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**AIFC GENERAL RULES**

**(GEN)**

**AIFC RULES NO. FR0001 OF 2017**

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Astana International Financial Centre, Astana

17 October 2017



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## AIFC GENERAL RULES

### Guidance: Purpose of this rulebook

The purpose of this rulebook, “GEN”, is to complement the regulatory framework established by the Financial Services Framework Regulations (“the Framework Regulations”).

- GEN 1.1 complements Part 3, Chapter 1 of the Framework Regulations by describing the process of application for a Licence to carry on Regulated Activities (i.e. to become an Authorised Firm) and the criteria that the AFSA will apply in considering an application.
- GEN 1.2 complements Part 3, Chapter 2 of the Framework Regulations by describing the process of application for a Licence to carry on Market Activities (i.e. to become an Authorised Market Institution) and the criteria that the AFSA will apply in considering an application.
- GEN 1.3 contains an application process for a Licence to carry on Ancillary Services (i.e. to become an Ancillary Service Provider) and the criteria that the AFSA will apply in considering an application.
- GEN 2 creates two categories of employees who attract regulatory attention. Approved Individuals occupy the most critical roles in an Authorised Person, which are referred to as “Controlled Functions”. GEN 2.1 identifies a number of roles that an Authorised Person must fill. Their appointment requires the approval of the AFSA. Designated Individuals occupy less critical roles, referred to as “Designated Functions”, and do not require AFSA approval, but may only be appointed by an Authorised Person after it has applied a fit and proper test.
- GEN 3 contains rules restricting the circumstances in which significant shareholders in an Authorised Person may change.
- GEN 4 contains two sets of core principles. The first are applicable to Authorised Persons, the second to Approved Individuals and Designated Individuals.
- GEN 5 contains the key System and Controls requirements that apply to all Authorised Persons.
- GEN 6 complements Part 8 of the Framework Regulations (Supervision of Authorised Persons). The chapter begins with guidance setting out a non-exhaustive list of the circumstances in which the AFSA is likely to exercise the supervisory powers granted to it by sections 96 to 101 of the Framework Regulations. GEN 6.1 adds details to section 97 of the Framework Regulations which gives the AFSA the power to require an Authorised Person to provide it with a report on a specified matter. GEN 6.2 identifies a large number of instances in which an Authorised Person is obliged to make a notification to the AFSA. Finally GEN 6.3 contains requirements relating to accounting and auditors, including requirements to prepare financial reports, keep accounting records, make certain notifications to the AFSA and cooperate with an auditor.



## **1. LICENSING OF CENTRE PARTICIPANTS**

### **1.1. Authorised Firms**

#### **1.1.1. Definition of Regulated Activities**

The Regulated Activities that may be carried on by an Authorised Firm, subject to the terms of its Licence, are specified in Schedule 1.

#### **1.1.2. Form and content of application for a Licence**

A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Regulated Activities by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules.

**Guidance: AFSA discretion to waive requirements**

A Person may apply to the AFSA to waive the requirements as to the contents of the Form prescribed in Schedule 3 pursuant to section 32(4) of the Framework Regulations.

#### **1.1.3. Adequate and appropriate financial resources**

In assessing whether an applicant has adequate and appropriate financial resources for the purposes of section 34(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) how the applicant will comply with the applicable provisions of the Prudential Rules (PRU);
- (b) the applicant's liabilities, including contingent and future liabilities;
- (c) the means by which the applicant manages the risks to its business;
- (d) the applicant's business plan;
- (e) whether the applicant's assets are appropriate given the applicant's liabilities;
- (f) the liquidity of the applicant's resources;



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- (g) the nature and scale of the business which will be carried on by the applicant;
- (h) the risks to the continuity of the services which will be provided by the applicant;
- (i) the applicant's membership of a Group and any relevant effect which that membership may have; and
- (j) whether the applicant is capable of meeting its debts as they fall due.

### 1.1.4. Adequate and appropriate non-financial resources

In assessing whether an applicant has adequate and appropriate non-financial resources for the purposes of section 34(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) the skills and experience of those who will manage the applicant's affairs;
- (b) the applicant's resources to identify, monitor, measure and take action to remove or reduce risks as to its safety and soundness;
- (c) the effectiveness of the applicant's business management; and
- (d) whether the applicant's non-financial resources are sufficient to enable the applicant to comply with the Regulations and Rules that are likely to be relevant to the applicant.

### 1.1.5. Fitness and propriety

In assessing whether an applicant is fit and proper for the purposes of section 34(1)(b) of the Framework Regulations, the AFSA will consider:

- (a) the fitness and propriety of the members of its Governing Body;
- (b) the applicant's connection with any Person or membership of any Group;
- (c) the fitness and propriety of the applicant's Controllers or any other Person associated with the applicant;
- (d) the impact a Controller might have on the applicant's ability to comply with the applicable requirements;
- (e) the Regulated Activities undertaken or to be undertaken by the applicant and the risks to their continuity;



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- (f) the nature (including the scale and complexity) of the activities of the applicant and any associated risks that those activities pose to the AFSA's Regulatory Objectives;
- (g) the complexity of any products or services that the applicant may offer or provide in carrying on those activities;
- (h) whether the applicant's business model will allow for its affairs and business to be conducted and managed in a sound and prudent manner, having regard to, amongst other things, the interests of its Clients and the integrity of the AIFC;
- (i) any matter which may harm or may have harmed the integrity or the reputation of the AFSA or AIFC, including through the carrying on of a business by the applicant for a purpose connected with a Financial Crime; and
- (j) any other relevant matters.

### 1.1.6. Effective supervision

In assessing whether an applicant is capable of being effectively supervised by the AFSA for the purposes of section 34(1)(c) of the Framework Regulations, the AFSA will consider:

- (a) the nature, including the complexity, of the Regulated Activities that the applicant will carry on; and
- (b) the way in which the applicant's business is organised; and
- (c) (if the applicant is a member of a Group) whether membership of the Group is likely to prevent the AFSA's effective supervision of the applicant; and
- (d) whether the applicant is subject to consolidated supervision.

### 1.1.7. Compliance arrangements

In assessing whether an applicant has adequate compliance arrangements for the purposes of section 34(1)(d) of the Framework Regulations, the AFSA will consider whether it has:

- (a) clear and comprehensive policies and procedures relating to compliance with all applicable legal requirements; and
- (b) adequate means to implement those policies and procedures and monitor that they are operating effectively and as intended.



### **1.1.8. Modification or withdrawal of an Authorised Firm's Licence**

An Authorised Firm may apply to the AFSA to change the scope of its Licence, to have a condition or restriction varied or withdrawn, or to have its Licence withdrawn by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules.

## **1.2. Authorised Market Institutions**

### **Guidance: Definition of Market Activity**

Market Activity is defined in the section 18 of the Framework Regulations as:

- (a) Operating an Exchange; and
- (b) Operating a Clearing House.

### **1.2.1. Form and content of application for a Licence**

A Person may apply to the AFSA for a Licence for a Centre Participant to carry on one or more Market Activities in the AIFC by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such information and documents as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules.

### **1.2.2. Adequate and appropriate financial resources**

In assessing whether an applicant has adequate and appropriate financial resources for the purposes of section 37(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) how the applicant will comply with the applicable provisions of AMI 2.2;
- (b) the provision the applicant makes in respect of any liabilities, including contingent and future liabilities;





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- (c) the means by which the applicant manages the risks to its business;
- (d) the rationale for, and basis of, the applicant's business plan;
- (e) whether the applicant's assets are appropriate given the applicant's liabilities;
- (f) the liquidity of the applicant's resources;
- (g) the nature and scale of the business which will be carried on by the applicant;
- (h) the risks to the continuity of the services which will be provided by the applicant;
- (i) the applicant's membership of a Group and any relevant effect which that membership may have; and
- (j) whether the applicant is capable of meeting its debts as they fall due.

### 1.2.3. Adequate and appropriate non-financial resources

In assessing whether an applicant has adequate and appropriate non-financial resources for the purposes of section 37(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) the skills and experience of those who will manage the applicant's affairs;
- (b) the applicant's resources to identify, monitor, measure and take action to remove or reduce risks as to its safety and soundness;
- (c) the applicant's resources to control and monitor access to, and the use of, its facilities in a manner designed to protect the orderly functioning of the market and the interests of investors;
- (d) the applicant's resources to reduce the extent to which its facilities can be used for a purpose connected with Market Abuse, Financial Crime or money laundering, and to facilitate their detection and monitor their incidence;
- (e) the applicant's resources to monitor and take action in the event of a member of an applicant being unable to meet his obligations in respect of one or more Market Contracts;
- (f) the effectiveness of the applicant's business management; and



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- (g) whether the applicant's non-financial resources are sufficient to enable the applicant to comply with the Regulations and Rules that are likely to be relevant to the applicant.

### 1.2.4. Adequate and appropriate technology resources

In assessing whether an applicant has adequate and appropriate technology resources for the purposes of section 37(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) the applicant's resources for the evaluation, selection and on-going monitoring of the information technology systems used by the applicant;
- (b) the applicant's willingness and ability to use development and testing methodologies in line with internationally accepted testing standards in order to test the viability and effectiveness of such systems; and
- (c) the means by which the applicant will secure and maintain the confidentiality of the data and ensure that the systems used by the applicant are reliable and adequately protected from external attack or incident.

### 1.2.5. Fitness and propriety

In assessing whether an applicant is fit and proper for the purposes of section 37(1)(b) of the Framework Regulations, the AFSA will consider:

- (a) the fitness and propriety of the members of its Governing Body;
- (b) the applicant's connection with any Person or membership of any Group;
- (c) the fitness and propriety of the applicant's Controllers or any other Person associated with the applicant;
- (d) the impact a Controller might have on the applicant's ability to comply with the applicable requirements;
- (e) the Market Activities concerned and the risks to their continuity;
- (f) the nature (including the scale and complexity) of the activities of the applicant and any associated risks that those activities pose to the AFSA's objectives;



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- (g) whether the applicant's business model will allow for its facilities to function in a fair and orderly manner, having regard to, amongst other things, the orderly functioning of the market and the interests of investors;
- (h) any matter which may harm or may have harmed the integrity or the reputation of the AIFC or AFSA , including through the carrying on of a business by the applicant for a purpose connected with Market Abuse or a Financial Crime; and
- (i) any other relevant matters.

### 1.2.6. Effective supervision

In assessing whether an applicant is capable of being effectively supervised by the AFSA for the purposes of section 37(1)(c) of the Framework Regulations, the AFSA will consider:

- (a) the nature, including the complexity, of the Market Activities that the applicant will carry on;
- (b) if the applicant seeks a licence to carry on the Market Activity of Operating an Exchange, the size, nature and complexity of any markets in respect of which the applicant will offer its facilities as an exchange in carrying on that Market Activity;
- (c) if the applicant seeks a licence to carry on the Market Activity of Operating a Clearing House, the complexity of the Securities and transactions, and the size of the likely transaction values and volumes in respect of which the applicant will offer clearing and settlement services in carrying on that Market Activity;
- (c) the way in which the applicant's business is organised;
- (d) (if the applicant is a member of a Group) whether membership of the Group is likely to prevent the AFSA's effective supervision of the applicant; and
- (e) whether the applicant is subject to consolidated supervision.

### 1.2.7. Compliance arrangements

In assessing whether an applicant has adequate compliance arrangements for the purposes of section 37(1)(d) of the Framework Regulations, the AFSA will consider whether it has:

- (a) clear and comprehensive policies and procedures relating to compliance with all applicable legal requirements;



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- (b) adequate means to implement those policies and procedures and monitor that they are operating effectively and as intended;
- (c) effective arrangements for monitoring and enforcing compliance of its Members with its own rules and, if relevant, its clearing and settlement arrangements; and
- (d) if the applicant seeks a licence to carry on the Market Activity of Operating an Exchange, effective arrangements to verify that issuers admitted to trading on its facilities comply with the Market Rules.

### 1.2.8. Modification or withdrawal of an Authorised Market Institution's Licence

An Authorised Market Institution may apply to the AFSA to change the scope of its Licence, to have a condition or restriction varied or withdrawn, or to have its Licence withdrawn by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules to the AFSA.

## 1.3. Ancillary Service Provider

### 1.3.1. Definition of Ancillary Service

The Ancillary Services that may be carried on by an Ancillary Service Provider, subject to the terms of its Licence, are specified in Schedule 2.

### 1.3.2. Form and content of application for a Licence

A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Ancillary Services in the AIFC by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in Schedule 4 to the AFSA.



### **1.3.3. Fitness and propriety**

In assessing whether an applicant is fit and proper for the purposes of section 41 of the Framework Regulations, the AFSA will consider:

- (a) the applicant's standing with any relevant regulatory body;
- (b) the applicant's disciplinary record;
- (c) the applicant's procedures for monitoring and preventing Financial Crime;
- (d) the risk posed to the AIFC by the applicant's activities; and
- (e) such other matters as the AFSA considers relevant.

### **1.3.4. Notifications**

An Ancillary Service Provider must promptly notify the AFSA of any change in its:

- (a) name; or
- (b) legal status; or
- (c) address; or
- (e) beneficial ownership.

### **1.3.5. Application to modify or withdraw an Ancillary Service Provider's Licence**

An Ancillary Service Provider may apply to the AFSA to change the scope of its Licence, to have a condition or restriction varied or withdrawn, or to have its Licence withdrawn by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules.

### **1.3.6. Withdrawal of an Ancillary Service Provider's Licence by the AFSA**

The AFSA may withdraw the Licence of an Ancillary Service Provider:



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- (a) on the application of the Ancillary Service Provider; or
- (b) if the Ancillary Service Provider's commercial registration is cancelled or expires and a reasonable time has passed without such registration being renewed; or
- (c) following a request by the Registrar of Companies; or
- (d) in the event of the insolvency or the entering into administration of the Ancillary Service Provider; or
- (e) if the AFSA considers it necessary or desirable in the interests of the AIFC.



## **2. CONTROLLED AND DESIGNATED FUNCTIONS**

### **2.1. Mandatory appointments**

#### **2.1.1. Appointments to be filled by Approved Individuals**

An Authorised Person must make the following appointments and ensure that they are held by one or more Approved Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer; and
- (c) Compliance Officer.

#### **2.1.2. Appointments to be filled by Approved Individuals or Designated Individuals**

An Authorised Person must make the following appointments and ensure that they are held by either an Approved Individual or a Designated Individual at all times:

- (a) Money Laundering Reporting Officer; and
- (b) such other role or function as the AFSA may direct from time to time.

### **2.2. Controlled Functions**

#### **2.2.1. Designation of roles as Controlled Functions**

The functions specified in GEN 2.2.2 to 2.2.5 are Controlled Functions.

#### **2.2.2. Senior Executive Officer**

The Senior Executive Officer function is carried out by an individual who:

- (a) has, either alone or jointly with other Approved Individuals, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of an Authorised Person's Regulated Activities; and
- (b) is a Director, Partner or Senior Manager of the Authorised Person.



### **2.2.3. Director**

The Director function is carried out by an individual who is a director of an Authorised Person which is a Body Corporate.

### **2.2.4. Finance Officer**

The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Person who has responsibility for monitoring the Authorised Person's compliance with the applicable Rules in the Prudential Rulebook.

### **2.2.5. Compliance Officer**

The Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Person who has responsibility for compliance matters in relation to the Authorised Person's Regulated Activities.

### **2.2.6. Application for Approved Individual status**

An Authorised Person may apply for its officer or Employee or future officer or Employee to be granted Approved Individual status by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the Fee prescribed in the Fees Rules to the AFSA.

#### **Guidance: criteria for approval of Approved Individual**

Section 43 of the Framework Regulations provides

- (1) The AFSA may only authorise an individual to carry on a Controlled Function if it is satisfied that the individual is fit and proper to be an Approved Individual.
- (2) In making this assessment, the AFSA must have regard to:
  - (a) the individual's integrity; and
  - (b) the individual's competence and capability; and
  - (c) the individual's financial soundness; and
  - (d) the individual's proposed role within the Authorised Person; and
  - (e) any other matters that the AFSA considers to be relevant to the application.





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- (3) The AFSA will not regard an individual as fit and proper if the individual:
- (a) is bankrupt; or
  - (b) has been convicted of a serious criminal offence; or
  - (c) is the subject of an administrative or civil finding; or
  - (d) is incapable, through mental or physical incapacity, of managing his affairs.

### 2.2.7. AFSA discretion to waive requirements

An Authorised Person may apply to the AFSA to waive the requirements made pursuant to Section 43(1) of the Framework Regulations in the light of any registration, authorisation or approval the relevant officer or Employee may have in a jurisdiction outside the AIFC.

### 2.2.8. Modification or withdrawal of an Approved Individual's registration

An Authorised Firm or an Approved Individual may apply to the AFSA to modify or withdraw the Approved Individual's status by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules to the AFSA.

### 2.2.9. Dismissal or resignation of an Approved Individual

In the event of an Approved Individual ceasing to be employed by an Authorised Firm to perform a Controlled Function, the Authorised Firm must:

- (a) request the withdrawal of the Approved Individual status within seven days of the Approved Individual ceasing to be employed;
- (b) inform the AFSA of any circumstances which lead the Authorised Firm to consider that the individual is no longer fit and proper; and
- (c) if the Approved Individual was dismissed or requested to resign, provide the AFSA with a statement of the reason, or reasons, for the dismissal or resignation.



## **2.3. Designated Functions**

### **2.3.1. Designation of roles as Designated Functions**

The functions specified in GEN 2.3.2 to 2.3.4 are Designated Functions.

### **2.3.2. Senior Manager**

The Senior Manager function is carried out by an individual who is responsible either alone or jointly with other individuals for the management, supervision or control of one or more parts of an Authorised Person's Regulated Activities who is:

- (a) an Employee of the Authorised Person; and
- (b) not a Director or Partner of the Authorised Person.

### **2.3.3. Responsible Officer**

The Responsible Officer function is carried out by an individual who:

- (a) has significant responsibility for the management of one or more aspects of an Authorised Person's affairs; and
- (b) exercises a significant influence on the Authorised Person as a result of (a); but
- (c) is not an Employee of the Authorised Person.

### **2.3.4. Money Laundering Reporting Officer**

The Money Laundering Reporting Officer function must be carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Person and who has responsibility for the implementation of an Authorised Person's anti-money laundering policies, procedures, systems and controls and day to day oversight of its compliance with the Rules in AML and any relevant anti-money laundering Rules.

#### **Guidance: criteria for appointment of Designated Individual**

Section 46 of Framework Regulations provides:

- (1) Before appointing an individual to carry on a Designated Function, an Authorised Person must take reasonable steps to satisfy itself that the individual is fit and proper to be a Designated Individual.
- (2) In making this assessment the Authorised Person must have regard to:



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- (a) the individual's integrity; and
  - (b) the individual's competence and capability; and
  - (c) the individual's financial soundness; and
  - (d) the individual's proposed role within the Authorised Person; and
  - (e) any other matters that the AFSA may prescribe by Rules.
- (3) An Authorised Person may not regard an individual as fit and proper if the individual:
- (a) is bankrupt; or
  - (b) has been convicted of a serious criminal offence; or
  - (c) is the subject of an administrative or civil finding; or
  - (d) is incapable, through mental or physical incapacity, of managing his affairs.

### **2.3.5. Appointment of Designated Individual**

In respect of each Designated Individual that it appoints, an Authorised Person must keep records of the assessment process that it has undertaken in accordance with section 46 of the Framework Regulations to satisfy itself that the relevant individual is a fit and proper Person. Such records must be kept for a minimum of six years from the date of the assessment.



### 3. CONTROL OF AUTHORISED PERSONS

#### 3.1. Definitions

##### 3.1.1. Definition of a Controller

A Controller is a Person who, either alone or with any Associate:

- (a) holds 10% or more of the shares in either the Authorised Person or a Holding Company of that Authorised Person; or
- (b) is entitled to exercise, or controls the exercise of, 10% or more of the voting rights in either the Authorised Person or a Holding Company of that Authorised Person; or
- (c) is able to exercise significant influence over the management of the Authorised Person as a result of holding shares or being able to exercise voting rights in the Authorised Person or a Holding Company of that Authorised Person or having a current exercisable right to acquire such shares or voting rights.

##### 3.1.2. Definition of “share” and “holding”

A reference in this chapter to the term:

- (a) “share” means:
  - (i) in the case of an Authorised Person, or a Holding Company of an Authorised Person, which has a share capital, its allotted shares;
  - (ii) in the case of an Authorised Person, or a Holding Company of an Authorised Person, with capital but no share capital, rights to a share in its capital; and
  - (iii) in the case of an Authorised Person, or a Holding Company of an Authorised Person, without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up; and
- (b) “a holding” means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Person or a Holding Company of that Authorised Person held by that Person either alone or with any Associate.



### **3.1.3. Disregarded holdings**

For the purposes of determining whether a Person is a Controller, any shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with any Associate, in an Authorised Person or a Holding Company of that Authorised Person are disregarded if:

- (a) they are shares held for the sole purpose of clearing and settling within a short settlement cycle; or
- (b) they are shares held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or
- (c) the Person is an Authorised Person or a Regulated Financial Institution and it:
  - (i) acquires the shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;
  - (ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and
  - (iii) retains the shares for a period less than one year.

## **3.2. Approval process**

### **3.2.1. Threshold for approval requirement**

For the purposes of section 48(b) of the Framework Regulations, the thresholds at which the prior written approval of the AFSA is required are when the relevant holding is increased:

- (a) from below 30% to 30% or more; or
- (b) from below 50% to 50% or more.

### **3.2.2. Approval process**

- (1) A Person who is required to obtain the prior written approval of the AFSA pursuant to section 48 of the Framework Regulations must make an application to the AFSA using the form prescribed in Schedule 3.



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- (2) Where the AFSA proposes to approve a proposed change of control, it will:
  - (a) do so as soon as practicable and in any event within 30 days of the receipt of a duly completed application, unless a different period is considered appropriate by the AFSA and notified to the applicant in writing; and
  - (b) issue to the applicant, and where appropriate to the Authorised Person, an approval notice as soon as practicable after making that decision.
- (3) Where the AFSA proposes to object to or grant a conditional approval to a proposed change of control, it will follow the procedures in Schedule 1 to the Framework Regulations.

### 3.2.3. Effect of AFSA approval or conditional approval

- (1) An approval, including a conditional approval granted by the AFSA pursuant to GEN 3.2.1, is valid for a period of one year from the date of the approval, unless an extension is granted by the AFSA in writing.
- (2) A Person who has been approved by the AFSA as a Controller of an Authorised Person subject to any conditions must comply with the relevant conditions of approval.

## 3.3. Notification requirements

### 3.3.1. Notification for decrease in the level of control of Authorised Person incorporated in the AIFC

A Controller of an Authorised Person which is incorporated in the AIFC must submit, using the form prescribed in Schedule 3, a written notification to the AFSA where that Person:

- (a) proposes to cease being a Controller; or
- (b) proposes to decrease that Person's holding from more than 50% to 50% or less.

### 3.3.2. Notification of changes relating to control of Branches

- (1) In the case of an Authorised Person which is a Branch, a written notification to the AFSA must be submitted by a Controller or a Person proposing to become a Controller of that Authorised Person in accordance with (3) in respect of any one of the events specified in (2).



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- (2) For the purposes of (1), a notification to the AFSA is required when:
  - (a) a Person becomes a Controller;
  - (b) an existing Controller proposes to cease being a Controller; or
  - (c) an existing Controller's holding is:
    - (i) increased from below 30% to 30% or more;
    - (ii) increased from below 50% to 50% or more; or
    - (iii) decreased from more than 50% to 50% or less.
- (3) The notification required under (1) must be made by a Controller or Person proposing to become a Controller of a Branch using the Form prescribed in Schedule 3 as soon as possible, and in any event, before making the relevant acquisition or disposal.

### 3.4. Obligations of Authorised Persons

#### 3.4.1. Obligations of Authorised Person relating to its Controllers

- (1) An Authorised Person must have adequate systems and controls to monitor:
  - (a) any change or proposed change of its Controllers; and
  - (b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact on the fitness and propriety of the Authorised Person or its ability to conduct business soundly and prudently.
- (2) An Authorised Person must, subject to (3), notify the AFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.
- (3) An Authorised Person need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the AFSA or notified the event to the AFSA as applicable.



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### **3.4.2. Annual report**

- (1) An Authorised Person must submit to the AFSA an annual report on its Controllers within four months of its financial year end.
- (2) The Authorised Person's annual report on its Controllers must include:
  - (a) the name of each Controller; and
  - (b) the current holding of each Controller, expressed as a percentage.





## **4. CORE PRINCIPLES**

### **4.1. Application**

#### **4.1.1. Application of the Principles for Authorised Persons**

The Principles for Authorised Persons set out in Section 4.2 apply to Authorised Persons in respect of Regulated Activities and Market Activities.

#### **4.1.2. Application of the Principles for Approved Individuals and Designated Individuals**

The Principles for Approved Individuals and Designated Individuals set out in Section 4.3 apply to Approved Individuals and Designated Individuals in respect of Controlled Functions and Designated Functions.

### **4.2. Principles for Authorised Persons**

#### **4.2.1. Principle 1 - Integrity**

An Authorised Person must observe high standards of integrity and fair dealing.

#### **4.2.2. Principle 2 - Due skill, care and diligence**

In conducting its business activities, an Authorised Person must act with due skill, care and diligence.

#### **4.2.3. Principle 3 - Management**

An Authorised Person must ensure that its affairs are managed effectively and responsibly by its senior management.

#### **4.2.4. Principle 4 - Systems and controls**

An Authorised Person must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with all relevant Regulations and Rules.

#### **4.2.5. Principle 5 - Resources**

An Authorised Person must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.



**4.2.6. Principle 6 - Market conduct**

An Authorised Person must observe proper standards of conduct in financial markets.

**4.2.7. Principle 7 - Information and interests**

An Authorised Person must pay due regard to the interests of its Clients and communicate information to them in a way which is clear, fair and not misleading.

**4.2.8. Principle 8 - Conflicts of interest**

An Authorised Person must take all reasonable steps to ensure that conflicts of interest between itself and its Clients, between its Employees and Clients and between one Client and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a Client are not adversely affected.

**4.2.9. Principle 9 - Suitability**

An Authorised Person must take reasonable care to ensure the suitability of its Advice and discretionary decisions for Clients who are entitled to rely upon its judgment.

**4.2.10. Principle 10 - Client assets and money**

Where an Authorised Person has control of or is otherwise responsible for assets or money belonging to a Client which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

**4.2.11. Principle 11 - Relations with the AFSA**

An Authorised Person must deal with the AFSA in an open and co-operative manner and keep the AFSA promptly informed of significant events or anything else relating to the Authorised Person of which the AFSA would reasonably expect to be notified.

**4.2.12. Principle 12 - Compliance with high standards of corporate governance**

An Authorised Person must have a corporate governance framework as appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Authorised Person's business and to protect the interests of its Clients and stakeholders.



#### **4.2.13. Principle 13 - Remuneration practices**

An Authorised Person must have a Remuneration structure and strategies which are well aligned with the long-term interests of the Authorised Person, and are appropriate to the nature, scale and complexity of its business.

### **4.3. Principles for Approved Individuals and Designated Individuals**

#### **4.3.1. Principle 1 - Integrity**

Each Approved Individual and Designated Individual must observe high standards of integrity and fair dealing in carrying out every Controlled Function or Designated Function.

#### **4.3.2. Principle 2 - Due skill, care and diligence**

Each Approved Individual and Designated Individual must act with due skill, care and diligence in carrying out every Controlled Function or Designated Function.

#### **4.3.3. Principle 3 - Market conduct**

Each Approved Individual and Designated Individual must observe proper standards of conduct in financial markets in carrying out every Controlled Function or Designated Function.

#### **4.3.4. Principle 4 - Relations with the AFSA**

Each Approved Individual and Designated Individual must deal with the AFSA in an open and co-operative manner and must disclose appropriately any information of which the AFSA would reasonably be expected to be notified.

#### **4.3.5. Principle 5 - Management, systems and control**

Each Approved Individual and Designated Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Person for which he is responsible is organised so that it can be managed and controlled effectively.

#### **4.3.6. Principle 6 - Compliance**

Each Approved Individual and Designated Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Person for which he is responsible complies with any Regulations or Rules.



## **5. SYSTEMS AND CONTROLS**

### **5.1. General requirements**

#### **5.1.1. Requirement to maintain systems and controls**

An Authorised Person must establish and maintain systems and controls, including but not limited to financial and risk systems and controls that ensure that its affairs are managed effectively and responsibly by its senior management.

#### **5.1.2. Review of systems and controls**

An Authorised Person must undertake regular reviews of its systems and controls.

#### **5.1.3. Business plan and strategy**

- (1) An Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its Clients are exposed.
- (2) The business plan must take into account the Authorised Person's current business activities and the business activities forecast for the next twelve months.
- (3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in and the complexities of the business of the Authorised Person.

#### **5.1.4. Prevention of market abuse, financial crime and other illegal conduct**

An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) Market Abuse, wherever committed;
- (b) a Financial Crime under any applicable laws; or
- (c) a contravention of applicable Regulations or Rules.



## **5.2. Outsourcing**

### **5.2.1. Responsibility for compliance**

An Authorised Person which outsources any of its functions or activities directly related to Regulated Activities or Market Activities to a service provider (including a service provider within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with the Framework Regulations and Rules.

### **5.2.2. Outsourced function deemed to be carried on by Authorised Person**

The outsourced function under GEN 5.2.1 shall be deemed to be carried out by the Authorised Person itself.

### **5.2.3. Due diligence and supervision**

An Authorised Person which uses a service provider as referred to in GEN 5.2.1 must ensure that it:

- (a) has undertaken due diligence in choosing a suitable service provider;
- (b) effectively supervises the outsourced functions or activities; and
- (c) deals effectively with any act or failure to act by the service provider that leads, or might lead, to a breach of any Regulations or Rules.

### **5.2.4. Notification of AFSA of material outsourcing arrangements**

An Authorised Person must inform the AFSA about any material outsourcing arrangements.

#### **Guidance: material outsourcing arrangement**

An outsourcing arrangement will be considered to be material if it is a service of such importance that weakness or failure of that service would cast serious doubt on the Authorised Person's continuing ability to remain fit and proper or to comply with the Framework Regulations and Rules administered by the AFSA.

### **5.2.5. Material outsourcing arrangements**

An Authorised Person which has a material outsourcing arrangement must:



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- (a) establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;
- (b) enter into an appropriate and written outsourcing contract; and
- (c) ensure that the outsourcing arrangements neither reduce its ability to fulfil its obligations to Clients and the AFSA, nor hinder supervision of the Authorised Person by the AFSA.

### 5.2.6. Terms of outsourcing contracts

An Authorised Person must ensure that the terms of its outsourcing contract with each service provider under a material outsourcing arrangement require the service provider to:

- (a) provide information and documents where required by the AFSA under section 96 of the Framework Regulations; and
- (b) deal in an open and co-operative way with the AFSA.

## 5.3. Corporate governance

### 5.3.1. Governing Body

An Authorised Person must have a Governing Body that meets the requirements of GEN 5.3.2 (membership), 5.3.3 (responsibilities) and 5.3.4 (competence, training and access to information).

### 5.3.2. Governing Body – membership

An Authorised Person's Governing Body must comply with the requirements set out below:

- (a) the composition of the Governing Body of an Authorised Person must reflect an adequately broad range of experience;
- (b) the Governing Body must possess adequate collective knowledge, skills and experience in order to understand the Authorised Person's activities and risks; and
- (c) members of the Governing Body must:
  - (i) commit sufficient time to perform their functions on the Governing Body; and
  - (ii) act with honesty, integrity and independence of mind; and



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- (iii) effectively assess and challenge, where necessary, the decisions of the senior management, and oversee and monitor decision making.

### 5.3.3. Governing Body – responsibilities

The Governing Body of an Authorised Person must:

- (a) define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the Authorised Person in a manner which promotes the integrity of the market, which at least must include: the segregation of duties in the organisation; and the prevention of conflicts of interest in its operation;
- (b) monitor and periodically assess the effectiveness of the Authorised Person's governance arrangements; and
- (c) take appropriate steps to address any deficiencies found as a result of the monitoring under sub-paragraph (b).

### 5.3.4. Governing Body – competence, training and access to information

An Authorised Person must:

- (a) devote adequate human and financial resources to the induction and training of members of the Governing Body;
- (b) ensure that the Governing Body has access to the information and documents it requires to oversee and monitor management decision-making; and
- (c) engage a broad set of qualities and competences when recruiting Persons to the Governing Body, and for that purpose have a policy promoting diversity on the management body; and
- (d) notify the AFSA of the identity of all the members of its Governing Body.

### 5.3.5. Senior management

An Authorised Person must ensure that the senior management of the Authorised Person have clear responsibility for the day-to-day management of the Authorised Person's business in accordance with the business objectives and strategies approved or set by the Governing Body.



### **5.3.6. Management information**

An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise, monitor and control its activities, to comply with all relevant Regulations and Rules and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

### **5.3.7. Remuneration structure and strategy**

The Governing Body of an Authorised Person must ensure that the Remuneration structure and strategy of that Authorised Person:

- (a) are consistent with the business objectives and strategies and the identified risk parameters within which the Authorised Person's business is to be conducted;
- (b) provide for effective alignment of risk outcomes and the roles and functions of the Employees, taking account of:
  - (i) the nature of the roles and functions of the relevant Employees; and
  - (ii) whether the actions of the Employees may expose the Authorised Person to unacceptable financial, reputational and other risks;
- (c) at a minimum, include the members of its Governing Body, the senior management, Approved Individuals and any Designated Individuals; and
- (d) are implemented and monitored to ensure that they operate, on an on-going basis, effectively and as intended.

## **5.4. Compliance**

### **5.4.1. Requirement to maintain compliance arrangements**

An Authorised Person must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Person complies with all relevant Regulations and Rules.

### **5.4.2. Documentation of compliance arrangements**

An Authorised Person must document the organisation, responsibilities and procedures of the compliance function.





**5.4.3. Compliance Officer – sufficient resources**

An Authorised Person must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.

**5.4.4. Compliance Officer – access to records and management**

An Authorised Person must ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Person’s Governing Body and senior management.

**5.4.5. Monitoring and reporting arrangements**

An Authorised Person must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.

**5.4.6. Documentation of monitoring and reporting arrangements and breaches**

An Authorised Person must document the monitoring and reporting processes and procedures as well as keep records of breaches of any relevant Regulations or Rules.

**5.5. Internal audit**

**5.5.1. Requirement to maintain internal audit function**

An Authorised Person must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.

**5.5.2. Independence of internal audit function**

An Authorised Person must ensure that its internal audit function is independent from operational and business functions.

**5.5.3. Access to records and resources**

An Authorised Person must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the Authorised Person's Governing Body or the relevant committee, established by its Governing Body for this purpose.



#### **5.5.4. Documentation of organisation, responsibilities and procedures**

An Authorised Person must document the organisation, responsibilities and procedures of the internal audit function.

#### **5.6. Conflicts of interest**

##### **5.6.1. Identification of conflicts of interest**

An Authorised Person must take all reasonable steps to identify conflicts of interest that may arise between:

- (a) the Authorised Person, including its managers and Employees, and the Clients of the Authorised Person, or any Person directly or indirectly linked to them by control; or
- (b) one Client of the Authorised Person and another Client,

in the course of the Authorised Person carrying on any Regulated Activity or Market Activity.

##### **5.6.2. Factors relevant to the existence of a conflict of interest in the provision of a service**

For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a Client, an Authorised Person must take into account, as a minimum, whether the Authorised Person or a Person directly or indirectly linked by control to the Authorised Person:

- (a) is likely to make a financial gain, or avoid a financial loss, at the expense of the Client; or
- (b) has an interest in the outcome of a service provided to the Client or of a transaction carried out on behalf of the Client, which is distinct from the Client's interest in that outcome; or
- (c) has a financial or other incentive to favour the interest of another Client or group of Clients over the interests of the Client; or
- (d) carries on the same business as the Client; or



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- (e) receives or will receive from a Person other than the Client an inducement in relation to a service provided to the Client, in the form of monies, goods or services, other than the standard commission or fee for that service.

### **5.6.3. Management of conflicts of interest**

If arrangements made by an Authorised Person to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a Client will be prevented, the Authorised Person must clearly disclose the general nature and/or sources of conflicts of interest to the Client before undertaking business for the Client.

### **5.6.4. Disclosure of conflicts of interest**

The disclosure in GEN 5.6.3 must:

- (a) be made in a durable medium; and
- (b) include sufficient detail, taking into account the nature of the Client, to enable that Client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

## **5.7. Information barriers**

### **5.7.1. Establishment of information barriers**

When an Authorised Person establishes and maintains an information barrier (that is, an arrangement that requires information held by an Authorised Person in the course of carrying on one part of the business to be withheld from, or not to be used for, Persons with or for whom it acts in the course of carrying on another part of its business) it may:

- (a) withhold or not use the information held; and
- (b) for that purpose, permit Employees in the first part of its business to withhold the information held from Employees in the other part of the business,

but only to the extent that the business of one of those parts involves the carrying on of Regulated Activities or Market Activities.



### **5.7.2. Information barriers with a group**

Information may also be withheld or not used by an Authorised Person when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same group

### **5.7.3. Relevance of information barrier to Market Abuse**

Acting in conformity with GEN 5.7.1 and 5.7.2 does not amount to Market Abuse.

### **5.7.4. Effect of information barrier**

When an Authorised Person manages a conflict of interest using the arrangements in GEN 5.7.1 and 5.7.2 which take the form of an information barrier, individuals on the other side of the information barrier will not be regarded as being in possession of knowledge denied to them as a result of the information barrier.

## **5.8. Management of risks**

### **5.8.1. Operational risk**

An Authorised Person must establish a robust operational risk management framework with appropriate systems and controls to identify, monitor and manage operational risks that key participants, other Authorised Persons, service providers (including outsources) and utility providers might pose to itself.

### **5.8.2. Legal risk**

An Authorised Person must have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

### **5.8.3. Fraud risk**

An Authorised Person must establish and maintain effective systems and controls to:

- (a) deter and prevent suspected fraud against the Authorised Person; and
- (b) report suspected fraud and other financial crimes to the AFSA and other relevant authorities.



#### **5.8.4. Business continuity plan**

An Authorised Person must have a business continuity plan, which is subjected to periodic review and scenario testing, that addresses events posing a significant risk of disrupting operations, including events that could cause a widespread or major disruption.

### **5.9. Recordkeeping**

#### **5.9.1. Record keeping obligation**

An Authorised Person must make and retain records of matters and dealings, including Accounting Records and corporate governance practices which are the subject of requirements and standards under the Framework Regulations and Rules.

#### **5.9.2. Retrieval of records**

An Authorised Person must ensure that records stored pursuant to GEN 5.9.1 are capable of reproduction on paper within a reasonable period not exceeding five Business Days.

## **6. SUPERVISION**

### **Guidance: supervisory powers of the AFSA**

The supervisory powers of the AFSA are set out in sections 96 to 101 of the Framework Regulations and include:

- Section 96: Power to gather information
- Section 97: Power to require the production of a report
- Section 98: Power to restrict, withdraw or suspend a Licence
- Section 99: Power to impose a prohibition
- Section 100: Power to impose a requirement
- Section 101: Power to enter into an enforceable arrangement

Section 95(1) of the Framework Regulations provides that the AFSA may exercise any of the above powers “at any time where it considers it necessary or desirable to do so in accordance with its Regulatory Objectives.”

### **Guidance: Exercise of supervisory powers by the AFSA**

The AFSA is likely to exercise the supervisory powers in sections 96 to 101 of the Framework Regulations in the following circumstances:

- (a) an Authorised Person is failing, or is likely to fail, to satisfy the criteria referred to in sections 34 or 37 of the Framework Regulations as appropriate (Criteria for the grant of a Licence); or



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- (b) an Authorised Person has failed, during a period of at least 12 months, to carry on a Regulated Activity or Market Activity for which it has a Licence; or
- (c) it is desirable to take such steps to exercise such power in order to protect the interests of clients or customers of an Authorised Person or the financial system; or
- (d) an Authorised Person is in breach of, or has been, in breach of one or more conditions, restrictions or requirements applicable to its Licence; or
- (e) an Authorised Person is (or has been) otherwise in breach of the AIFC Constitutional Law, the Framework Regulations or any Rules or other relevant legislation; or
- (f) an Authorised Person is in breach of a requirement under section 48 of the Framework Regulations (Requirement for AFSA approval to change in control); or
- (g) a request has been received from a Financial Services Regulator; or
- (h) there is a reasonable likelihood that an Authorised Person will contravene a requirement of any Regulations or Rules; or
- (i) an Authorised Person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated; or
- (j) there is loss, risk of loss, or other adverse effect on an Authorised Person's Clients; or
- (k) an investigation is being carried out in relation to an act or omission by an Authorised Person that constitutes or may constitute a Contravention of any applicable Regulation or Rule; or
- (l) an enforcement action has commenced against an Authorised Person for a Contravention of any applicable Regulation or Rule; or
- (m) civil proceedings have commenced against an Authorised Person; or
- (n) an Authorised Person or any of its Employees may be or has been engaged in Market Abuse; or
- (o) an Authorised Person is subject to a merger; or
- (p) a meeting has been called to consider a resolution for an Authorised Person's Winding-Up; or
- (q) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country, territory or jurisdiction outside the AIFC for an Authorised Person; or
- (r) there is a notification to dissolve an Authorised Person or strike it from the register maintained by the Registrar of Companies, or a comparable register in another jurisdiction; or
- (s) there is information to suggest that an Authorised Person is involved in Financial Crime; or
- (t) the AFSA considers that the exercise of the power is necessary or desirable to ensure Clients, Authorised Persons, or the financial system, are not adversely affected.

### 6.1. Power to require the production of a report

#### 6.1.1. Notification of requirement to produce a report

Where the AFSA requires an Authorised Person to provide it with a report under section 97 of the Framework Regulations (Power to require the production of a report) it will give written notification to the Authorised Person of:



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- (a) the purpose of its report, and
- (b) its scope, and
- (c) the timetable for completion and
- (d) any other relevant matters.

### 6.1.2. Nomination or approval of Skilled Person

- (a) The Person appointed to produce a report shall be referred to as the “Skilled Person”.
- (b) Where the AFSA nominates the Skilled Person, the Authorised Person must appoint the Person so nominated.
- (c) Where the AFSA invites the Authorised Person to nominate a Skilled Person, the Authorised Person must provide the AFSA with the details of an appropriately qualified Person within such period as the AFSA may direct. The AFSA will confirm within a reasonable period where it approves the appointment of the Person so nominated. If the AFSA does not approve the Person so nominated, it may require the Authorised Person to nominate another Person or itself nominate a Person.

### 6.1.3. Obligations of Skilled Person

When an Authorised Person appoints a Skilled Person, it must enter into a written contract with the Skilled Person whose terms:

- (a) require and permit the Skilled Person to co-operate with the AFSA in relation to the Authorised Person and to communicate to the ASFA information on, or his opinion on, matters of which he has, or had, become aware in his capacity as a Skilled Person reporting on the Authorised Person in the following circumstances:
  - (i) the Skilled Person reasonably believes that, as regards the Authorised Person concerned:
    - (A) there is or has been, or may be or may have been, a contravention of any requirement that applies to the Authorised Person concerned; and
    - (B) that the contravention may be of material significance to the AFSA in determining whether to exercise, in relation to the Authorised Person



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concerned, any powers conferred on the AFSA under any provision of the Framework Regulations;

- (ii) the Skilled Person reasonably believes that the information on, or his opinion on, those matters may be of material significance to the AFSA in determining whether the Authorised Person concerned satisfies and will continue to satisfy the fit and proper requirements; or
  - (iii) the Skilled Person reasonably believes that the Authorised Person is not, may not be, or may cease to be, a going concern;
- (b) require the Skilled Person to prepare a report within the time specified by the AFSA; and
- (c) waive any duty of confidentiality owed by the Skilled Person to the Authorised Person which might limit the provision of information or opinion by that Skilled Person to the AFSA in accordance with (a) or (b).

### 6.1.4. Contract with Skilled Person

An Authorised Person must ensure that the contract required under GEN 6.1.2:

- (a) is governed by the law of the AIFC; and
- (b) expressly provides that the AFSA has a right to enforce the provisions included in the contract under GEN 6.1.2; and
- (c) expressly provides that, in proceedings brought by the AFSA for the enforcement of those provisions, the skilled Person is not to have available by way of defence, set-off or counter claim any matter that is not relevant to those provisions; and
- (d) if the contract includes an arbitration agreement, expressly provides that the AFSA is not, in exercising the right in (b) to be treated as a party to, or bound by, the arbitration agreement; and
- (e) provides that the provisions included in the contract under GEN 6.1.2 are irrevocable and may not be varied or rescinded without the AFSA's consent.





## **6.2. Obligation of disclosure to the AFSA**

### **6.2.1. Core information**

An Authorised Person must provide the AFSA with reasonable advance notice of a change in:

- (a) the Authorised Person's name; or
- (b) any business or trading name under which the Authorised Person carries on a Regulated Activity or Market Activity; or
- (c) the address of the Authorised Person's principal place of business in the AIFC; or
- (d) in the case of a Branch, its registered office or head office address; or
- (e) its legal structure; or
- (f) an Approved Individual's name or any material matters relating to his fitness and propriety.

### **6.2.2. Branches**

An Authorised Person which is incorporated in the AIFC must provide the AFSA with reasonable advance notice of the establishment or closure of a branch office anywhere in the world from which it carries on financial services.

### **6.2.3. Regulatory impact**

An Authorised Person must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

- (a) the Authorised Person's failure to satisfy the fit and proper requirements; or
- (b) any matter which could have a significant adverse effect on the Authorised Person's reputation; or
- (c) any matter in relation to the Authorised Person which could result in serious adverse financial consequences to the financial system or to other Authorised Persons; or
- (d) a significant breach of a Rule by the Authorised Person or any of its Employees; or



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- (e) a breach by the Authorised Person or any of its Employees of any requirement imposed by any applicable law by the Authorised Person or any of its Employees; or
- (f) any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the Authorised Person's risk profile or resources; or
- (g) any significant failure in the Authorised Person's systems or controls, including a failure reported to the Authorised Person by the Authorised Person's Auditor; or
- (h) any action that would result in a material change in the capital adequacy or solvency of the Authorised Person; or
- (i) non-compliance with Rules due to an emergency outside the Authorised Person's control and the steps being taken by the Authorised Person.

### 6.2.4. Suspected Market Abuse

- (1) An Authorised Person must notify the AFSA immediately if it:
  - (a) receives an order from a Client, or arranges or executes a transaction with or for a Client; and
  - (b) has reasonable grounds to suspect that the order or transaction may constitute Market Abuse.
- (2) The notification under (1) must specify:
  - (a) sufficient details of the order or transaction; and
  - (b) the reasons for the Authorised Person suspecting that the order or transaction may constitute Market Abuse.
- (3) An Authorised Person must not inform the Client, or any other Person involved in the order or transaction, of a notification under this Rule.

### 6.2.5. Fraud and errors

An Authorised Person must notify the AFSA immediately if one of the following events arises in relation to its activities:



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- (a) it becomes aware that an Employee may have committed a fraud against one of its or another Person's Clients; or
- (b) a fraud has been committed against it; or
- (c) it has reason to believe that a Person is acting with intent to commit a serious fraud against it; or
- (d) it identifies significant irregularities in its accounting or other records, whether or not there is evidence of fraud; or
- (e) it suspects that one of its Employees who is connected with the Authorised Person's Regulated Activities or Market Activities may be guilty of serious misconduct.

### 6.2.6. Other regulators

An Authorised Person must advise the AFSA immediately of:

- (a) the granting or refusal of any application for or revocation of authorisation to carry on financial services in any jurisdiction; or
- (b) the granting, withdrawal or refusal of an application for, or revocation of, membership of the Authorised Person of any regulated exchange or clearing house; or
- (c) the Authorised Person becoming aware that a Financial Services Regulator or another enforcement or regulatory agency has started an investigation into the affairs of the Authorised Person; or
- (d) the appointment of inspectors, howsoever named, by a Financial Services Regulator or another enforcement or regulatory agency to investigate the affairs of the Authorised Person; or
- (e) the imposition of disciplinary measures or disciplinary sanctions on the Authorised Person in relation to its financial services or governance by any Financial Services Regulator or any regulated exchange or clearing house.

### 6.2.7. Action against an Authorised Person

An Authorised Person must notify the AFSA immediately if:



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- (a) civil proceedings are brought against the Authorised Person and the amount of the claim is significant in relation to the Authorised Person's financial resources or its reputation; or
- (b) the Authorised Person is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion.

### 6.2.8. Winding up, bankruptcy and insolvency

An Authorised Person must notify the AFSA immediately on:

- (a) the calling of a meeting to consider a resolution for winding up the Authorised Person; or
- (b) an application to dissolve the Authorised Person or to strike it from the register maintained by the AIFC Registrar of Companies, or a comparable register in another jurisdiction; or
- (c) the presentation of a petition for the winding up of the Authorised Person; or
- (d) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Authorised Person; or
- (e) the application of any Person against the Authorised Person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country.

### 6.2.9. Information relating to corporate governance and remuneration

An Authorised Person must provide to the AFSA notice as soon as practicable of any significant changes to its corporate governance framework or the remuneration structure or strategy that affect its Regulated Activities or Market Activities.

### 6.2.10. Accuracy of information

An Authorised Person must take reasonable steps to ensure that all information that it provides to the AFSA in accordance with any applicable legislation is:

- (a) factually accurate or, in the case of estimates and judgements, fairly and properly based; and



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- (b) complete, in that it should include anything of which the AFSA would reasonably expect to be notified.

### 6.2.11. Correction of inaccurate information

An Authorised Person must notify the AFSA immediately it becomes aware, or has information that reasonably suggests, that it:

- (a) has or may have provided the AFSA with information which was or may have been false, misleading, incomplete or inaccurate; or
- (b) has or may have changed in a material particular.

## 6.3. Accounting / Auditing

### 6.3.1. Financial statements

An Authorised Person must prepare financial statements in accordance with the International Financial Reporting Standards ("IFRS") for each financial year of the Authorised Person.

### 6.3.2. Approval of financial statements

The financial statements of an Authorised Person must be approved by the Directors and signed on its behalf by at least one of the Directors.

### 6.3.3. Accounting records and regulatory returns

An Authorised Person must keep Accounting Records which are sufficient to show and explain transactions are such as to:

- (a) be capable of disclosing the financial position of the Authorised Person on an ongoing basis;
- (b) record the financial position of the Authorised Person as at its financial year end; and
- (c) ensure that any financial statements prepared by the Authorised Person comply with the Framework Regulations and Rules.

### 6.3.4. Retention of and access to records

An Authorised Person must ensure that its Accounting Records are:



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- (a) retained by the Authorised Person for at least six years from the date to which they relate;
- (b) at all reasonable times, open to inspection by the AFSA or the Auditor of the Authorised Person; and
- (c) if requested by the AFSA capable of reproduction, within a reasonable period not exceeding five Business Days, in hard copy and in English.

### 6.3.5. Financial year end

An Authorised Person must not change its financial year end without the prior consent of the AFSA.

### 6.3.6. Appointment and termination of Auditors

An Authorised Person must:

- (a) notify the AFSA of the appointment of an Auditor using the form prescribed in Schedule 3;
- (b) prior to the appointment of the Auditor, take reasonable steps to ensure that the Auditor has the required skills, resources and experience to audit the business of the Authorised Person for which the Auditor has been appointed;
- (c) notify the AFSA immediately if the appointment of the Auditor is or is about to be terminated, or on the resignation of its Auditor, using the form prescribed in Schedule 3;
- (d) appoint an Auditor to fill any vacancy in the office of Auditor and ensure that the replacement Auditor can take up office at the time the vacancy arises or as soon as reasonably practicable; and
- (e) comply with any request by the AFSA to replace an Auditor previously appointed by that Authorised Person.

### 6.3.7. Independence of the Auditor

An Authorised Person must:



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- (a) take reasonable steps to ensure that the Auditor and the relevant audit staff of the Auditor are independent of and not subject to any conflict of interest with respect to the Authorised Person; and
- (b) notify the AFSA if it becomes aware, or has reason to believe, that the Auditor or the relevant audit staff of the Auditor are no longer independent of the Authorised Person, or have a conflict of interest which may affect their judgement in respect of the Authorised Person.

### 6.3.8. Co-operation with Auditors

An Authorised Person must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Auditor that its Auditor reasonably requires, or is entitled to receive as Auditor;
- (b) give the Auditor right of access at all reasonable times to relevant records and information within its possession;
- (c) allow the Auditor to make copies of any records or information referred to in (b);
- (d) do not interfere with the Auditor's ability to discharge its duties;
- (e) report to the Auditor any matter which may significantly affect the financial position of the Authorised Person; and
- (f) provide such other assistance as the Auditor may reasonably request it to provide.

### 6.3.9. Audit reports

An Authorised Person must:

- (a) require, in writing, its Auditor to:
  - (i) conduct an audit of and produce a report on the Authorised Person's financial statements in accordance with the International Standards on Auditing; and
  - (ii) such other reports as the AFSA may require; and
- (b) submit any reports so produced to the AFSA within four months of the Authorised Person's year end.



## **Schedule 1: REGULATED ACTIVITIES**

### **1. Dealing in Investments as Principal**

Dealing in Investments as Principal means buying, selling, subscribing for or underwriting any Investment as principal.

### **2. Dealing in Investments as Agent**

Dealing in Investments as Agent means buying, selling, subscribing for or underwriting any Investment as agent.

### **3. Managing Investments**

Managing Investments means managing on a discretionary basis assets belonging to another Person where the assets include any Investment.

### **4. Managing a Collective Investment Scheme**

- (1) Managing a Collective Investment Scheme means establishing, managing or otherwise operating or winding up a Collective Investment Scheme.
- (2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Deals in Investments, or Providing Custody, such a Regulated Activity is taken to be incorporated within Managing a Collective Investment Scheme.

### **5. Providing Custody**

Providing Custody means one or more of the following activities:

- (a) safeguarding and administering Investments belonging to another Person; or
- (b) in the case of a Fund, safeguarding and administering Fund Property.

### **6. Arranging Custody**

Arranging Custody means arranging for one or more Persons to carry on the Regulated Activity of Providing Custody.





## **7. Providing Trust Services**

Providing Trust Services means:

- (a) the provision of services with respect to the creation of an express trust;
- (b) arranging for any Person to act as a trustee in respect of any express trust;
- (c) acting as trustee in respect of an express trust;
- (d) the provision of Trust Administration Services in respect of an express trust; or
- (e) acting as protector or enforcer in respect of an express trust.

## **8. Providing Fund Administration**

Providing Fund Administration means providing one or more of the following services in relation to a Fund:

- (a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements;
- (b) valuing of assets and performing net asset value calculations;
- (c) maintaining the share register and Unitholder registration details;
- (d) performing anti money laundering requirements;
- (e) undertaking transaction monitoring and reconciliation functions;
- (f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange;
- (g) producing financial statements, other than as the Fund's registered auditor; or
- (h) communicating with participants, the Fund, the Fund Manager, and investment managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund.



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### 9. Acting as the Trustee of a Fund

- (1) Acting as the Trustee of a Fund means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of an Investment Trust.
- (2) To the extent that any activity under (1) constitutes Providing Fund Administration or Providing Custody, such a Financial Service is taken to be incorporated within Acting as the Trustee of a Fund.

### 10. Advising on Investments

- (1) Advising on Investments means giving advice to a Person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, on the merits of his buying, selling, holding, subscribing for or underwriting a particular Investment (whether as principal or agent).
- (2) In sub-paragraph (1), "advice" includes a statement, opinion or report:
  - (a) where the intention is to influence a Person, in making a decision, to select a particular Investment or an interest in a particular Investment; or
  - (b) which could reasonably be regarded as being intended to have such an influence.

### 11. Arranging Deals in Investments

Arranging Deals in Investments means making arrangements with a view to another Person buying, selling, subscribing for or underwriting an Investment (whether that other Person is acting as principal or agent).

### 12. Managing a Restricted Profit Sharing Investment Account

Managing a Restricted Profit Sharing Investment Account means managing an account or portfolio which is a Restricted Profit Sharing Investment Account (RPSIA).

### 13. Islamic Banking Business

Islamic Banking Business means providing financing or making Investments by entering as principal or agent into any Islamic Financial Contract while raising funds for those activities through either or both of the following:



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- (a) raising, accepting and managing funds or money placements;
- (b) managing Unrestricted Profit Sharing Investment Accounts (UPSIA);

provided that all such activities are carried out in a Shari'ah-compliant manner.

### 14. Providing Islamic Financing

Providing Islamic Financing means providing financing in a Shari'ah-compliant manner by entering into any Islamic Financial Contract.

### 15. Insurance Intermediation

- (1) Insurance Intermediation means:
  - (a) advising on a Contract of Insurance;
  - (b) acting as agent for another Person in relation to the buying or selling of a Contract of Insurance for that other Person; or
  - (c) making arrangements with a view to another Person, whether as principal or agent, buying a Contract of Insurance.
- (2) In (1)(a), 'advising' means giving advice to a Person in his capacity as a Policyholder, or in his capacity as agent for a Policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent.
- (3) In (2), 'advice' includes a statement, opinion or report:
  - (a) where the intention is to influence a Person, in making a decision, to select a Contract of Insurance or insurance cover; or
  - (b) which could reasonably be regarded as being intended to have such influence.
- (4) The arrangements in (1)(c) include arrangements which do not bring about the transaction.
- (5) The arrangements in (1)(c) do not include the mere provision of information about:
  - (a) a Contract of Insurance, insurer, insurance intermediary or insurance manager to a Policyholder; or



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- (b) a Policyholder to an insurer, insurance intermediary or insurance manager, if the Person providing that information does not take any further steps to assist in concluding the Contract of Insurance.

### 16. Operating a Representative Office

- (1) Operating a Representative Office means the marketing, from an establishment in the AIFC, of one or more financial services or investments which are offered in a jurisdiction other than the AIFC.
- (2) For the purposes of this paragraph, "marketing" means:
  - (a) providing information on one or more investments or financial services;
  - (b) engaging in promotions in relation to such information provision; or
  - (c) making introductions or referrals in connection with the offer of financial services or investments;provided that such activities do not constitute:
  - (d) advising on Investments; or
  - (e) receiving and transmitting orders in relation to an Investment.
- (3) An Authorised Person which is authorised to Operate a Representative Office may not have a Licence to carry on any other Regulated Activity.
- (4) An Authorised Person which does not have a Licence to Operate a Representative Office does not Operate a Representative Office if it undertakes any activities of the kind described in sub-paragraph (2) that constitute marketing.
- (5) Any communication which amounts to marketing in respect of a Financial Service or Investment, which is issued by or on behalf of a Government or non-commercial governmental entity, does not constitute marketing for the purposes of sub-paragraph (2).



## **Schedule 2: ANCILLARY SERVICES**

### **1. Providing Legal Services**

Providing Legal Services means the application of legal principles or judgement, including but not limited to:

- (a) giving legal advice or counsel; or
- (b) drafting or completion of legal documents or agreements; or
- (c) representation in court proceedings or in an administrative adjudicative procedure in which legal pleadings are filed or a record is established as the basis for judicial review; or
- (d) negotiation of legal rights or responsibilities; but excluding acting as a lay representative authorised by an administrative agency or tribunal, serving as a judge, mediator, arbitrator, conciliator or facilitator; and participation in employment negotiations, arbitrations or conciliations.

### **2. Providing Audit Services**

Providing Audit Services means:

- (a) performing audit, examination, verification, investigation, certification, presentation or review of financial transactions and accounting records; and
- (b) preparing or certifying reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related documents

### **3. Providing Accountancy Services**

Providing Accountancy Services means the application of accounting principles or judgement, including but not limited to advising on matters relating to accounting procedure and the recording, presentation or certification of financial information or data, including financial information or data required by any law for the time being in force in the AIFC.



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### **4. Providing Consulting Services**

Performing Consultancy Services means providing expert knowledge or advice on a particular topic.

### **5. Providing Credit Rating Services**

Providing Credit Rating Services means:

- (a) analysis or evaluation of information carried on with a view to issuing or reviewing a Credit Rating; or
- (b) issuing or reviewing a Credit Rating.



### **Schedule 3: FORMS**

For the purpose of the Framework Regulations and the GEN Rules the prescribed forms are listed in the following table.

Purpose	Relevant Section or Rule	Form
Application for a Licence to carry on Regulated Activities	GEN 1.1.2	
Application to modify or withdraw a Licence to carry on Regulated Activities	GEN 1.1.8	
Application for a Licence to carry on Market Activities	GEN 1.2.1	
Application to modify or withdraw a Licence to carry on Market Activities	GEN 1.2.8	
Application for a Licence to carry on Ancillary Services	GEN 1.3.2	
Application to modify or withdraw a Licence to carry on Ancillary Services	GEN 1.3.5	
Application for Approved Individual status	GEN 2.2.6	
Application to modify or withdraw an Approved Individual's registration	GEN 2.2.8	
Application for approval to a change of control	FSFR section 48; GEN 3.2.2	
Notification of proposed decrease in level of control	GEN 3.3.1	
Notification of appointment, termination or resignation of Auditor	GEN 6.3.6	