institution or by operation of law, the debit or credit is effective against third parties when, and only if, the condition is satisfied.
- (4) An account agreement, the business rules of an Authorised Market Institution, or the Acting Law of the AIFC, may provide that a debit or credit of an Investment Entitlement to an Investment Account is liable to be reversed.
- (5) Subsection (6) applies if:
  - (a) an Investment Entitlement is credited to an Investment Account maintained by an Investment Intermediary (the *relevant intermediary*) for an Account Holder; and
  - (b) the credit is not effective, and is liable to be reversed, because of the circumstances in which it was made; and
  - (c) before the credit is reversed, the Investments are credited to the account of a third party under a further disposition.
- (6) Despite subsection (4), the fact that the initial credit is not effective, and is liable to be reversed, because of the circumstances in which it was made does not make the further credit ineffective against the Person making the further disposition, the relevant intermediary or third parties unless:
  - (a) the further credit is made conditionally and the condition is not satisfied; or
  - (b) the further credit is made to a Person having knowledge, at the time it is made, that it is made as a result of the further disposition and that the further disposition was made in such circumstances; or
  - (c) the further disposition is made by way of gift or otherwise gratuitously.





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- (7) For subsection (6), a Person has knowledge of a matter if the Person has actual knowledge of the matter or has knowledge of facts sufficient to indicate that there is a significant probability and deliberately avoids information that would establish the facts of the matter.

### 31. **Prohibition of higher-tier attachment**

- (1) No attachment of or in relation to an Investment Entitlement attached to an Investment Account maintained by an Investment Intermediary for an Account Holder may be granted or made against the issuer of the relevant Investment or any other Investment Intermediary.

- (2) In this section:

*attachment* means any judicial, administrative or other act or process for enforcing or satisfying a judgement, award or other judicial, arbitral, administrative or other decision against or in relation to the Account Holder or for freezing, restricting or impounding Property of the Account Holder to ensure the ability to satisfy or enforce any future such judgement, award or decision.

### 32. **Recognition of and priority among competing interests**

- (1) Interests arising under section 27 (Acquisition and disposal of Investment Entitlements) and under the AIFC Security Regulations:

- (a) have priority over any other interest created by any method permitted by the Acting Law of the AIFC; and
- (b) rank among themselves in the order in which they were created.

- (2) Any other interest in Investment Entitlements arising by operation of law under the Acting Law of the AIFC has the priority provided by the Acting Law of the AIFC.

- (3) Subject to subsections (1) and (2), the priority of any competing interests in Investment Entitlements is decided by the Acting Law of the AIFC.

- (4) As between Persons entitled to any interests mentioned in this section, the priorities provided by this section may be varied by agreement between them.

### 33. **Protection against Third Party Property Interests**

- (1) If a Person acquires an Investment Entitlement under section 27 (Acquisition and disposal of Investment Entitlements) and does not, at the time of acquisition, have knowledge of a Third Party Property Interest in relation to the Investment Entitlement, the Person is not subject to the interest.

- (2) However, subsection (1) does not apply if the Investment Entitlement was acquired by way of gift or otherwise gratuitously.

- (3) For this section, a Person has knowledge of a Third Party Property Interest if the Person:

- (a) has actual knowledge of the interest; or
- (b) has knowledge of facts sufficient to indicate that there is a significant probability that the interest exists and deliberately avoids information that would establish the existence of the interest.



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- (4) For this section, knowledge received by an organisation is effective for a particular transaction from the time when it is, or ought reasonably to have been, brought to the attention of the individual within that organisation conducting the transaction.

### 34. **Duty of Investment Intermediary to have sufficient Investment Entitlement**

- (1) An Investment Intermediary must not:
- (a) make a credit of an Investment Entitlement to an Investment Account maintained by the Investment Intermediary or held by the Investment Intermediary with another Investment Intermediary; or
  - (b) dispose of an Investment Entitlement held by the Investment Intermediary or credited to an Investment Account held by the Investment Intermediary with another Investment Intermediary;

if, on the credit or disposition becoming effective, there would not be sufficient Investments Entitlements of the same description held by the Investment Intermediary or credited to Investment Accounts held by the Investment Intermediary with other Investment Intermediaries.

- (2) If at any time sufficient Investments Entitlements of any description are not held by the Investment Intermediary or credited to Investment Accounts held by the Investment Intermediary with other Investment Intermediaries, the Investment Intermediary must take the action necessary to ensure that sufficient Investments Entitlements of that description are so held or credited.
- (3) For this section, a reference to *sufficient* Investments Entitlements of any description is a reference to Investments Entitlements of an aggregate number or amount at least equal to the aggregate number or amount of Investments Entitlements of that description held by the Investment Intermediary or credited to Investment Accounts held by the Investment Intermediary with other Investment Intermediaries.
- (4) Subsection (2) does not limit or otherwise affect:
- (a) any other provision of the Acting Law of the AIFC; or
  - (b) any provision of the business rules of an Authorised Market Institution; or
  - (c) subject to the Acting Law of the AIFC, any account agreement relating to the allocation of the cost of ensuring compliance with that subsection.
- (5) The fact that a credit or disposition is made by an Investment Intermediary in Contravention of subsection (1) does not make the credit or disposition ineffective, but:
- (a) the Investment Intermediary must comply with subsection (2); and
  - (b) this subsection does not affect any liability of the Investment Intermediary to compensate the relevant Account Holder for any loss resulting from the Contravention.



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35. **Investments and certain money claims not part of insolvent Investment Intermediary's estate etc.**
- (1) Investments held by an Investment Intermediary, or credited to Investment Accounts held by an Investment Intermediary with another Investment Intermediary, must be allocated to the rights of Account Holders of the Investment Intermediary to the extent necessary to ensure that the aggregate number or amount of the Investments or claims of that description so allocated is equal to the aggregate number or amount of such Investments or claims credited to Investment Accounts maintained by the Investment Intermediary.
  - (2) Investments allocated under subsection (1) do not form part of the Property of the Investment Intermediary available for distribution among, or realisation for the benefit of, the Investment Intermediary's creditors in an insolvency proceeding (whether in the AIFC or elsewhere) in relation to the Investment Intermediary and are not otherwise subject to claims of creditors of the Investment Intermediary.
  - (3) The allocation required by subsection (1) must be made by the arrangements of the Investment Intermediary or, in the absence of such arrangements, by operation of the Acting Law of the AIFC.
36. **Effect of insufficiency on Account Holders' rights**
- (1) If the aggregate number or amount of Investments held by an Investment Intermediary, or credited to an Investment Account that an Investment Intermediary holds with another Investment Intermediary, is less than the aggregate number or amount of Investments of that description credited to Investment Accounts of the Investment Intermediary, the shortfall must be allocated:
    - (a) if the Investment Intermediary is an Authorised Market Institution and its business rules make provision for the allocation of the shortfall—in accordance with the business rules; and
    - (b) in any other case—among the Account Holders to whose Investment Accounts the assets or Investments of the relevant description are credited, in proportion to the respective numbers or amounts of assets or Investments so credited.
  - (2) In any allocation required under subsection (1)(b), no account must be taken of:
    - (a) the origin of, or any past dealings in, any Investments held by the Investment Intermediary or credited to Investment Accounts held by the Investment Intermediary with other Investment Intermediaries; or
    - (b) the order in which, or time at which, any Investments are credited or debited to the respective Investment Accounts of Account Holders.
37. **Right of Transfer against insolvent Investment Intermediary**
- (1) The rights of an Account Holder under section 27 (Acquisition and disposal of Investment Entitlements) constituted by the credit of an Investment Entitlement to the Account Holder's Investment Account maintained by an Investment Intermediary are effective against a Receiver or Liquidator in any insolvency proceeding (whether in the AIFC or elsewhere) in relation to the Investment Intermediary.
  - (2) Without limiting subsection (1), if the Investment Intermediary is or becomes insolvent, the Account Holder may instruct the Transfer or registration of Investments or Investment Entitlements



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or transfer of money claims to which section 36(1)(b) (Effect of insufficiency on Account Holders' rights) applies. The instruction is enforceable against a Receiver or Liquidator.

### 38. **Insolvency of clearing and settlement intermediaries or Authorised Market Institutions**

Any provision of the business rules of an Authorised Market Institution relating to the finality of acquisitions or dispositions made under the business rules:

- (a) prevails, to the extent of any inconsistency with any AIFC Regulations or AIFC Rules, in deciding claims to Investment Entitlements subject to the Control of the Authorised Market Institution; and
- (b) has effect, and prevails over, any law of insolvency (whether of the AIFC or otherwise) despite the commencement of an insolvency proceeding (whether in the AIFC or elsewhere) in relation to the Authorised Market Institution or any party to a contract for the acquisition or disposal of an Investment or Investment Entitlement to which the business rules apply.

### 39. **Instructions to Investment Intermediaries**

- (1) An Investment Intermediary is neither bound nor entitled to give effect to an Instruction in relation to an Investment Entitlement of the Account Holder of an Investment Account maintained by the Investment Intermediary if the Instruction is given by a Person other than the Account Holder or the Account Holder's agent.
- (2) Subsection (1) is subject to:
  - (a) the provisions of the account agreement, any other agreement between the Account Holder and the Investment Intermediary, or any other agreement entered into by the Investment Intermediary with the Account Holder's consent; and
  - (b) the rights of any Person (including the Investment Intermediary) who holds a perfected security interest under the AIFC Security Regulations; and
  - (c) subject to section 32 (Recognition of and priority among competing interests), any judgement, award, order or decision of a court, tribunal or other judicial or administrative authority of competent jurisdiction; and
  - (d) any mandatory provision of the Acting Law of the AIFC; and
  - (e) if the Investment Intermediary is an Authorised Market Institution—its business rules.

### 40. **Position of issuers of Investments**

- (1) Any provision of the AIFC Companies Regulations, and any provision of the terms of issue of Investments constituted under the AIFC Companies Regulations, that would prevent the holding of Investment Entitlements with an Investment Intermediary, or the effective exercise by an Account Holder of rights in relation to Investment Entitlements, are modified to the extent necessary to make possible the holding of Investment Entitlements with an Investment Intermediary and the effective exercise of the rights of an Account Holder.
- (2) Without limiting subsection (1), that subsection applies to provisions of any of the following kinds:



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- (a) a provision that restricts the ability of a holder of Investments to exercise voting or other rights in different ways in relation to different parts of a holding of Investments of the same description;
  - (b) a provision that does not include adequate provision for making available to Account Holders holding Investment Entitlements, or to Investment Intermediaries for transmission to Account Holders holding Investment Entitlements:
    - (i) copies of notices, accounts, circulars and other materials addressed by the issuer to holders of the Investment Entitlements; or
    - (ii) ways of exercising the rights attached to the Investments either in person or through a proxy or other representative;
  - (c) a provision that prohibits, or fails to recognise, the holding of Investments by a Person acting in the capacity of Investment Intermediary;
  - (d) a provision under which recognition of the holding of Investments by an Investment Intermediary, or the exercise of rights by an Account Holder holding Investment Entitlements to such Investments, is conditional on the maintenance of records in a particular medium;
  - (e) a provision that imposes restrictions on the holding of Investments, or the exercise of rights attached to Investments, by reference to the identity, status, residence, nationality, domicile or other characteristics or circumstances of any Person acting in the capacity of Investment Intermediary.
- (3) However, this section does not make an issuer of Investments bound by, or compel an issuer of Investments to recognise, a right or interest of any Person in or in relation to the Investments if the issuer is not bound by, or compelled to recognise, that right or interests under the laws under which the Investments are constituted and the terms of the Investments.

### 41. **Set-off and netting**

- (1) As between an Account Holder who holds Investment Entitlements for the Account Holder's own account and the issuer of the Investments, the fact that the Account Holder holds the Investments with an Investment Intermediary must not of itself, in any insolvency proceeding (whether in the AIFC or elsewhere) in relation to the issuer, prevent the existence or exercise of any rights of set-off that would have existed, and been exercisable, if the Account Holder had held the Investments otherwise than through an Investment Intermediary.
- (2) Netting of entitlements, and rights to Investments or entitlements, as provided in agreements between parties, between Investment Intermediaries and Account Holders, or in the business rules of an Authorised Market Institution, are enforceable.
- (3) Close-out netting as provided in termination provisions of agreements, or in the business rules of an Authorised Market Institution, are enforceable according to the terms of the agreement or business rules.



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### **42. Enforcement of Investment Entitlements**

Except as otherwise provided by the Acting Law of the AIFC, an Investment Entitlement may be enforced only against the Investment Intermediary against which the Investment Entitlement was acquired.



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### PART 9: RULES

#### 43. Power to adopt Rules etc.

- (1) The Board of Directors of the AIFCA or the Board of Directors of the AFSA may adopt rules prescribing matters:
  - (a) required or permitted by these Regulations to be prescribed by the Rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to these Regulations.
- (2) However, the Board of Directors of the AIFCA may not adopt rules under this section on matters related to the regulation conducted by the AFSA.
- (3) Without limiting subsection (1), either Board may adopt rules clarifying, extending, implementing, modifying or waiving the application of provisions of these Regulations in relation to the holding of Investments or interests or entitlements in Investments.



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### SCHEDULE 1: INTERPRETATION

#### 1. Definitions for these Regulations

In these Regulations:

**Account Holder**, in relation an Investment Intermediary and an Investment Account, means the Person in whose name the Investment Intermediary maintains the Investment Account, whether the Person is acting on the Person's own account or for another Person (including in the capacity of Investment Intermediary).

**Acting Law of the AIFC** has the meaning given by article 4 of the Constitutional Statute.

**Action** includes counterclaim and set-off.

**AFSA** means the Astana Financial Services Authority.

**AIFC** means the Astana International Financial Centre.

**AIFCA** means Astana International Financial Centre Authority.

**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.

**Authorised Market Institution** means an Authorised Market Institution under the AIFC Financial Services Framework Regulations.

**Bearer Security** means a Security which by its terms is payable to the bearer of the certificate for the Security, and includes any Security certificate that has been generally Endorsed.

**Certificated Investment** means an Investment (other than a Future or option) whose existence is embodied in a physical certificate.

**Claimant** means a Person who brings or makes a claim under these Regulations.

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

**Contract of Sale** includes a contract to sell as well as a contract of sale.

**Contravene** includes Fail to comply with.

**Control** has the meaning given by section 21 (Meaning of *Control*).

**Court** means the Astana International Financial Centre Court.

**Delivery**, in relation to Property, means the voluntary transfer of possession of the Property from one Person to another Person, and includes any act of separation by which the Property becomes unconditionally appropriated to a Contract of Sale.





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**Endorsement**, of a Security, means a signature that alone, or accompanied by other words, is made on the Security, or on a separate document, for the purpose of:

- a) assigning, Transferring, or redeeming the Security or underlying Property; or
- b) granting a power to assign, Transfer or redeem the Security or underlying Property.

**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.

**Fail** includes refuse.

**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.

**Good Faith**: an act or omission is in **Good Faith** if it is done or omitted to be done honestly, whether or not it is done or omitted to be done negligently.

**Governor** means the Governor of the Astana International Financial Centre.

**Instruction**, in relation to an Investment, means a notification that directs that the Transfer of the Investment be registered or that the Investment be redeemed.

**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 maintained by an Investment Intermediary for a Person for the safekeeping of assets by way of custody, collateral or margin. For this definition, **assets** include Investments, Investment Entitlements and cash provided as margin in connection with the clearing and settlement operations of an Authorised Market Institution.

**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 credited to the Entitlement Holder's Investment Account.

**Investment Intermediary** means a Person who in the ordinary course of business transacts Investments or holds Investments by way of custody or in connection with the taking of security, and includes an Authorised Market Institution.

**Liquidator** means any Person acting in a capacity as provisional liquidator or liquidator (however described) of a Person, whether under the AIFC Insolvency Regulations or otherwise.

**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



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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.

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

**Property** means anything (other than Real Property) that may be owned and Transferred under the Acting Law of the AIFC, and, as the context requires, may refer to either the thing itself or title to it.

**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 otherwise than as a recipient of a gift or other gratuitous Transfer.

**Real Property** means any right or interest in land.

**Receiver** means any Person acting in a capacity as administrative receiver or receiver (however described) of a Person, whether under the AIFC Insolvency Regulations or otherwise.

**Registered Form**, in relation to a Certificated Investment, means a form in which a Transfer of the Certificated Investment may be registered on books maintained for that purpose by or on behalf of the issuer.

**Rules** means rules adopted by the Board of Directors of the AIFCA/AFSA under section 43.

**Sale** includes a contract to sell and Deliver as well as a sale and Delivery.

**Secured Party** has the meaning given by section 7 of Schedule 1 of the AIFC Security Regulations.

**Security** has the meaning prescribed by the Rules.

**Third Party Property Interest**, in relation to Property, means an interest in the Property that could be asserted by a third party adversely to the interest of a Purchaser of the Property, including any interest arising from Property rights in existence at the time of Transfer and Property rights that may arise later by operation of law or judicial decision.

**Transfer**, in relation to Property, means transfer of title to the Property.

**Transfer Authority** has the meaning given by section 18 (Transfer Authority for Investments etc.)

**Transferee**, in relation to a Transfer of Property, means a Person who seeks to have title to the Property transferred to the Person, and includes a buyer of the Property.

**Transferor**, in relation to a Transfer of Property, means a Person who seeks to transfer title to the Property to another Person, whether or not the first Person owns the Property at the time of the Transfer, and includes a seller of the Property.

**Uncertified Investment** means an Investment that is not represented by a certificate.

**Unpaid Transferor**, for Part 4 (Rights of parties), has the meaning given by section 15 (Meaning of *Unpaid Transferor*).