



AIFC INSOLVENCY REGULATIONS

AIFC REGULATIONS No. 14 of 2017

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PART 1: GENERAL

1. **Name**

These Regulations are the *AIFC Insolvency 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 3 contains definitions and other interpretative provisions used in these Regulations.

7. **Administration of these Regulations**

These Regulations are administered by the Registrar of Companies.



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PART 2: COMPANY VOLUNTARY ARRANGEMENTS

8. Company arrangements

- (1) The directors of a Company may make a proposal under this Part to the Company and to its creditors for a scheme of arrangement of its affairs (a *Voluntary Arrangement*).
- (2) The directors must appoint a Person (the *Nominee*) to act in relation to the proposed Voluntary Arrangement for the purpose of supervising its implementation.
- (3) The Nominee must be an Insolvency Practitioner.

9. Moratorium

- (1) If the directors of a Company eligible for a moratorium under this section intend to make a proposal for a Voluntary Arrangement, they may take steps to obtain a moratorium for the Company.
- (2) The Rules may make provision for or in relation to the obtaining of a moratorium, including, for example, for or in relation to the following:
 - (a) the Companies eligible for a moratorium under this section;
 - (b) the procedure for obtaining a moratorium;
 - (c) the effects of a moratorium;
 - (d) the procedure applying (instead of sections 10 to 13) in relation to the approval and implementation of a Voluntary Arrangement for a Company if a moratorium is or has been in force for the Company.

10. Calling meetings for Voluntary Arrangement proposal

- (1) The Nominee must call meetings of the Company and of its creditors to consider the Voluntary Arrangement proposal.
- (2) The Nominee must give notice, in accordance with the Rules, of the meeting of creditors to every creditor of the Company of whose claim and address the Nominee is aware.
- (3) The Company meeting must be held in accordance with the AIFC Companies Regulations.

11. Decisions of meetings for Voluntary Arrangement proposal

- (1) The meetings called under section 10 (Calling meetings for Voluntary Arrangement proposal) must decide whether to approve the proposed Voluntary Arrangement (with or without modifications).
- (2) However, a meeting must not approve any proposal or modification that affects the right of a preferential creditor or secured creditor of the Company to enforce the creditor's rights or security, unless the creditor agrees.

12. Effect of approval of Voluntary Arrangement proposal



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- (1) This section applies if each of the meetings called under section 10 (Calling of meetings for Voluntary Arrangement proposal) approves the proposed Voluntary Arrangement (with or without modifications).
- (2) If each of the meetings approves the Voluntary Arrangement with the same modifications or without modifications, the Voluntary Arrangement as approved by the meetings is the approved Voluntary Arrangement.
- (3) If the proposed arrangements approved by the meetings differ from each other, the Court may, on the application of a Person who appears to the Court to be interested, decide which of the proposed arrangements is to be taken to be the approved Voluntary Arrangement.
- (4) If there is an approved Voluntary Arrangement under subsection (2) or (3), the approved Voluntary Arrangement:
 - (a) takes effect as if made by the Company at the meeting of creditors; and
 - (b) binds every Person who in accordance with the Rules had notice of, and was entitled to vote at, that meeting (whether or not the Person was present or represented at the meeting) as if the Person were a party to the Voluntary Arrangement.
- (5) If the Company is being wound up or under receivership, the Court may do either or both of the following:
 - (a) by order, stay all proceedings in the winding up or discharge the receivership;
 - (b) give the directions in relation to the conduct of the winding up or the receivership as it considers appropriate for facilitating the Voluntary Arrangement.

13. Implementation of approved Voluntary Arrangement

- (1) This section applies if there is an approved Voluntary Arrangement for a Company.
- (2) On the Voluntary Arrangement taking effect, the Nominee for the proposed Voluntary Arrangement becomes the **Supervisor** of the approved Voluntary Arrangement.
- (3) If a creditor or other Person is dissatisfied by any act, omission or decision of the Supervisor, the Person may apply to the Court. On the application, the Court may do any or all of the following:
 - (a) confirm, reverse or modify any act or decision of the Supervisor;
 - (b) give the Supervisor directions;
 - (c) make any other order it considers appropriate.
- (4) The Supervisor:
 - (a) may apply to the Court for directions in relation to any particular matter arising under the Voluntary Arrangement; and
 - (b) is included among the Persons who may apply to the Court for the winding up of the



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Company or for a receivership order to be made in relation to it.

- (5) The Court may make an order appointing an Insolvency Practitioner as Supervisor for the Company, either in substitution for an existing Supervisor or to fill a vacancy.



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PART 3: RECEIVERSHIP

14. Appointment and Functions of Receivers and Administrative Receivers

- (1) A Company may, by instrument (the *appointing instrument*), give a Person (the *appointer*) power to appoint a Person for the purpose of getting in and selling any part of the Company's property and applying the proceeds in reduction of a debt owing by the Company to the appointer.
- (2) If the appointer appoints a Person under the power given to the appointer by the appointing instrument, the Person appointed (the *appointee*) is:
 - (a) if the property of the Company over which the Person is appointed consists of all or substantially all of the undertaking of the Company—an *Administrative Receiver* of the Company; or
 - (b) in any other case—a Receiver of the Company.
- (3) The appointee must be an Insolvency Practitioner.
- (4) The appointee has the Functions given to the appointee by the appointing instrument except so far as otherwise provided under these Regulations or the Rules, and is subject to the appointing instrument, these Regulations and the Rules in the Exercise of those Functions.
- (5) If the appointee is an Administrative Receiver of the Company, the appointee has, in addition to the powers given by the appointing instrument, the powers set out in Schedule 1 (Additional powers of Administrative Receivers).
- (6) In the application of Schedule 1 to the appointee, a reference to *relevant property* of the Company is a reference to property of the Company for which the appointee is, or apart from the appointment of another Person as Receiver would be, the Administrative Receiver.
- (7) The appointee or the appointor may apply to the Court for directions in relation to any particular matter arising in relation to the Exercise of the appointee's Functions as Administrative Receiver or Receiver of the Company.
- (8) On an application under subsection (7), the Court may give the directions, or may make the order declaring the rights of Persons before the Court or otherwise, as it considers just.

15. Notification of appointment of Receiver or Administrative Receiver

If a Receiver or Administrative Receiver has been appointed for a Company, every invoice, order for goods or services, or business letter, issued by or on behalf of the Company or the Receiver or Administrative Receiver, and on or in which the Company's name appears, must contain a statement that a Receiver has been appointed.

16. Interaction of Administrative Receivers and Receivers

If an Administrative Receiver is appointed for a Company, any Receiver appointed before the appointment of the Administrative Receiver immediately vacates office, and a Receiver may not be subsequently appointed for any part of the Company's property.



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17. **No duty to inquire about Administrative Receiver's powers**

A Person dealing with the Administrative Receiver of a Company in good faith and for value is not required to inquire whether the Administrative Receiver is acting within the Administrative Receiver's powers.

18. **Power of Administrative Receiver to dispose of charged property**

- (1) If, on application by the Administrative Receiver of a Company, the Court is satisfied that the disposal (with or without other assets) of any relevant property that is subject to a security interest would be likely to promote a more advantageous realisation of the Company's assets than would otherwise be achieved, the Court may, by order, authorise the Administrative Receiver to dispose of the property as if it were not subject to the security interest.
- (2) Subsection (1) does not apply to a security interest held by the Person by whom or on whose behalf the Administrative Receiver was appointed or to any security interest to which a security interest held by the Person has priority.
- (3) It must be a condition of an order under this section that the following amounts must be applied towards discharging the amounts secured by the security:
 - (a) the amount of the net proceeds of the disposal;
 - (b) the amount (if any) required to make good the deficiency between the net proceeds of the disposal and the net amount that would be realised on a sale of the property in the open market by a willing vendor.
- (4) If the condition mentioned in subsection (3) relates to 2 or more security interests, the condition must require the amounts mentioned in that subsection to be applied towards discharging the amounts secured by those security interests in the order of their priorities.

19. **Administrative Receiver: as Company's agent**

The Administrative Receiver of a Company is taken to be the Company's agent unless and until the Company Goes into Liquidation.

20. **Administrative Receiver: vacation of office**

The Administrative Receiver of a Company may at any time be removed from office by order of the Court (but not otherwise) and may resign the office by giving notice of the resignation in accordance with the Rules.

21. **Report by Administrative Receiver**

- (1) If an Administrative Receiver is appointed for a Company, the Administrative Receiver must, within 3 months after the day of the appointment (or, if the Court allows a longer period, the longer period), send to all creditors of the Company (so far as the Administrative Receiver is aware of their claims and addresses) a report about the following matters:
 - (a) the events leading up to the appointment, so far as the Administrative Receiver is aware of them;



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- (b) the disposal, or proposed disposal, by the Administrative Receiver of any property of the Company and the conduct, or proposed conduct, by the Administrative Receiver of any business of the Company;
 - (c) the amounts of principal and interest payable to the debt security holders of the Company and the amounts payable to preferential creditors of the Company; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The Administrative Receiver must, within 3 months after the day of appointment (or, if the Court allows a longer period, the longer period), publish, in accordance with the Rules, a notice stating an address to which unsecured creditors of the Company may write for copies of the report to be sent to them free of charge.
- (3) The Administrative Receiver must call a meeting of the Company's unsecured creditors for the purpose of discussing the report, and must give the unsecured creditors not less than 14 days notice of the meeting.

22. **Creditors committee**

- (1) If a meeting of a Company's unsecured creditors is called under section 21(3) (Report by Administrative Receiver) by the Administrative Receiver, the meeting may establish a committee (a *creditors committee*) to Exercise the Functions given to the committee under these Regulations and the Rules.
- (2) If a creditors committee is established under subsection (1), the committee may, on giving not less than 7 days notice, require the Administrative Receiver to attend before it at any reasonable time and give it the information relating to the Exercise of the Administrative Receiver's Functions that it may reasonably require.



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PART 4: WINDING UP

CHAPTER 1—GENERAL

23. **Alternative modes of winding up**

- (1) The winding up of a Company may be either voluntary or by the Court.
- (2) This Chapter relates to winding up generally, except so far as the contrary intention appears.

24. **Rules about obligations to contribute in winding up**

The Rules may make provision for or in relation to the obligations of members, former members, directors, and former directors, of a Company that is being wound up, and other Persons, to contribute to the assets of the Company.

25. **Powers etc. of Liquidators**

- (1) A Liquidator appointed in the winding up of a Company has the powers set out in Schedule 2 (Powers of Liquidator in winding up).
- (2) The Rules may make provision with respect to the Exercise of a Liquidator's Functions in relation to the winding up of a Company, including, for example, by:
 - (a) prescribing the forms and procedures to be adopted by the Liquidator in the winding up of a Company; or
 - (b) imposing requirements on officers of a Company and others to cooperate with the Liquidator in relation to the winding up of the Company.
- (3) Without limiting subsection (2), the Rules may authorise a Liquidator appointed in the winding up of a Company to do any or all of the following:
 - (a) summon a Person to be examined before the Court about the affairs of the Company;
 - (b) inspect books and records of the Company;
 - (c) direct an officer of the Company to deliver to the Liquidator all books and records in the officer's possession that relate to the Company;
 - (d) inform the Liquidator of the whereabouts of books or records that relate to the Company;
 - (e) direct an officer of the Company to give the Liquidator the information about the Company's business, property, affairs and financial circumstances that the Liquidator requires;
 - (f) direct an officer of the Company to attend on the Liquidator to provide the books or records, information, or other assistance, that the Liquidator may reasonably require.
- (4) If a Liquidator has been appointed in the winding up of a Company, an officer of the Company must not:



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- (a) Fail to do whatever the Liquidator reasonably requires the officer to do to assist in the winding up; or
 - (b) Fail to comply with any reasonable direction given to the officer by the Liquidator under these Regulations or the Rules; or
 - (c) hinder or obstruct the Liquidator in the Exercise of the Liquidator's Functions.
- (5) Contravention of subsection (4) is punishable by a fine.
- (6) A Liquidator may Exercise the Liquidator's Functions in relation to a Person whether the Person is inside or outside of the AIFC.
- (7) However, in Exercising Functions in relation to a Person outside of the AIFC, the Liquidator must comply with local requirements applying to the Exercise of the Functions, including, if appropriate, informing, or acting in collaboration with, a local regulator or authority.
- (8) In this section:

officer, in relation to a Company, means a Person who is, or has been:

- (a) a director or secretary of the Company; or
- (b) an employee of the Company involved in its management; or
- (c) a Receiver or Administrative Receiver of the Company; or
- (d) a Nominee or Supervisor in relation to a proposed Voluntary Arrangement or Voluntary Arrangement for the Company.

CHAPTER 2–VOLUNTARY WINDING UP

26. Circumstances in which Company may be wound up voluntarily

A Company may be wound up voluntarily:

- (a) in the circumstances (if any) provided for in the Company's articles of association; or
- (b) if the Company passes a resolution that it should be wound up voluntarily; or
- (c) if the Company passes a resolution that it cannot continue to conduct its business because of its liabilities and that it is advisable that it be wound up.

27. Notice of Resolution for Voluntary Winding Up

If a Company passes a Resolution for Voluntary Winding Up, it must, within 14 days after the day it passes the resolution, give notice of the resolution by advertisement published in accordance with the Rules.

28. Commencement of Voluntary Winding Up



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The Voluntary Winding Up of a Company is taken to commence at the time of the passing of the Resolution for Voluntary Winding Up.

29. **Effect on business and status of Company in Voluntary Winding Up**

- (1) In the Voluntary Winding Up of a Company, the Company must cease conducting its business from the commencement of the winding up, except so far as conducting the business may be required for its beneficial winding up.
- (2) However, the corporate personality and corporate powers of the Company continue until the Company is dissolved, despite anything to the contrary in its articles of association.

30. **Avoidance of share transfers after commencement of Voluntary Winding Up**

Any transfer of shares in a Company (other than a transfer made to or with the approval of the Company's Liquidator), and any alteration in the status of the Company's members, is void if it is made after the commencement of a Voluntary Winding Up of the Company.

31. **Declaration of solvency**

- (1) If it is proposed to wind up a Company voluntarily, the directors of the Company (or, if the Company has more than 2 directors, the majority of them) may at a meeting of the directors make a declaration to the effect that they have made a full inquiry into the Company's affairs and that, having done so, they have formed the opinion that the Company will be able to pay its debts in full, together with interest at the official rate, within the period, not exceeding 12 months from the commencement of the winding up, specified in the declaration.
- (2) The declaration must be made:
 - (a) within 5 weeks immediately before the day the resolution for winding up is passed; or;
 - (b) on that day, but before the passing of the resolution.
- (3) A director must not make a declaration under subsection (1) unless the director has reasonable grounds for the opinion stated in the declaration.
- (4) Contravention of subsection (3) is punishable by a fine.
- (5) If the Company is wound up because of a resolution passed within 5 weeks after the declaration under subsection (1) is made, and its debts are not paid or provided for in full within the period specified in the declaration, it must be presumed (unless the contrary is shown) that each of the directors making the declaration did not have reasonable grounds for the director's opinion stated in the declaration.

32. **Appointment of Liquidator by Company**

- (1) In a Members Voluntary Winding Up, the Company in general meeting must appoint 1 or more liquidators for the purpose of winding up the Company's affairs and distributing its assets.
- (2) On the appointment of a Liquidator for the Company, all the powers of the directors cease, except so far as the Company in general meeting, or the Liquidator, approves their continuance.



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33. **General Company meeting at end of each year**

- (1) If the winding up of a Company continues for more than 1 year, the Liquidator must call a general meeting of the Company at the end of the first year of the winding up, and of each succeeding year, or at the first convenient date within 3 months after the end of the relevant year (or, if the Court allows a longer period, the longer period allowed by the Court).
- (2) The Liquidator must give the meeting an account of the Liquidator's acts and dealings, and of the conduct of the winding up, during the preceding year.

34. **Final meeting before dissolution**

- (1) As soon as the Company's affairs are fully wound up, the Liquidator must prepare an account of the winding up, explaining how it has been conducted and how the Company's property has been disposed of.
- (2) When the account has been prepared, the Liquidator must call a general meeting of the Company for the purpose of giving the account to the meeting and explaining it to the meeting.
- (3) The meeting must be called by an advertisement that specifies the time, place and purpose of the meeting, that is published at least 1 month before the meeting, and that otherwise complies with the Rules.

35. **Effect of Company's insolvency**

- (1) This section applies if the Liquidator of a Company is of the opinion that the Company will be Unable to Pay its Debts in full within the period stated in the declaration made for the Company under section 31 (Declaration of solvency).
- (2) The Liquidator must call a meeting of creditors for a day not later than 28 days after the day the Liquidator forms the opinion, and must send notice of the meeting to the creditors by post not less than 7 days before the day the meeting is to be held.
- (3) The Liquidator must give the creditors, free of charge, the information about the Company's affairs that they reasonably require. The notice of the meeting must tell creditors about this duty.
- (4) The Liquidator must also make out a statement of the Company's affairs and give the statement to the meeting of creditors.

36. **Conversion to Creditors Voluntary Winding Up**

As from the day the meeting of creditors of a Company is held under section 35 (Effect of Company's insolvency), these Regulations have effect as if:

- (a) the declaration made for the Company under section 31 (Declaration of solvency) had not been made; and
- (b) the creditors meeting and the Company meeting at which it was resolved that the Company be wound up voluntarily were the meetings mentioned in section 38 (Meeting of Creditors);

and accordingly the winding up becomes a Creditors Voluntary Winding Up.



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CHAPTER 3–CREDITORS VOLUNTARY WINDING UP

37. Application of Chapter 3

- (1) This Chapter applies in relation to a Creditors Voluntary Winding Up of a Company.
- (2) However, sections 38 (Meeting of creditors) and 39 (Appointment of liquidation committee) do not apply if, under section 36 (Conversion to Creditors Voluntary Winding Up), a Members Voluntary Winding Up has become a Creditors Voluntary Winding Up.

38. Meeting of creditors

- (1) The Company must:
 - (a) call a meeting of its creditors for a day not later than 14 days after the day the meeting of the Company is to be held to consider the proposed Resolution for Voluntary Winding Up of the Company; and
 - (b) give notice of the creditors meeting to all creditors (so far as it is aware of their claims and addresses), and publish notice of the meeting in an appropriate publication, at least 7 days before the day that meeting is to be held; and
 - (c) nominate a Person to be appointed as liquidator of the Company.
- (2) The creditors may, at the creditors meeting, nominate a Person to be appointed as liquidator of the Company.
- (3) If the same Person is nominated by the Company and the creditors or the creditors do not nominate a Person, the Person nominated by the Company is taken to be appointed as the Liquidator of the Company.
- (4) If different Persons are nominated by the Company and the creditors, the Person nominated by the creditors is taken to be appointed as the Liquidator of the Company.
- (5) The Person nominated by the Company must not exercise any of the Liquidator's powers during the period before the holding of the creditors meeting without the Court's approval.

39. Appointment of liquidation committee

- (1) At the meeting of the creditors of a Company held under section 38 (Meeting of creditors) or at any subsequent creditors meeting, the creditors may appoint a committee (a *liquidation committee*) of not more than 5 individuals to Exercise the Functions given to the committee under these Regulations and the Rules.
- (2) If a liquidation committee is appointed under subsection (1), the Company may, either at the meeting at which the Resolution for Voluntary Winding Up is passed or at any time subsequently in general meeting, appoint not more than 5 individuals as members of the committee.
- (3) However, the creditors may resolve that all or any of the individuals appointed by the Company as members of the liquidation committee ought not to be members of the committee.
- (4) If the creditors so resolve:



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- (a) the individuals mentioned in the resolution cease to be eligible to be members of the liquidation committee, unless the Court otherwise directs; and
- (b) on an application to the Court under this subsection, the Court may appoint other individuals to be members of the liquidation committee instead of individuals mentioned in the resolution.

40. **Directors' powers on appointment of Liquidator**

On the appointment of a Liquidator for a Company, all the powers of the directors cease, except so far as the liquidation committee appointed under section 39 (Appointment of liquidation committee) (or, if there is no liquidation committee, the creditors) approve their continuance.

41. **Vacancy in office of Liquidator**

If a vacancy occurs, by death, resignation or otherwise, in the office of a Liquidator of a Company (other than a Liquidator appointed by, or by the direction of, the Court), the creditors may fill the vacancy.

42. **Meetings of Company and creditors at end of each year**

- (1) If the winding up of a Company continues for more than 1 year, the Liquidator must call a general meeting of the Company, and a meeting of the creditors, at the end of the first year of the winding up, and of each succeeding year, or at the first convenient date within 3 months after the end of the relevant year (or, if the Court allows a longer period, the longer period allowed by the Court).
- (2) The Liquidator must give the meetings an account of the Liquidator's acts and dealings, and of the conduct of the winding up, during the preceding year.

43. **Final meetings before dissolution**

- (1) As soon as the Company's affairs are fully wound up, the Liquidator must prepare an account of the winding up, explaining how it has been conducted and how the Company's property has been disposed of.
- (2) When the account has been prepared, the Liquidator must call a general meeting of the Company, and a meeting of the creditors, for the purpose of giving the account to the meetings and explaining it to the meetings.
- (3) The meeting must be called by an advertisement that specifies the time, place and purpose of the meeting, that is published at least 1 month before the meeting, and that otherwise complies with the Rules.

CHAPTER 4—PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

44. **Distribution of Company's property**

Subject to section 97 (Preferences) and section 66 (Preferential debts and ranking of claims), to any Rules mentioned in section 92 (Rules made in relation to these Regulations) and to the application of any other AIFC Regulations or AIFC Rules as described in section 100 (Application of other laws to receivership and winding up), a Company's property in a Voluntary Winding Up must be applied in satisfaction of the



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Company's liabilities other than to its members (as members) and, subject to that application, must (unless the Company's articles of association otherwise provide) be distributed among the members according to their rights and interests in the Company.

45. **Appointment or removal of Liquidator by Court**

- (1) If, for whatever reason, there is no Liquidator appointed for a Company that is being wound up voluntarily, the Court may appoint a liquidator.
- (2) The Court may remove a Liquidator of a Company that is being wound up voluntarily and appoint another.

46. **Reference of questions to Court**

- (1) The Liquidator of a Company, or any creditor, shareholder or other Person liable to contribute to the assets of a Company that is being wound up voluntarily, may apply to the Court to decide any question arising in the winding up, or to exercise, in relation to the enforcing of calls or anything else, all or any of the powers that the Court might exercise if the Company were being wound up by the Court.
- (2) The Court may make the orders on the application that it considers just.

47. **Expenses of Voluntary Winding Up**

All expenses properly incurred in the Voluntary Winding Up of a Company, including the remuneration of the Liquidator, are payable out of the Company's assets in priority to all other claims.

48. **Winding up by Court**

The Voluntary Winding Up of a Company does not bar the right of any creditor or other Person to apply to have it wound up by the Court.

CHAPTER 5—COMPULSORY WINDING UP

49. **Circumstances in which Company may be wound up by Court**

A Company may be wound up by the Court if:

- (a) the Company has resolved that it be wound up by the Court; or
- (b) the Company is Unable to Pay its Debts; or
- (c) a moratorium for the Company under section 9 (Moratorium) comes to an end and there is no Voluntary Arrangement approved under Part 2 (Company Voluntary Arrangements) in relation to the Company; or
- (d) the Court is authorised to make the order under any other AIFC Regulations or any AIFC Rules; or
- (e) the Court is of the opinion that it is just and equitable that the Company should be wound up.



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50. **Definition of *Unable to Pay its Debts***

- (1) A Company is taken to be *Unable to Pay its Debts* if:
 - (a) a creditor to whom the Company is indebted in a sum exceeding U.S. \$2,000 then due has served on the Company a Written demand requiring the Company to pay the sum so due and the Company has for 3 weeks afterwards neglected to pay the sum or to agree terms in relation to its payment to the reasonable satisfaction of the creditor; or
 - (b) execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the Company is returned unsatisfied in whole or part; or
 - (c) it is proved to the satisfaction of the Court that the Company is unable to pay its debts as they fall due.
- (2) A Company is also taken to be *Unable to Pay its Debts* if it is proved to the satisfaction of the Court that the value of the Company's current assets is less than the amount of its current liabilities, taking into account its contingent and prospective liabilities.
- (3) In this section:
Company includes a Recognised Company.

51. **Application for winding up**

Subject to any other AIFC Regulations or any AIFC Rules to the contrary, an application to the Court for the winding up of a Company may only be presented by the Company, the directors or any creditor or creditors (including any contingent or prospective creditor or creditors).

52. **Petition for winding up on grounds of interests of AIFC**

If it appears to the AIFCA that it is in the interests of the AIFC that a Company should be wound up, the AIFCA may present a petition for the Company to be wound up if the Court considers it just and equitable for it to be wound up.

53. **Voiding of property dispositions**

In a winding up by the Court, any disposition of the Company's property, and any transfer of shares or alteration in the status of the Company's members, made after the commencement of the winding up is void unless the Court otherwise orders.

54. **Voiding of attachments**

If a Company is being wound up by the Court, a Person must not attach, sequester or otherwise appropriate the assets of the Company after the commencement of the winding up, and any such activity is void unless the Court otherwise orders.

55. **Consequences of winding up order**

If a winding up order is made for a Company, no legal proceeding may be continued or commenced against the Company or its property without the leave of the Court and subject to the terms that the Court may impose.



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56. **Procedures and Functions of Liquidator appointed by Court**

Without limiting section 25 (Powers etc. of Liquidators), the Rules may make provision for or in relation to the procedures and Functions of a Liquidator of a Company appointed by the Court.

57. **Choice of Liquidator by Court or meetings of creditors and contributories**

- (1) If the Court orders that a Company be wound up, the Court must, in the order, appoint a Person as liquidator of the Company. The Person appointed as liquidator becomes the Company's Liquidator on the making of the order. The Person may either continue the liquidation or call meetings of the Company's creditors and contributories to nominate a Person to be liquidator of the Company.
- (2) The creditors and the contributories at their respective meetings may nominate a Person to be liquidator.
- (3) The Person nominated by the creditors is taken to have been appointed as the Company's Liquidator or, if a Person is not nominated by the creditors, the Person (if any) nominated by the contributories is taken to have been appointed as the Company's Liquidator.
- (4) However, if the creditors and contributories nominate different Persons, any creditor, shareholder or other Person liable to contribute to the assets of the Company may, within 7 days after the day the nomination is made by the creditors, apply to the Court for an order either:
 - (a) appointing as the Company's Liquidator the Person nominated by the contributories instead of, or jointly with, the Person nominated by the creditors; or
 - (b) appointing another Person as the Company's Liquidator instead of the Person nominated by the creditors.

58. **Appointment of Provisional Liquidator**

The Court may, at any time after the presentation of a winding up petition for a Company, appoint a liquidator provisionally for the Company. The powers of the Provisional Liquidator may be limited by the order appointing the Provisional Liquidator.

59. **Appointment of liquidation committee**

- (1) At the meeting of the creditors of a Company held under section 57 (Choice of Liquidator by Court or meetings of creditors and contributories) or at any subsequent creditors meeting, the creditors may appoint a committee (a *liquidation committee*) of not more than 5 individuals to Exercise the Functions given to the committee under these Regulations and the Rules.
- (2) If a liquidation committee is appointed under subsection (1), the Company may, at any time in general meeting, appoint not more than 5 individuals as members of the committee.
- (3) However, the creditors may resolve that all or any of individuals appointed by the Company as members of the liquidation committee ought not to be members of the committee.
- (4) If the creditors so resolve:



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- (a) the individuals mentioned in the resolution cease to be eligible to be members of the liquidation committee, unless the Court otherwise directs; and
- (b) on an application to the Court under this subsection, the Court may appoint other individuals to be members of the liquidation committee instead of individuals mentioned in the resolution.

60. **General Functions of Liquidator in winding up by Court**

The Functions of the Liquidator of a Company that is being wound up by the Court are to ensure that the assets of the Company are got in or otherwise secured, realised and distributed to the Company's creditors and, if there is a surplus, to the Persons entitled to it.

61. **Vesting of Company property in Liquidator**

- (1) If a Company is being wound up by the Court, the Court may direct that all or any part of the property of any description belonging to the Company, or held by trustees on its behalf, vest in the Liquidator.
- (2) The Liquidator may bring or defend any legal proceeding that relates to property vested in the Liquidator or that it is necessary to bring or defend to wind up the Company and recover its property.

62. **Power to stay winding up**

The Court may at any time after an order is made for the winding up of a Company, on the application of the Liquidator, or any creditor, shareholder or other Person liable to contribute to the assets of the Company, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on the terms and conditions the Court considers appropriate.

63. **Power to exclude creditors not proving in time**

If the Court is satisfied that all necessary steps have been taken to draw the liquidation of a Company to the attention of creditors, the Court may fix a time or times within which creditors must prove their debts or claims or be excluded from the benefit of any distribution made before the debts or claims are proved.

64. **Payment of expenses of winding up**

If the assets of a Company that is being wound up by the Court are insufficient to satisfy its liabilities, the Court may make an order about the payment out of the assets of the expenses incurred in the winding up in the order of priority that the Court considers just.

CHAPTER 6—OTHER WINDING UP PROVISIONS

65. **Removal of Liquidator**

- (1) This section applies in relation to the removal from office and vacation of office of the Liquidator of a Company that is being wound up voluntarily.
- (2) The Liquidator may be removed from office only by:



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- (a) an order of the Court; or
- (b) for a Members Voluntary Winding Up—a general meeting of the Company called specially for that purpose; or
- (c) for a Creditors Voluntary Winding Up—a general meeting of the Company’s creditors called specially for that purpose in accordance with the Rules.

66. **Preferential debts and ranking of claims**

- (1) Subject to the application of any other AIFC Regulations and any AIFC Rules as described in section 100 (Application of other laws to receivership and winding up), in the winding up of a Company the Company’s preferential debts must be paid in priority to all other debts.
- (2) The Rules may make provision for or in relation to designating certain types of claim on a Company as preferential debts and to prescribing any priorities for their payment and as to the ranking of other claims.

67. **Power to disclaim onerous property**

- (1) The Liquidator of a Company may, by giving the notice prescribed by the Rules, disclaim any onerous property and may do so even though the Liquidator has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) However, a Liquidator in a Members Voluntary Winding Up may not disclaim property.
- (3) In this section:

onerous property means:

- (a) any unprofitable contract; or
- (b) any other property of the Company that is unsaleable or not readily saleable or may give rise to a liability to pay money or perform any other onerous act.

68. **Notification that Company is in liquidation etc.**

If a Company is being wound up (whether by the Court or voluntarily), every invoice, order for goods or services, or business letter, issued by or on behalf of the Company or a Liquidator of the Company, and on or in which the Company’s name appears, must contain a statement that the Company is being wound up.

69. **Reports by Liquidator to Registrar**

If the winding up of a Company is not concluded within 1 year, the Liquidator must, at the intervals prescribed by the Rules until the winding up is concluded, give the Registrar of Companies a report, in the form prescribed under the Rules, about the liquidation.

70. **Reference of questions to Court**

- (1) The Liquidator of a Company, or any creditor, shareholder or other Person liable to contribute to the assets, of a Company, may apply to the Court for the Court to decide any question arising in



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the Company's winding up.

- (2) The Liquidator or any aggrieved Person may apply to the Court for an order in relation to the Exercise of the Liquidator's Functions.
- (3) On an application under this section, the Court may make the order that it considers just, including, if appropriate, an order enforcing or setting aside any direction given, or requirement made, by the Liquidator to or of a Person.

71. **Dissolution and early dissolution**

- (1) Subsections (2) and (3) apply if the Liquidator of a Company that is being wound up has sent the Liquidator's final account and return to creditors.
- (2) At the end of 3 months after the day the final account and return is sent to creditors, the Company is taken to be dissolved.
- (3) However, on the application of any Person who appears to the Court to be interested, the Court make an order deferring the dissolution of the Company for the time the Court considers appropriate.
- (4) If the realisable assets of the Company are insufficient to cover the expenses of the winding up, and the affairs of the Company do not require any further investigation, the Liquidator may at any time apply to the Registrar of Companies for the early dissolution of the Company.
- (5) Before making an application under subsection (4), the Liquidator must give at least 28 days notice of the Liquidator's intention to make the application to the Company's creditors and contributories.



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PART 5: PROTECTION OF ASSETS IN LIQUIDATION

72. **Fraud in anticipation of winding up**

If a Company is being wound up (whether by the Court or voluntarily), section 79 (Remedies by Court to protect assets) applies to a past or present officer of the Company if the Person within 12 months immediately before the commencement of the winding up and with the intention of defrauding the creditors of the Company or concealing the state of the Company from any Person:

- (a) concealed any part of the Company's property to the value of U.S. \$200 (or the equivalent them) or more; or concealed any debt due to or from the Company; or
- (b) fraudulently removed any part of the Company's property to the value of U.S. \$200 (or the equivalent them) or more; or
- (c) concealed, destroyed, mutilated, altered or falsified any register, book, paper, security or other Document affecting or relating to the Company's property or affairs; or
- (d) made any false or fraudulent entry in any register, book, security, paper or other Document affecting or relating to the Company's property or affairs; or
- (e) fraudulently parted with, altered or made any omission in any register, book, paper, security or other Document affecting or relating to the Company's property or affairs; or
- (f) pawned, pledged or disposed of any property of the Company that had been obtained on credit and had not been paid for (unless the pawning, pledging or disposal was in the ordinary course of the Company's business).

73. **Transactions in fraud of creditors**

- (1) If a Company is being wound up (whether by the Court or voluntarily), section 79 (Remedies by Court to protect assets) applies to a past or present officer of the Company if the Person, while an officer of the Company:
 - (a) made, or caused to be made, any gift or transfer of, or charge on, or caused or connived at the levying of any execution against, the Company's property; or
 - (b) concealed or removed any part of the Company's property on or after, or within 2 months before, the date of any unsatisfied judgement or order for the payment of money obtained against the Company.
- (2) However, section 79 does not apply to the Person because of subsection (1) if the Person proves that, at the time the Person engaged in the conduct mentioned in that subsection, the Person had no intent to defraud the Company's creditors.

74. **Falsification of Company's books etc.**

If a Company is being wound up (whether by the Court or voluntarily), section 79 (Remedies by Court to protect assets) applies to a past or present officer of the Company, or a shareholder or other Person liable to contribute to the assets of the Company, if the Person does anything mentioned in section 72(c) to (e) with intent to defraud or deceive any Person.



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75. **Material omissions from statement relating to Company's affairs**

If a Company is being wound up (whether by the Court or voluntarily), section 79 (Remedies by Court to protect assets) applies to a past or present officer of the Company if the Person makes any material omission in any statement relating to the Company's affairs with intent to defraud any Person.

76. **False representations to creditors**

- (1) If a Company is being wound up (whether by the Court or voluntarily), section 79 (Remedies by Court to protect assets) applies to a past or present officer of the Company if the Person makes a false representation, or commits another fraud, for the purpose of obtaining the consent of the Company's creditors, or any of them, to an agreement about the Company's affairs or the winding up.
- (2) The Person is taken to have made such a false representation if, before the winding up, the Person made any false representation, or committed any other fraud, for that purpose.

77. **Fraudulent trading**

If a Company is being wound up (whether by the Court or voluntarily), section 79 (Remedies by Court to protect assets) applies to a Person if:

- (a) any business of the Company has been conducted with intent to defraud creditors of the Company or creditors of any other Person, or for any other fraudulent purpose; and
- (b) the Person was knowingly a party to conducting the business with that intent or for that purpose.

78. **Wrongful trading**

If in the course of the winding up of a Company (whether by the Court or voluntarily) it appears that the Company has gone into insolvent liquidation and that, at some time before the commencement of the winding up of the Company, 1 or more directors of the Company knew, or ought to have known, that there was no reasonable prospect of the Company avoiding going into insolvent liquidation, section 79 (Remedies by Court to protect assets) applies to that director or those directors.

79. **Remedies by Court to protect assets**

The Court may, on application by any aggrieved Person in relation to a Company (including a Liquidator or Administrative Receiver of the Company), make the orders the Court considers appropriate in relation to a Person to whom this section applies, including any or all of the following orders:

- (a) an order to return or pay to the Company any money or other property of the Company that the Person has misapplied or retained or become accountable for;
- (b) an order to compensate the Company in relation to any misfeasance or breach of any fiduciary or other duty in relation to the Company;
- (c) an order to make the contributions to the Company's assets that the Court considers proper;
- (d) an order requiring the Person to do, or not to do, anything.



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80. Restriction on reuse of Company names

- (1) If a Company (the *liquidating Company*) has gone into insolvent liquidation and a Person was a director or shadow director of the Company at any time in the 12 months ending on the day before it went into liquidation, the Person must not, within 5 years after the liquidation of the liquidating Company, be a director of, or have any connection with, another Company if the name of the other Company is:
 - (a) a name by which the liquidating Company was known at any time in that period of 12 months; or
 - (b) a name is so similar to a name mentioned in paragraph (a) as to suggest an association with the liquidating Company.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) A Person is personally responsible for all the relevant debts of a Company if the Person is, as at any time, involved in the management of the Company in Contravention of section (1).



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PART 6: RECOGNISED AND FOREIGN COMPANIES

81. Proceedings in relation to Foreign Companies

- (1) If a Foreign Company is the subject of insolvency proceedings in its jurisdiction of incorporation or formation, the Court must, on the request of a court of that jurisdiction, assist that court in gathering and remitting assets in the AIFC.
- (2) The Rules may make provision for or in relation to the getting in of assets of Foreign Companies and other issues arising in the context of cooperation under subsection (1) with the courts of other jurisdictions.

82. Application of Part 6 to Recognised Companies

- (1) This Part is additional to, and does not limit, any provisions of these Regulations or the Rules, or any other Acting Law of the AIFC in relation to insolvency and winding up, and a Liquidator or the Court may Exercise any Functions or do anything else in relation to a Recognised Company that might be Exercised or done by the Liquidator or Court in the winding up of a Company.
- (2) A Recognised Company may be wound up under this Part even though it is being wound up, or has been dissolved, deregistered or otherwise ceased to exist as a body corporate, under the law of its place of origin.

83. Winding up of Recognised Companies

- (1) Subject to this Part, a Recognised Company may be wound up under these Regulations, and these Regulations apply accordingly to a Recognised Company with the following changes:
 - (a) the place of business of the Recognised Company in the AIFC is taken, for the purposes of the winding up, to be the registered office of the Recognised Company;
 - (b) a Recognised Company must not to be wound up voluntarily under these Regulations;
 - (c) a Recognised Company may be wound up by the Court if:
 - (i) the Recognised Company is Unable to Pay its Debts, has been dissolved, deregistered or otherwise ceased to exist as a body corporate under the law of its place of origin, has ceased to conduct business in the AIFC, or has a place of business in the AIFC only for the purpose of winding up its affairs; or
 - (ii) the Court is of the opinion that it is just and equitable that the Recognised Company should be wound up;
 - (d) any other necessary changes and any changes prescribed by the Rules.
- (2) A Person is a contributory to a Recognised Company that is being wound up, and is liable to contribute as contributory to the property of the Recognised Company, if:
 - (a) the Person is liable, on the Recognised Company being wound up, to pay, or contribute to the payment of:
 - (i) a debt or liability of the Recognised Company; or



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- (ii) any amount for the adjustment of the rights of the members among themselves; or
 - (iii) the costs and expenses of the winding up; or
 - (b) the Recognised Company has been dissolved, deregistered or otherwise ceased to exist as a body corporate under the law of in its place of origin—the Person was so liable immediately before it so ceased to exist.
- (3) Any provision of these Regulations, the Rules, or any other AIFC Regulations or AIFC Rules, about staying or restraining legal proceedings against a Company at any time after the filing of an application for winding up and before the making of a winding up order extend, in the case of a Recognised Company if the application to stay or restrain is by a creditor, to legal proceedings against a contributory of the Recognised Company.
- (4) If an order has been made for the winding up of a Recognised Company, no legal proceeding may be continued or commenced against a contributory of the Recognised Company in relation to a debt of the Recognised Company without the leave of the Court and subject to the terms that the Court may impose.

84. **Outstanding property of dissolved etc. Recognised Company**

- (1) This section applies if, after the dissolution or deregistration of a Recognised Company, outstanding property of the Recognised Company remains in the AIFC.
- (2) The estate and interest in the property of the Recognised Company or of its Liquidator at the time of the dissolution or deregistration, together with all claims, rights and remedies that the Recognised Company or the Liquidator then had in relation to the property, vests by force of this section in the AIFC.
- (3) If any claim, right or remedy of a Liquidator may, under these Regulations or the Rules, be made, exercised or availed of only with the approval (however described) of the Court or another Person, the AIFC may, for this section, make, exercise or avail itself of the claim, right or remedy without the approval.



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PART 7: OTHER TYPES OF COMPANY

85. Application of these Regulations to other types of Company

- (1) If, for Part 11 (Other types of Company) of the AIFC Companies Regulations, a type of Company is prescribed under the Rules, the Rules may make provision for or in relation to:
 - (a) prescribing the following in relation to Companies of that type:
 - (i) the circumstances and way in which the Companies may enter into Voluntary Arrangements or receiverships or be wound up;
 - (ii) requirements or obligations in relation to the appointment of Insolvency Practitioners or Official Liquidators for them;
 - (iii) forms and procedures for Voluntary Arrangements or receiverships for, and the winding up of, the Companies; and
 - (b) extending, excluding, waiving or modifying the application of provisions of these Regulations or the Rules to facilitate the orderly application of insolvency law in relation to a Company of that type.
- (2) Subject to any Rules made for subsection (1), these Regulations apply to a Company of a type to which that subsection applies except so far as any other AIFC Regulations or any AIFC Rules provide otherwise.



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PART 8: APPLICATION OF THESE REGULATIONS TO LIMITED LIABILITY PARTNERSHIPS

86. Application to limited liability partnerships

- (1) Unless the contrary intention appears, these Regulations and the Rules apply to Limited Liability Partnerships and Recognised Limited Liability Partnerships with the following modifications:
 - (a) a reference to a Company includes a reference to a limited liability partnership;
 - (b) a reference to a director or officer of a Company includes a reference to a member (however described) of a limited liability partnership;
 - (c) a reference to a provision of these Regulations, the AIFC Companies Regulations, or any other AIFC Regulations or any AIFC Rules, is a reference to that provision as it applies to a limited liability partnership in accordance with these Regulations;
 - (d) a reference to the articles of association of a Company includes a reference to the partnership agreement of a limited liability partnership;
 - (e) a reference to a resolution of a Company includes a reference to a decision of a limited liability partnership;
 - (f) a reference to a meeting of a Company includes a reference to a meeting of the members (however described) of a limited liability partnership;
 - (g) these Regulations are taken to have been made modified in accordance with the following provisions:
 - (i) in section 8(1), for ‘The directors of a Company’ substitute ‘A limited liability partnership’, and delete ‘to the Company and’;
 - (ii) in section 8(2), for ‘The directors’ substitute ‘The limited liability partnership’;
 - (iii) in section 9(1), for ‘The directors of a Company’ substitute ‘A limited liability partnership’;
 - (iv) omit section 10(3);
 - (v) for section 26, substitute the following:

‘A limited liability partnership may be wound up voluntarily if it decides that it should be wound up voluntarily.’;
 - (vi) in section 31, for ‘directors’ (wherever appearing) substitute ‘Designated Members (however described)’, and for ‘director’ (wherever appearing) substitute ‘Designated Member’;
 - (vii) in section 32(2), for ‘directors’ substitute ‘Designated Members (however described)’;
 - (viii) in section 40, for ‘directors’ (wherever appearing) substitute ‘Designated Members (however described)’;



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- (ix) in section 51, for ‘directors’ substitute ‘Designated Members (however described)’;
 - (x) in section 53, for ‘any transfer of shares’ substitute ‘any transfer by a member (however described) of the limited liability partnership of the member’s interest in the partnership’s property’;
 - (xi) in sections 72 to 76, for ‘officer of the Company’ substitute ‘member (however described) of the limited liability partnership’;
 - (xii) in section 78, for ‘directors of the Company’ substitute ‘members (however described) of the limited liability partnership’, and for ‘that director or those directors’ substitute ‘that member or those members’;
- (h) all other necessary modifications and any modifications prescribed by the Rules.
- (2) A reference in subsection (1) (or in any provision of these Regulations modified in accordance with that subsection) to a ***limited liability partnership*** is a reference to a Limited Liability Partnership or Recognised Limited Liability Partnership, as the case requires.



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PART 9: INSOLVENCY PRACTITIONERS

87. Restrictions on appointment as liquidator, receiver etc.

- (1) A Person must not be appointed or act as a Receiver, Administrative Receiver or Liquidator of a Company under these Regulations, the Rules, or any other AIFC Regulations or AIFC Rules, unless the Person is registered as an insolvency practitioner under this Part.
- (2) Without limiting subsection (1), unless a Person who is an Insolvency Practitioner is further registered as an official liquidator under this Part, the Person must not be appointed as:
 - (a) a liquidator under section 57 (Choice of Liquidator by Court or meetings of creditors and contributories); or
 - (b) a provisional liquidator under section 58 (Appointment of Provisional Liquidator).
- (3) The registration of an Insolvency Practitioner as an Official Liquidator constitutes an acknowledgement by the Insolvency Practitioner that the Insolvency Practitioner will “in principle” accept any appointment made by the Court as a liquidator or provisional liquidator of a Company in accordance with any rules of procedure that may be made by the Court.

88. Qualification and registration of Insolvency Practitioners and Official Liquidators

- (1) The Rules must prescribe criteria that a Person must meet to be registered as an insolvency practitioner or official liquidator. The Rules may include requirements relating to the qualifications, experience and fitness and propriety of applicants for registration.
- (2) The Rules may provide for requirements mentioned in subsection (2) to be varied for applicants who are, at the time of application, regulated in a jurisdiction outside the AIFC.
- (3) The Registrar of Companies may:
 - (a) grant or refuse to grant an application for registration as an insolvency practitioner or official liquidator; and
 - (b) impose any restrictions or conditions on granting registration.
- (4) A Person registered as an insolvency practitioner or official liquidator must act within the scope of the Person’s registration and comply with any restrictions and conditions imposed on the registration.
- (5) The Registrar of Companies may, by Written notice given to a Person registered as an insolvency practitioner or official liquidator on the Registrar’s own initiative or at the request of the Person’s:
 - (a) impose restrictions or conditions on the Person’s registration; or
 - (b) vary or withdraw any restrictions or conditions imposed on the Person’s registration; or
 - (c) suspend, cancel or otherwise withdraw the Person’s registration.
- (6) In making a decision under this section, the Registrar of Companies must comply with any Rules



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applying in relation to the making of the decision.

89. Register of insolvency practitioners and official liquidators

- (1) The Registrar of Companies must keep and publish registers of current and past registrations of insolvency practitioners and official liquidators in accordance with any requirements prescribed by the Rules.
- (2) The Registrar of Companies must make a reasonably current version of each register kept under subsection (1) freely available for viewing by the public during the normal business hours of the Registrar.

90. Obligation of disclosure to Registrar

- (1) An Insolvency Practitioner (including an Official Receiver) appointed for a Company must disclose to the Registrar of Companies any matter that reasonably tends to show:
 - (a) that the Company has or may have Contravened these Regulations (within the meaning given by section 169 of the AIFC Companies Regulations);
 - (b) anything else prescribed by the Rules or any other Legislation Administered by the Registrar.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) Subsection (1) does not require the disclosure of a privileged communication
- (4) Any provision in an agreement between a Company and an officer, employee or agent of the Company or an Insolvency Practitioner is void so far as it purports to hinder any Person from causing or assisting an Insolvency Practitioner to comply with subsection (1).
- (5) A Person must not be subjected to detriment, loss or damage only because the Person does anything to cause or assist an Insolvency Practitioner to comply with subsection (1).
- (6) The Court may, on application of an aggrieved Person, make any order for relief if the Person has been subjected to any detriment, loss or damage mentioned in subsection (5).
- (7) Without limiting any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar, an Insolvency Practitioner does not Contravene any duty to which the Insolvency Practitioner is subject only because the Insolvency Practitioner:
 - (a) makes a disclosure under subsection (1); or
 - (b) gives the Registrar of Companies any other information or opinion in relation to a matter to which the disclosure applies or any related matter,if the Insolvency Practitioner is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the Registrar.
- (8) In this section:

privileged communication means a communication attracting a privilege arising from the



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provision of professional legal advice or any other advice to which the relationship of lawyer and client or other similar relationship applies, but does not include a communication to which a general duty of confidentiality only applies.

91. **Supervision of Insolvency Practitioners**

- (1) This section applies if the Court is satisfied, on the application of the Registrar of Companies, that an Insolvency Practitioner:
 - (a) has Contravened these Regulations (within the meaning given by section 169 of the AIFC Companies Regulations); or
 - (b) has Failed, whether within or outside the AIFC, to Exercise any Functions adequately or properly; or
 - (c) is otherwise not a fit and proper Person to remain an Insolvency Practitioner or, if applicable, an Official Liquidator.
- (2) The Court may make 1 or more of the following orders:
 - (a) an order that the Registrar of Companies may cancel, suspend for a stated period, or impose stated restrictions or conditions on, the Person's registration as an insolvency practitioner or official liquidator (or, if applicable, both);
 - (b) an order imposing restrictions or conditions on the Person's future conduct as an Insolvency Practitioner or Official Liquidator (or, if applicable, both);
 - (c) an order requiring the Person to do, or refrain from doing, anything;
 - (d) any other order the Court considers appropriate.
- (3) This section does not affect the powers that any Person or the Court may have apart from this section.



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PART 10: MISCELLANEOUS

92. Rules made in relation to these Regulations

The Rules may make provision for or in relation to:

- (a) practices and procedures under these Regulations, including voting and results of voting at meetings, the valuation of liabilities, the ranking of debts (other than preferential debts), and the identification and application of assets and the Functions of creditors' and liquidation committees; and
- (b) extending, excluding, waiving or modifying the application of provisions of these Regulations for the purpose of amending the Functions or responsibilities of any Person under these Regulations.

93. Getting in Company's property

- (1) This section applies in relation to a Company if:
 - (a) a Receiver, Administrative Receiver or Provisional Liquidator is appointed for the Company; or
 - (b) the Company Goes into Liquidation.
- (2) If any Person has in the Person's possession or control any property, books, papers, records or anything else to which the Company appears to be entitled, the Court may, on application by an Administrator of the Company, require the Person to give (however described) the thing to the Administrator.
- (3) If an Administrator of the Company:
 - (a) seizes or disposes of any property that is not property of the Company; and
 - (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that the Administrator is entitled (whether under a Court order or otherwise) to seize or dispose of the property;

the Administrator is not liable to any Person in relation to any loss or damage resulting from the seizure or disposal (except so far as the loss or damage is caused by the Administrator's own negligence), and has a lien on the property, or the proceeds of its sale, for the expenses incurred by the Administrator in connection with the seizure or disposal.

94. Duty to cooperate with Administrator

- (1) This section applies in relation to a Company (the *relevant Company*) if:
 - (a) a Receiver, Administrative Receiver or Provisional Liquidator is appointed for the Company; or
 - (b) the Company Goes into Liquidation.
- (2) A Person to whom subsection (3) applies must:



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- (a) attend on the Administrator of the Company at the times the Administrator may reasonably require; and
 - (b) give the Administrator the information about the Company, and its promotion, formation, business, dealings, affairs or property, as the Administrator reasonably requires.
- (3) This subsection applies to the following Persons:
- (a) a Person who is, or has at any time been, an officer of the Company;
 - (b) a Person who took part in the formation of the Company if the formation happened at any time within 1 year before the effective date;
 - (c) a Person who is in the Company's employment, or was in its employment at any time within that year, and may be able, in the Administrator's opinion, to give the Administrator information that the Administrator needs;
 - (d) a Person who is, or was at any time within that year, an officer of, or in the employment of, another Company that is, or was at any time within that year, an officer of the relevant Company; and
 - (e) if the relevant Company is being wound up by the Court—any Person who has been a Receiver, Administrative Receiver or Liquidator of the Company.

- (4) In this section:

effective date means whichever of the following dates applies in relation to the relevant Company:

- (a) if a Receiver or Administrative Receiver has been appointed for the Company—the date the Receiver or Administrative Receiver was appointed or, if Receiver or Administrative Receiver was appointed in succession to another Receiver or Administrative Receiver, the date the first Receiver or Administrative Receiver was appointed;
- (b) if the Company has gone into liquidation—the date it went into liquidation;
- (c) if a Provisional Liquidator has been appointed for the Company—the date the Provisional Liquidator was appointed;

employment includes employment under a contract for services.

95. **Producing account of dealings with Company etc.**

The Court may order any Person involved with a Company to produce to it, or to an Administrator of the Company, an account of the Person's dealings with the Company or any books, papers, records or other Documents in the Person's possession relating to the Company or to any dealing of the Person with the Company.

96. **Transactions at undervalue**



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- (1) This section applies in relation to a Company if:
 - (a) a Receiver, Administrative Receiver or Provisional Liquidator is appointed for the Company; or
 - (b) the Company Goes into Liquidation.
- (2) If the Company has at a relevant time (as defined in section 98 (Relevant time for sections 96 and 97)) entered into a transaction with any Person at an undervalue, the Court may, on the application of an Administrator of the Company, make an order restoring the position to what it would have been if the Company had not entered into that transaction.
- (3) For this section, a Company enters into a transaction with a Person *at an undervalue* if it makes a gift to the Person or otherwise enters into a transaction with the Person on terms that provide for the Company to receive no consideration, or consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the Company.
- (4) However, the Court must not make an order under this section in relation to a transaction at an undervalue if it is satisfied that:
 - (a) the Company entered into the transaction in good faith and for the purpose of conducting its business; and
 - (b) at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the Company.

97. Preferences

- (1) This section applies in relation to a Company if:
 - (a) a Receiver, Administrative Receiver or Provisional Liquidator is appointed for the Company; or
 - (b) the Company Goes into Liquidation.
- (2) If the Company has at a relevant time (as defined in section 98 (Relevant time for sections 96 and 97)) given a preference to any Person, the Court may, on the application of an Administrator of the Company, make an order restoring the position to what it would have been if the Company had not given that preference.
- (3) For this section, a Company *gives a preference* to a Person if:
 - (a) the Person is one of the Company's creditors or a surety or guarantor for any of the Company's debts or other liabilities; and
 - (b) the Company does anything, or suffers anything to be done, that (in either case) has the effect of putting the Person into a position that, if the Company were to go into insolvent liquidation, would be better than the position the Person would have been in if that thing had not been done.



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- (4) However, the Court must not make an order under this section in relation to a preference given to a Person by a Company unless the Company was influenced in deciding to give the preference by a desire to produce in relation to the Person the effect mentioned in subsection (3)(b).
- (5) A Company that has given a Preference to a Person connected with the Company at the time the preference was given (otherwise than only because of the Person being its employee) is presumed, unless the contrary is shown (by, for example, the receiving of additional material consideration for the preference), to have been influenced in deciding to give it by a desire of the kind mentioned in subsection (4).

98. **Relevant time under sections 96 and 97**

For section 96 (Transactions at undervalue) and section 97 (Preferences), the time at which a Company enters into a transaction at an undervalue, or gives a preference, is a *relevant time* if the transaction is entered into, or the preference given:

- (a) for a transaction at an undervalue that is entered into with, or a preference that is given to, a Person connected with the Company (otherwise than only because of the Person being its employee)—at a time in the period of 2 years ending with the onset of Insolvency; or
- (b) for any other transaction at an undervalue or preference—at a time in the period of 6 months ending with the onset of Insolvency; or
- (c) in either case—at a time between the making of an application to the Court under these Regulations and the making of an order by the Court on the application, if the order gives rise to the onset of Insolvency.

99. **Invalid security interests**

- (1) If a Company becomes Insolvent, a security interest in all or substantially all of the Company's property is invalid if:
 - (a) the security interest is created in favour of a Person connected with the Company and is created within 2 years before the onset of Insolvency; or
 - (b) the security interest is created within 1 year before the onset of Insolvency and the Company was on the day of the creation of the interest, or became because of the transaction in relation to which the interest was created, Unable to Pay its Debts; or
 - (c) the security interest is created after the commencement of a Voluntary Arrangement for the Company.
- (2) Subsection (1) does not invalidate a security interest to the extent of the value transferred to the Company, or liabilities of the Company released, because of the transaction giving rise to the grant of the security interest.

100. **Application of other laws to receivership and winding up**

- (1) The provisions of these Regulations and the Rules relating to the powers of a Receiver, Administrative Receiver or Liquidator to get in, secure, realise or distribute property of a Company (the *general insolvency law provisions*) are subject to the provisions of any other



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AIFC Regulations or AIFC Rules that are inconsistent with, or otherwise extend, exclude, modify or waive the application of, provisions of these Regulations and the Rules in particular cases or classes of case.

- (2) Without limiting subsection (1), the general insolvency law provisions are subject to the provisions of any other AIFC Regulations or any AIFC Rules that provide for or in relation to the orderly conduct of affairs or winding up of a Company (a *licensed Company*) that is licensed, or recognised by the AFSA including provisions that prescribe procedures and priorities for dealing with assets of a licensed Company or other Persons if there is a pending or actual Insolvency or other default.

101. **Power of Court to declare dissolution of Company void**

- (1) This section applies if a Company has been dissolved under these Regulations or the AIFC Companies Regulations.
- (2) On application made within 10 years after the day of the dissolution by a Liquidator of the Company or any other Person who appears to the Court to be interested, the Court may make an order, on the terms the Court considers appropriate, declaring the dissolution void.
- (3) If the Court makes an order under subsection (2), the Court may by the order (or subsequent orders) give the directions and make the provisions that it considers just for placing the Company and all other Persons in the same position as nearly as may be as if the Company had not been dissolved.
- (4) If the Court makes an order under subsection (2), any proceeding may be taken that might have been taken if the Company had not been dissolved.



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SCHEDULE 1: ADDITIONAL POWERS OF ADMINISTRATIVE RECEIVERS

1. Power to take possession of, collect and get in the relevant property of the Company and, for that purpose, to take the legal proceedings that the Administrative Receiver considers appropriate.
2. Power to sell or otherwise dispose of relevant property of the Company by public auction or private contract.
3. Power to raise or borrow money and grant security for it over relevant property of the Company.
4. Power to appoint a legal consultant, accountant or other professionally qualified Person to assist the Administrative Receiver in the Exercise of the Administrative Receiver's Functions.
5. Power to bring or defend any legal proceeding in the name and on behalf of the Company.
6. Power to refer to arbitration any question affecting the Company.
7. Power to effect and maintain insurance in relation to the business and property of the Company.
8. Power to do all acts in the name and on behalf of the Company and, in particular, to execute any deed, receipt or other Document in the name and on behalf of the Company.
9. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.
10. Power to appoint any agent to do any business that the Administrative Receiver is unable to do personally or that can more conveniently be done by an agent.
11. Power to do all other things that may be necessary for winding up the Company's affairs and distributing its assets.

SCHEDULE 2: POWERS OF LIQUIDATOR IN WINDING UP

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or Persons claiming to be creditors, or having or claiming to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company or for which the Company may be liable.
3. Power to compromise, on agreed terms:
 - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or claimed to subsist between the Company and a shareholder or other Person liable, or claimed to be liable, to contribute to the assets of the Company or other debtor or Person apprehending liability to the Company; and
 - (b) all questions in any way relating to or affecting the assets or the winding up of the Company;
and to take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in relation to it.
4. Power to bring or defend any legal proceeding in the name and on behalf of the Company.
5. Power to carry on the business of the Company so far as may be necessary for its beneficial winding up.
6. Power to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any Person or to sell the property in parcels.
7. Power to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other Documents and, for that purpose, to use the Company's seal when necessary.
8. Power to prove, rank and claim in the bankruptcy, insolvency, or sequestration, (however described) of any shareholder or other Person liable to contribute to the assets of the Company for any balance against the Person's estate, and to receive dividends in the bankruptcy, insolvency or sequestration in relation to that balance, as a separate debt owing from the Person, and rateably with the other separate creditors.
9. Power to draw, accept, make and endorse any bill of exchange or promissory note, in the name and on behalf of the Company, with the same effect in relation to the Company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the Company in the course of its business.
10. Power to raise money on the security of the assets of the Company.
11. Power to take out in the Liquidator's official name letters of administration to any deceased shareholder or other Person liable to contribute to the assets of the Company, and to do in the official name anything else necessary to obtain payment of any amount owing to the Company from the Person's estate that cannot conveniently be done in the name of the Company.
For this clause, the amount owing is taken, for the purpose of enabling the Liquidator to take out the letters of administration or recover the money, to be owing to the Liquidator personally.
12. Power to appoint an agent to do any business that the Liquidator is unable to do personally or that can more conveniently be done by an agent.
13. Power to do all other things necessary for winding up the Company's affairs and distributing its assets.



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SCHEDULE 3: INTERPRETATION

1. Definitions for these Regulations

In these Regulations:

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

Administrative Receiver, in relation to a Company, has the meaning given by section 14(2) (Appointment and Functions of Receivers and Administrative Receivers).

Administrator, in relation to a Company, means a Receiver, Administrative Receiver or Liquidator of the Company.

AFSA means the Astana Financial Services Authority.

AIFC means the Astana International Financial Centre.

AIFCA means the 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 for these Regulations.

Company means a body corporate that is incorporated as, or converted to, a private company or public company under the AIFC Companies Regulation.

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

Contravene includes Fail to comply with.

Court means the Astana International Financial Centre Court.

Creditors Voluntary Winding Up, in relation to a Company, means a winding up of the Company that is not a Members Voluntary Winding Up.

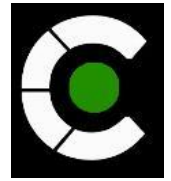
Document includes any summons, notice, statement, return, account, order and other legal process, and any register.

Exercise a Function includes perform the Function.

Fail includes refuse.

Foreign Company means any association or other body corporate incorporated or otherwise formed in a jurisdiction outside the AIFC that has a corporate existence under the law of that jurisdiction (whether or not it is considered to be a company under that law), and includes a Recognised Company.

Function includes authority, duty and power.



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Goes into Liquidation: A Company ***Goes into Liquidation*** if:

- (a) it passes a Resolution for Voluntary Winding Up; or
- (b) the Court makes an order for its winding up if it has not already passed a Resolution for Voluntary Winding Up.

Governor means the Governor of the Astana International Financial Centre.

Insolvency, in relation to a Company:

- (a) means that the Company is Unable to Pay its Debts; and
- (b) in Part 10 (Miscellaneous), includes the approval under Part 2 (Company Voluntary Arrangements) of a Voluntary Arrangement for the Company or the appointment of a Receiver or Administrative Receiver for the Company.

Insolvency Practitioner means a Person who is registered as an insolvency practitioner under these Regulations.

Legislation Administered by the Registrar has the meaning given by section 1 of Schedule 1 of the AIFC Companies Regulations.

Limited Liability Partnership means a Limited Liability Partnership under the AIFC Limited Liability Partnership Regulations.

Liquidator, in relation to a Company, means a Person who is appointed as the liquidator, or a liquidator, of the Company, and includes a Provisional Liquidator for the Company.

Management Council means the Management Council of the Astana International Financial Centre.

Management Council Resolution on AIFC Bodies means *The Structure of the Bodies of the Astana International Financial Centre*, adopted by resolution of the Management Council on 26 May 2016, as amended by resolution of the Management Council, *The Amendments and supplementations to the Structure of the Bodies of the Astana International Financial Centre*, adopted on 9 October 2017.

Members Voluntary Winding Up, in relation to a Company, means a winding up of the Company for which directors of the Company have made a declaration that complies with section 31 (Declaration of solvency).

Nominee, in relation to a proposed Voluntary Arrangement for a Company, means the Person appointed under section 8(2) (Company arrangements) to act in relation to the Voluntary Arrangement.

Official Liquidator means a Person who is registered as an official liquidator under these Regulations.

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

Provisional Liquidator, in relation to a Company, means a liquidator appointed provisionally for the Company under section 58 (Appointment of Provisional Liquidator).

Receiver, in relation to a Company, has the meaning given by subsection 14(2) (Appointment and



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Functions of Receivers and Administrative Receivers).

Recognised Company a body corporate incorporated in any jurisdiction other than the AIFC that is registered under the AIFC Companies Regulations as a recognised company.

Registrar means the Registrar of Companies.

Registrar of Companies means the individual who is the Registrar of Companies appointed under the AIFC Companies Regulations.

Resolution for Voluntary Winding Up, in relation to a Company, means a resolution passed by the Company under section 26 (Circumstances in which Company may be wound up voluntarily).

Rules means rules adopted by the Board of Directors of the AFSA under section 181 of the AIFC Companies Regulations.

Supervisor, in relation to a Voluntary Arrangement for a Company, has the meaning given by section 13(2) (Implementation of Voluntary Arrangement).

Unable to Pay its Debts, in relation to a Company or Recognised Company, has the meaning given by section 50 (Definition of *Unable to Pay its Debts*).

Voluntary Arrangement has the meaning given by section 8(1) (Company arrangements).

Voluntary Winding Up means a Creditors Voluntary Winding Up or a Members Voluntary Winding Up.

Writing includes:

- (a) in relation to a certificate, instrument, notice or other thing—the thing in any form that preserves a record of the information contained in it and is capable of being reproduced in tangible form, including by electronic means; and
- (b) in relation to a communication—any method of communication that preserves a record of the information contained in it and is capable of being reproduced in tangible form, including by electronic means

and **Written** shall be construed accordingly.