AIFC INSOLVENCY RULES

(IR)

AIFC RULES NO. GR0008 OF 2017

Astana International Financial Centre, Astana

29 December 2017

AIFC INSOLVENCY RULES

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PART 1: GENERAL

1.1. **Name**

These Rules are the *AIFC Insolvency Rules 2017* (or IR).

1.2. **Commencement**

These Rules commence on 1 January 2018.

1.3. **Legislative authority**

These Rules are adopted by the Board of Directors of the AFSA under section 181 (Power to adopt rules etc.) of the AIFC Companies Regulations.

1.4. **Application of these Rules**

These Rules apply within the jurisdiction of the AIFC.

1.5. **Definitions etc.**

1.5.1 Schedule 4 (Interpretation) contains definitions used in these Rules.

1.5.2 Terms used in these Rules (other than terms defined in Schedule 4) have the same meanings as they have, from time to time, in the AIFC Insolvency Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Insolvency Regulations applying to these Rules, see Schedule 3 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- Administrative Receiver, in relation to a Company
- Administrator, in relation to a Company
- AFSA
- AIFC
- AIFC Regulations
- AIFC Rules
- AIFCA
- Company
- Contravention
- Court
- Creditors Voluntary Winding Up, in relation to a Company
- Document
- Exercise
- Fail
- Function
- Goes into Liquidation
- Insolvency, in relation to a Company
- Insolvency Practitioner
- Liquidator, in relation to a Company
- Members Voluntary Winding Up, in relation to a Company
- Nominee, in relation to a proposed Voluntary Arrangement for a Company

- Official Liquidator
- Person
- Provisional Liquidator, in relation to a Company
- Receiver, in relation to a Company
- Registrar of Companies (or Registrar)
- Supervisor, in relation to a Voluntary Arrangement for a Company
- Unable to Pay its Debts, in relation to a Company or Recognised Company
- Voluntary Arrangement
- Voluntary Winding Up
- Writing.

1.5.3 Subject to subrule 1.5.2, terms used in these Rules (other than terms defined in Schedule 4 or the AIFC Insolvency Regulations) have the same meanings as they have, from time to time, in the AIFC Companies Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Companies Regulations applying to these Rules, see Schedule 1 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- Acting Law of the AIFC
- Articles of Association
- Share
- Shareholder.

1.6. **Administration of these Rules**

These Rules are administered by the Registrar of Companies.

PART 2: VOLUNTARY ARRANGEMENTS

2.1. Preparation of proposal etc.

2.1.1 If the Directors of a Company wish to propose a Voluntary Arrangement under section 8 (Company arrangements) of the AIFC Insolvency Regulations, the Directors must appoint an Insolvency Practitioner under that section as the Nominee and prepare and give to the Nominee a proposal that includes the following matters:

(a) an estimate of the value of the Company's assets (other than assets that are Excluded Property);

(b) a statement of the extent (if any) to which those assets are secured in favour of the Company's creditors;

(c) a statement of the extent (if any) to which particular assets of the Company are to be excluded from the arrangement;

(d) particulars of any property, other than assets of the Company itself, that is proposed to be included in the arrangement, the source of the property, and the terms on which it is to be made available for inclusion;

(e) a statement of the nature and amount of the Company's liabilities (other than liabilities in relation to Excluded Property) and, so far as it is within the Directors' immediate knowledge, how those liabilities are proposed to be met, modified, postponed or otherwise dealt with under the arrangement, and, in particular:

(i) how it is proposed to deal with Preferential Creditors and creditors of the Company who are, or claim to be, secured; and

(ii) how Persons connected with the Company who are creditors are proposed to be treated under the arrangement; and

(iii) whether there are, to the Directors' knowledge, any circumstances giving rise to the possibility that, if the Company were to go into liquidation, claims may be made under section 96 (Transactions at undervalue), 97 (Preferences) or 99 (Invalid security interests) of the AIFC Insolvency Regulations and, if any such circumstances exist, whether and, if so how, it is proposed under the arrangement to make provision for completely or partly indemnifying the Company in relation to the claims;

(f) for Excluded Property of the Company—the information mentioned in paragraphs (a), (b), (d) and (e);

(g) a statement of whether any, and, if so, what, guarantees have been given of the Company's debts by other Persons, and, if there are any such guarantees, which of the guarantors are Persons connected with the Company;

(h) a statement of the proposed duration of the arrangement;

(i) information about the proposed dates of distributions to creditors and estimates of the amounts of the distributions;

(j) a statement of how it is proposed to deal with the claims of any Persons who do not consent to the arrangement;

(k) a statement of the amount proposed to be paid to the Nominee for remuneration and expenses;

(l) a statement of how it is proposed that the Supervisor of the arrangement should be remunerated and the Supervisor's expenses defrayed;

(m) a statement of whether, for the purposes of the arrangement, any guarantees are to be offered by Directors, or other Persons and, if so, whether any Security Interest is to be given or sought;

(n) a statement of how funds held for the purposes of the arrangement are to be banked, invested, or otherwise dealt with, pending distribution to creditors;

(o) a statement of how funds held for the purpose of payment to creditors, and not paid to creditors on the termination of the arrangement, are to be dealt with;

(p) a statement of how the business of the Company is proposed to be conducted during the course of the arrangement;

(q) details of any further credit facilities that are intended to be arranged for the Company, and a statement of how the debts arising from them are to be paid;

(r) a statement of the Functions to be Exercised by the Supervisor of the arrangement;

(s) a statement of whether it is likely that there will be other proceedings in other jurisdictions.

2.1.2 If the Company is an Authorised Person, the Directors must obtain the consent of the AFSA before giving the proposal to the Nominee.

2.2. **Statement of affairs for proposal**

2.2.1 The Directors of the Company must, within 7 days after the day their proposal is given to the Nominee under rule 2.1 (Preparation of proposal etc.) or any longer time that the Nominee may allow, give the Nominee a statement of the Company's affairs (the ***statement of affairs***).

2.2.2 The statement of affairs must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs).

2.2.3 The statement of affairs must be made up to a date not earlier than 2 weeks before the day the proposal is given to the Nominee. However, the Nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before that day).

2.2.4 Two or more Directors of the Company (or, if the Company has only 1 Director, the Director) must certify that the statement of affairs is correct to the best of the Directors' (or Director's) knowledge and belief.

2.3. **Nominee may ask for additional information in relation to proposal**

The Nominee may ask the Directors of the Company to provide any additional information that the Nominee considers necessary. The Directors must take all reasonable steps to comply with the request.

2.4. **Calling meetings for proposed Voluntary Arrangement**

2.4.1 Notice of a meeting called by the Nominee under section 10 (Calling of meetings for Voluntary Arrangement proposal) of the AIFC Insolvency Regulations must be accompanied by the following:

(a) a copy of the Directors' proposal;

(b) a copy of the statement of affairs given to the Nominee under rule 2.2 (Statement of affairs for proposal) or, if the Nominee considers appropriate, a summary of it;

(c) the Nominee's comments on the proposal.

2.4.2 A summary under subrule 2.4.1(b) must include a list of creditors and the amounts of their debts.

2.5. **Majority required at creditors meeting for proposed Voluntary Arrangement**

At the meeting of the Company's creditors called under section 10 (Calling of meetings for Voluntary Arrangement proposal) of the AIFC Insolvency Regulations, a resolution approving any proposal or modification is taken to have been passed only if it is passed by a majority of more than three-quarters in value of the creditors present in person or by Proxy and voting on the resolution.

2.6. **Handover of property to Supervisor etc.**

2.6.1 If an approved Voluntary Arrangement for the Company takes effect under section 12 (Effect of approval of Voluntary Arrangement proposal) of the AIFC Insolvency Regulations, the Directors, and other Persons connected with the Company with power to do so, must immediately do everything necessary to give the Supervisor possession of the assets included in the Voluntary Arrangement and, if applicable, give the Supervisor control of any Excluded Property included in the Voluntary Arrangement.

2.6.2 If the Company is in liquidation, the Supervisor must on taking possession of the assets either discharge any amount due to the Liquidator by way of remuneration or on account of fees, costs, charges and expenses properly incurred and payable under the AIFC Insolvency Regulations or these Rules or, before taking possession, give the Liquidator a written undertaking to discharge any amount due out of the first realisation of assets.

2.6.3 The Supervisor has a Security Interest in the assets (other than any Excluded Property) included in the Voluntary Arrangement for payment of any amount due to the Liquidator, subject only to the deduction from realisations by the Supervisor of the proper costs and expenses of the realisations.

2.6.4 The Supervisor must, from time to time, out of the realisation of assets (other than any Excluded Property) discharge all guarantees properly given by the Liquidator for the benefit of the Company and must pay all of the Liquidator's expenses.

2.7. **Supervisor's duties in relation to Excluded Property**

2.7.1 If the Company's assets or liabilities include Excluded Property, the Supervisor of the Voluntary Arrangement must comply with any requirements applying to the Company under the AIFC Personal Property Regulations or any AFSA Rules in relation to the Excluded Property.

2.7.2 Without limiting subrule 2.7.1, the Supervisor must comply with any instruction made under

section 37 (Right of Transfer against insolvent Investment Intermediary) of the AIFC Personal Property Regulations.

2.8. **Supervisor's accounts and reports**

2.8.1 The Supervisor of the Voluntary Arrangement for the Company must keep accounts and records of the Supervisor's acts and dealings in and in connection with the Voluntary Arrangement, including records of all receipts and payments

2.8.2 The Supervisor must, not less often than once in every 12 months beginning with the date of the Supervisor's appointment, prepare an abstract of all receipts and payments of the Supervisor in and in connection with the Voluntary Arrangement, and send copies of it, accompanied by the Supervisor's comments on the progress and efficacy of the arrangement, to the following:

(a) the Court;

(b) the Registrar of Companies;

(c) the Company;

(d) all of the Company's creditors who are bound by the arrangement;

(e) the members of the Company who are bound by the arrangement;

(f) if the Company is not in liquidation—the Company's auditors.

2.8.3 However, if in any12-month period the Supervisor makes no payments, and has no receipts, in or in connection with the Voluntary Arrangement, the Supervisor must at the end of that period send a statement to that effect to all the Persons mentioned in subrule 2.8.2.

2.9. **Fees, costs, charges and expenses for Voluntary Arrangement**

The fees, costs, charges and expenses that may be incurred for any of the purposes of the Voluntary Arrangement are:

(a) any disbursements made by the Nominee before the arrangement took effect, and any remuneration for the Nominee's services agreed between the Nominee and the Company (or, as the case may be, the Administrator of the Company); and

(b) any fees, costs, charges or expenses that:

(i) are in accordance with the terms of the arrangement; or

(ii) would be payable, or correspond to those that would be payable, in a winding up.

2.10. **Completion or termination of Voluntary Arrangement**

2.10.1 Not later than 28 days after the day of the completion or termination of the Voluntary Arrangement, the Supervisor must send to the creditors and members of the Company who were bound by it notice that the Voluntary Arrangement has been fully implemented or has terminated.

2.10.2 The notice must be accompanied by a copy of a report by the Supervisor summarising all receipts and payments made by the Supervisor in or in connection with the Voluntary Arrangement,

explaining in relation to implementation of the arrangement any departure from the arrangement as it took effect, and, if the arrangement has terminated, explaining why the arrangement has terminated.

2.10.3 The Supervisor must, within the 28-day period mentioned in subrule 2.10.1, send a copy of the notice under that subrule and the report under subrule 2.10.2 to the Registrar of Companies and the Court.

2.10.4 The Supervisor may not vacate office until this rule has been complied with.

PART 3: MORATORIUM

3.1. Preparation of proposal by Directors to obtain a moratorium

3.1.1 If the Directors of a Company eligible for a moratorium under section 9 of the AIFC Insolvency Regulations intend to make a proposal for a Voluntary Arrangement and wish to take steps to obtain a moratorium for the Company, the Directors must prepare a proposal for the moratorium. The Document containing the proposal must explain why the Directors consider that a moratorium would be of benefit to creditors. The proposal may be accompanied by the supporting Documents that the Directors consider relevant. The proposal for the Voluntary Arrangement and the proposal for the moratorium may be made in the same Document.

3.1.2 The proposal for the moratorium and the supporting Documents (if any) must be given to the Nominee for the proposed Voluntary Arrangement or to a Person authorised to accept service of Documents on behalf of the Nominee. On receipt of the Documents, the Nominee must immediately acknowledgement receipt of them to the Directors. The acknowledgement must indicate the date the Documents were received by or on behalf of the Nominee.

3.1.3 The Nominee must apply to the Court for a moratorium. The Court may grant the application.

3.2. Advertisement and notice of beginning of moratorium

3.2.1 If the Court grants the Nominee's application for a moratorium for the Company, the Nominee must, as soon as possible, advertise the coming into force of the moratorium once in the newspaper the Nominee considers most appropriate for ensuring that its coming into force comes to the notice of the Company's creditors. The advertisement must specify the date the moratorium came into force.

3.2.2 The Nominee must, as soon as possible, also notify the Registrar of Companies, the Company, and any creditor of the Company of whose claim the Nominee is aware, of the coming into force of the moratorium. The notification must specify the date the moratorium came into force.

3.3. Advertisement and notice of end of moratorium

3.3.1 As soon as possible after the moratorium for the Company comes to an end, the Supervisor of the Voluntary Arrangement for the Company must advertise its coming to an end once in the newspaper the Supervisor considers most appropriate for ensuring that its coming to an end comes to the notice of the Company's creditors. The advertisement must specify the date the moratorium came to an end.

3.3.2 The Supervisor must, as soon as possible, also notify the Registrar of Companies, the Court, the Company, and any creditor of the Company of whose claim the Supervisor is aware, of the moratorium coming to an end. The notification must specify the date the moratorium came to an end.

3.4. Eligibility for moratorium

3.4.1 A Company is eligible for a moratorium under section 9 (Moratorium) of the AIFC Insolvency Regulations unless:

(a) it is an Authorised Person and:

(i) effects or carries out contracts of insurance; or

(ii) accepts deposits; or

(iii) is an Investment Intermediary; or

(iv) holds Money to which any AFSA Rules relating to the holding of client Money apply; or

(b) it is the debtor under a Security Interest of a type prescribed under the AIFC Security Rules for this paragraph; or

(c) it or any of its property is subject to the business rules of an Authorised Market Institution; or

(d) it is the subject of any kind of Insolvency Proceedings; or

(e) it has incurred any liability under an agreement of US$20 million or more; or

(f) it is a party to a capital market arrangement.

3.4.2 For subrule 3.4.1, an arrangement is a ***capital market arrangement*** if, under the arrangement:

(a) a party to the arrangement has issued securities (within the meaning given by the AIFC Security Regulations); and

(b) any of the following conditions is satisfied:

(i) a Person holds a Security Interest as nominee or agent for a Person who holds the securities;

(ii) at least one party guarantees or provides a Security Interest in relation to the performance of obligations of another party;

(iii) the arrangement involves a Future.

3.5. **Effect of moratorium**

During the period for which a moratorium is in force for a Company:

(a) no petition may be presented for the winding up of the Company; and

(b) no meeting of the Company may be called or requested, except with the consent of the Supervisor or with the leave of the Court and subject to the terms that the Court may decide; and

(c) no resolution may be passed or order made for the winding up of the Company; and

(d) no application may be made for the appointment of an Administrator for the Company, and no Administrator of the Company may be appointed; and

(e) no lessor or other Person to whom rent is payable may exercise any right of forfeiture in relation to premises let to the Company for a Failure by the Company to comply with its tenancy of the premises, except with the leave of the Court and subject to the terms that the Court may decide;

and

(f) no other steps may be taken to enforce any Security Interest in the Company's property, or to repossess goods in the Company's possession under any hire-purchase agreement, except with the leave of the Court and subject to the terms the Court may decide, and

(g) no other proceedings, and no execution or other legal process, may be commenced or continued, and no distress may be levied, against the Company or its property, except with the leave of the Court and subject to the terms that the Court may decide.

3.6. **Security Interests in moratorium**

3.6.1 If a moratorium is in force for a Company, a Secured Party under a Security Interest over substantially all of the property of the Company must not take any step to enforce the Security Interest until the moratorium has come to an end.

3.6.2 If a Security Interest is granted by a Company at a time when a moratorium is in force for the Company, the Security Interest may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the Company.

3.7. **Requirements for invoices, obtaining credit etc. in moratorium**

3.7.1 This rule applies in relation to a Company if a moratorium is in force for the Company.

3.7.2 Every invoice, order for goods, or business letter, issued by or on behalf of the Company, and on or in which the Company's name appears, must also contain the Supervisor's name and a statement that a moratorium is in force for the Company.

3.7.3 The Company must not obtain credit of US$500 or more from a Person who has not been told that a moratorium is in force for the Company.

3.7.4 The reference in subrule 3.7.3 to the Company ***obtain credit*** includes a reference to the following cases:

(a) if goods are bailed to the Company under a hire-purchase agreement, or goods are agreed to be sold to the Company under a conditional sale agreement;

(b) if the Company is paid in advance (whether or not in money) for the supply of goods or services.

3.7.5 The Company may only dispose of any of its property otherwise than in the ordinary course of business if:

(a) there are reasonable grounds for believing that the disposal will benefit the Company, and

(b) the disposal is approved by the Supervisor

3.7.6 The Company may only make a payment in relation to any debt or other liability of the Company in existence before the beginning of the moratorium if:

(a) there are reasonable grounds for believing that the payment will benefit the Company, and

(b) the payment is approved by the Supervisor.

3.7.7 Subrule 3.7.6 does not apply to a payment of any fees or costs, or to any reimbursement of expenses, expressly permitted under these Rules.

3.7.8 If any property of the Company is subject to a Security Interest, the Company may dispose of the property free of any interest of the Secured Party if the Secured Party consents or the Court gives leave.

3.7.9 Subrule 3.7.8 does not affect any right that the Secured Party may have in relation to the proceeds of the disposal of the property.

3.7.10 If any goods are in the Company's possession under a hire-purchase agreement, the Company may dispose of the goods free of any interest of the owner of the goods if the owner consents or the Court gives leave.

3.7.11 A consent or leave under subrule 3.7.8 or 3.7.10 may be given on the condition that:

(a) the net proceeds of the disposal; and

(b) if the net proceeds are less than the amount that may be agreed, or decided by the Court, to be the net amount that would be realised on a sale of the property or goods in the open market by a willing vendor—the amount necessary to make good the difference;

must be applied towards discharging the amount secured by the Security Interest or payable under the hire-purchase agreement.

3.7.12 If the condition under subrule 3.7.11 relates to 2 or more Security Interests, the condition is taken to require the proceeds and amounts mentioned in that subrule to be applied towards discharging the amounts secured by the Security Interests in the order of their priorities.

3.7.13 The Company must not enter into any transaction, or give any Security Interest, subject to the business rules of an Authorised Market Institution.

3.7.14 The fact that the Company enters into a transaction in Contravention of this rule does not:

(a) make the transaction void; or

(b) make it to any extent unenforceable by or against the Company.

PART 4: RECEIVERSHIP

4.1. Types of receivership etc.

The types of receivership and the Functions of Receivers and Administrative Receivers are as set out in section 14 (Appointment and Functions of Receivers and Administrative Receivers) of the AIFC Insolvency Regulations.

4.2. Application of Rules to Company with Administrative Receiver

These Rules apply to a Company in Administration as if:

(a) the Exercise of the Administrative Receiver's Functions in relation to the Company were the winding up of the Company; and

(b) all other necessary changes were made.

4.3. Notice of appointment etc.

4.3.1 If a Person is appointed as a Receiver or Administrative Receiver for a Company, the Person must publish once, in the newspaper the Person considers most appropriate for ensuring that it comes to the notice of the Company's creditors, a notice that includes the following information:

(a) the registered name of the Company, as at the date of the appointment, and its registered number;

(b) any other name with which the Company has been registered in the 12 months before that date;

(c) any name under which the Company has traded at any time in those 12 months, if the name is substantially different from its then registered name;

(d) the Person's name and address, and the date of the Person's appointment;

(e) the name of the Person by whom the appointment was made;

(f) the date of the instrument appointing the Person, and a brief description the Person's Functions under the instrument;

(g) if the Person is appointed as a Receiver—a brief description of the property of the Company over which the Person is appointed as a Receiver.

4.3.2 If the Company is an Authorised Person, the Person must also immediately notify the AFSA in Writing of the appointment and must not Exercise any of the Person's Functions as Receiver or Administrative Receiver unless the AFSA as given its prior Written consent to the Exercise of the Functions.

4.4. Requirement to prepare statement of affairs etc.

4.4.1 An Administrative Receiver of a Company may require a statement of the Company's affairs (the ***statement of affairs***) to be prepared and given to the Administrative Receiver by the Directors of the Company and by the other Persons that the Administrative Receiver considers should be made responsible for the statement of affairs.

4.4.2 If the Administrative Receiver decides to require the statement of affairs to be prepared, the Administrative Receiver must, by notice given to each Director and other Person mentioned in subrule 4.4.1, require them to prepare the statement of affairs, and give it to the Administrative Receiver, within the period specified in the notice.

4.4.3 The statement of affairs prepared under this rule must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs).

4.4.4 A Person making or contributing to the statement of affairs must be allowed, and paid by the Administrative Receiver out of the Administrative Receiver's receipts, any expenses incurred by the Person in doing so that the Administrative Receiver considers reasonable.

4.5. **Creditors committee**

If a creditors committee is not established under section 22(1) (Creditors committee) of the AIFC Insolvency Regulations for a Company for which an Administrative Receiver is appointed, the Administrative Receiver may appoint a creditors committee for the Company.

4.6. **Disposal of charged property**

If the Court makes an order under section 18 (Power of Administrative Receiver to dispose of charged property) of the AIFC Insolvency Regulations in relation to property of a Company that is subject to a Security Interest, the Administrative Receiver of the Company must, as soon as possible, give notice of the order to the Person who is the holder of the Security Interest if the Person was not a party to the proceeding in which the order was made.

4.7. **Receiver's duties in relation to Excluded Property etc.**

4.7.1 A Receiver or Administrative Receiver of a Company whose assets or liabilities include Excluded Property must comply with any requirements applying to the Company under the AIFC Personal Property Regulations, or any AFSA Rules, in relation to the Excluded Property.

4.7.2 Without limiting subrule 4.7.1, the Receiver or Administrative Receiver must comply with any instruction made under section 37 (Right of Transfer against insolvent Investment Intermediary) of the AIFC Personal Property Regulations.

4.8. **Abstracts of receipts and payments by Administrative Receiver**

An Administrative Receiver of a Company must prepare an abstract of all receipts and payments as Administrative Receiver, and send it to the Registrar of Companies, the Company and the Person by whom the Administrative Receiver was appointed:

(a) within 2 months after the end of the period of 12 after the date of the Administrative Receiver's appointment, and after every subsequent period of 12 months; and

(b) within 2 months after ceasing to be Administrative Receiver.

4.9. **Resignation of Receiver or Administrative Receiver**

4.9.1 A Receiver or Administrative Receiver of a Company (the ***receiver***) may resign by giving notice of the resignation in accordance with this rule.

4.9.2 The notice must be given to each of the following:

(a) the Person by whom the receiver was appointed;

(b) the Company or, if it is then in liquidation, its Liquidator;

(c) if the Company has a creditors committee—the members of the committee.

4.9.3 The notice must specify the date the resignation is to take effect. The date specified must not be earlier than 7 days after the day the notice is given to each of the Persons mentioned in subrule 4.9.2 or, if the notice is given to them on 2 or more different days, the last of those days.

PART 5: WINDING UP

5.1. Disapplication of provisions of Part 5 for Voluntary Winding Up

5.1.1 If a Company is subject to a Members Voluntary Winding Up, only the following provisions of Part 5 (Winding up) apply in relation to the winding up:

(a) rules 5.6 to 5.8;

(b) rules 5.16 to 5.30;

(c) rule 5.53.

5.1.2 If a Company is subject to a Creditors Voluntary Winding Up, the following provisions of Part 5 do not apply in relation to the winding up:

(a) rules 5.2 to 5.5;

(b) rule 5.10;

(c) rule 5.11.

5.2. Statutory demand

5.2.1 A written demand served by a creditor on a Company under section 50(1)(a) of the AIFC Insolvency Regulations is called the ***statutory demand***.

5.2.2 The statutory demand must be dated, and be signed either by the creditor personally or by a Person stating that the Person is authorised to make the demand on the creditor's behalf.

5.2.3 The statutory demand must state the amount of the Debt then due and how it arises, include an explanation of the purpose of the demand, and state that, if the demand is not complied with, proceedings may be commenced for the winding up of the Company.

5.2.4 The statutory demand must provide information about how the Debt may be paid, and give information about a Person whom the Company can contact, including an address and telephone number.

5.3. Presentation of winding up petition etc.

5.3.1 A winding up order under section 49 (Circumstances in which Company may be wound up by Court) of the AIFC Insolvency Regulations may be made by the Court on the presentation of a petition by a Person permitted to present the petition.

5.3.2 For section 51 (Application for winding up) of the AIFC Insolvency Regulations, if a Company is an Authorised Person, the AFSA may also make an application to the Court for the winding up of the Company.

5.3.3 A petition for the winding up of a Company must be filed in the Court and, if the petitioner is not the Company, must be served on the Company.

5.3.4 If the Company is an Authorised Person and the petitioner is not the AFSA, the petitioner must serve a copy of the petition on the AFSA.

5.3.5 If, to the petitioner's knowledge, an Administrative Receiver or Receiver has been appointed in relation to assets of the Company, the petitioner must serve a copy of the petition on the Administrative Receiver or Receiver.

5.3.6 If the Company intends to oppose the petition, it must notify the Court of its intention not later than 7 days before the date fixed for the hearing.

5.4. **Advertisement of petition**

Unless the Court otherwise directs, the petitioner must, not later than 7 business days after the day the petition is served on the Company, advertise the presentation of the petition in the newspaper the petitioner considers most appropriate for ensuring that the presentation of the petition comes to the notice of the Company's creditors and members.

5.5. **Notice of winding up order and appointment of Provisional Liquidator**

5.5.1 If a winding up order is made for a Company, the Court must, as soon as possible, give notice of the making of the order to the Company, the petitioner (if the Company is not the petitioner), the AFSA (if the Company is an Authorised Person and the AFSA is not the petitioner) and any other Person represented at the hearing of the petition.

5.5.2 The Court must also publish notice of the making of the order once in the newspaper the Court considers most appropriate for ensuring that the making of the order comes to the notice of the Company's creditors and members.

5.6. **Requirement to prepare statement of affairs etc.**

5.6.1 The Liquidator may require a statement of the Company's affairs (the ***statement of affairs***) to be prepared and given to the Liquidator by the Directors of the Company and by the other Persons that the Liquidator considers should be made responsible for the statement of affairs.

5.6.2 If the Liquidator decides to require the statement of affairs to be prepared, the Liquidator must, by notice given to each Director and other Person mentioned in subrule 5.6.1, require them to prepare the statement of affairs, and give it to the Liquidator, within the period specified in the notice.

5.6.3 The statement of affairs prepared under this rule must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs).

5.6.4 The Liquidator must make the statement of affairs publicly available. However, the Liquidator is not required to make the statement, or any part of it, publicly available if the Liquidator considers that the publication of the statement, or that part of it, might reduce the amount recovered in the liquidation.

5.6.5 The Liquidator may agree to authorise an allowance, payable out of the assets of the Company, towards expenses incurred in preparing the statement of affairs.

5.7. **Access of Liquidator to accounts etc.**

5.7.1 The Liquidator of a Company is entitled to demand access to, and copies of, the accounts, books and records of the Company for the period the Liquidator considers necessary.

5.7.2 If a Person is required to provide accounts to the Liquidator, the Liquidator may authorise an

allowance, payable out of the assets of the Company, towards expenses incurred by the Person in employing others to assist the Person to prepare the accounts.

5.8. **Liquidator may require further disclosure**

The Liquidator may, at any time, require any Person to provide information, in Writing, amplifying, modifying or explaining any matter contained in any statement of affairs or accounts prepared, or given to the Liquidator, (however described) under the AIFC Insolvency Regulations or these Rules.

5.9. **General rule about reporting**

5.9.1 The Court may, on the Liquidator's application, relieve the Liquidator of any duty of the Liquidator under these Rules, or authorise the Liquidator to perform the duty in a way different to the way required under these Rules.

5.9.2 In considering an application under subrule 5.9.1, the Court must have regard to the cost of carrying out the relevant duty, the amount of the assets of the Company available, and the extent of the interest of creditors or members or any particular class of them.

5.10. **First meetings of creditors and contributories**

5.10.1 If, under section 57(1) (Choice of Liquidator by Court or meetings of creditors and contributories) of the AIFC Insolvency Regulations, the Liquidator decides to call meetings of the Company's creditors and contributories to nominate a Person to be liquidator of the Company, the Liquidator must fix the Venue for each meeting. The meetings must be fixed to be held no later than 4 months after the date of the winding up order.

5.10.2 The notice to creditors must specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge their Proofs to be entitled to vote at the meeting and by which they must lodge any Proxies for the meeting. The notice to contributories must specify a date and time, not more than 4 days before the date fixed for the meeting, by which they must lodge any Proxies for the meeting.

5.10.3 Notice of the meetings must also be given by public advertisement.

5.10.4 The meetings (if any) called by the Liquidator under this rule are respectively referred to as the ***First Meeting of Creditors*** and the ***First Meeting of Contributories***.

5.10.5 If the Company is an Authorised Person, a copy of the notice to creditors must also be given to the AFSA.

5.11. **First Meeting of Creditors and First Meeting of Contributories**

5.11.1 At the First Meeting of Creditors, only the following resolutions may be taken:

(a) a resolution to appoint a named Official Liquidator to be the Liquidator or to appoint 2 or more Official Liquidators as joint Liquidators;

(b) a resolution to appoint a liquidation committee;

(c) unless liquidation committee has been appointed, a resolution specifying the terms on which the Liquidator is to be remunerated, or to defer consideration of that matter;

(d) if 2 or more Persons are appointed to act jointly as the Liquidators—a resolution specifying whether acts are to be done by both or all of them, or by only one and, if so, which one of them;

(e) a resolution authorising payment out of the assets of the Company, as an expense of the liquidation, of the cost of calling and holding the meeting;

(f) a resolution to adjourn the meeting for not longer than 3 weeks;

(g) any other resolution that the chair of the meeting considers should, for special reasons, be allowed.

5.11.2 Subrule 5.11.1 also applies, with any necessary changes, to the First Meeting of Contributories, but that meeting must not pass any resolution to the effect of the resolutions mentioned in subrule 5.11.1(c) or (e).

5.11.3 Rule 5.11.1, except paragraph (e), applies, with any necessary changes, to a meeting of creditors called under section 35 (Effect of Company's insolvency) or section 38 (Meeting of creditors) of the AIFC Insolvency Regulations.

5.12. **Report by Directors updating statement of affairs**

5.12.1 If, at any meeting, the statement of the Company's affairs presented to the meeting does not state the Company's affairs as at the date of the meeting, the Directors of the Company must cause to be made to the meeting, either by a Director or another Person with knowledge of the relevant matters, a report (whether written or oral) on any material transactions relating to the Company happening between the date of the making of the statement and that of the meeting.

5.12.2 Any report under subrule 5.12.1 must be recorded in the minutes of the meeting.

5.13. **Specific provisions about creditors meetings in liquidation**

5.13.1 This rule applies in relation to a meeting of creditors in the winding up of a Company.

5.13.2 For a resolution for the appointment of the Liquidator:

(a) if there is more than 1 Official Liquidator nominated, and one of them has a clear majority over the others together—that Official Liquidator is appointed; and

(b) in any other case—the chair of the meeting must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for a nominee.

5.13.3 The chair may at any time put to the meeting a resolution for the joint appointment of any 2 or more nominees.

5.13.4 If a resolution is proposed that affects a Person in relation to the Person's remuneration or conduct as Liquidator, or as proposed or former Liquidator, the vote of the Person, and of any partner or employee of the Person, must not be counted in the majority required for passing the resolution. This subrule applies in relation to a vote given by a Person (whether personally or by Proxy) either as creditor or member or as the holder of a Proxy for a creditor or member.

5.13.5 Subject to rule 5.14 (Admission and rejection of Proofs at creditors meetings), a Person is entitled

to vote as a creditor only if:

(a) a Proof of the creditor's Debt has been duly lodged (in a winding up by the Court, by the time and date stated in the notice of the meeting) and the claim has been admitted under that rule for the purpose of entitlement to vote; and

(b) any Proxy necessary for that entitlement has been duly lodged by the time and date stated in the notice of the meeting.

5.13.6 However, the Court may, in exceptional circumstances, by order declare that the creditors, or the creditors of any class, are entitled to vote at creditors meetings without being required to Prove their Debts.

5.13.7 If a creditor is entitled to vote at creditors meetings under subrule 5.13.6, the Court may, on the application of the Liquidator, make the consequential orders that it considers appropriate (for example, an order treating a creditor as having Proved the creditor's Debt for the purpose of permitting payment of a dividend).

5.13.8 Also, a creditor must not vote in relation to a Debt for an unliquidated amount, or a Debt with an unascertained value, unless the chair of the meeting agrees to put an estimated minimum value on the Debt for the purpose of entitlement to vote and admits the Proof for that purpose.

5.13.9 In addition, a secured creditor is entitled to vote only in relation to the balance (if any) of the creditor's Debt after deducting the value of the creditor's Security Interest as estimated by the creditor.

5.13.10 The chair of the meeting may also allow a creditor to vote even though the creditor has Failed to comply with subrule 5.13.5, if satisfied that the failure was caused by circumstances beyond the creditor's control.

5.14. **Admission and rejection of Proofs at creditors meetings**

5.14.1 At any creditors meeting for a Company, the chair of the meeting may admit or reject, all or any part of, a creditor's Proof for the purpose of the creditor's entitlement to vote.

5.14.2 Any creditor or member of the Company may appeal to the Court against a decision of the meeting chair under this rule.

5.14.3 If the chair of the creditors meeting is in doubt about whether a creditor's Proof should be admitted or rejected, the chair must mark it as objected to and allow the creditor to vote, subject to the vote being subsequently declared invalid.

5.14.4 If on an appeal a decision of the chair is reversed or varied, or a creditor's vote is declared invalid, the Court may order that another meeting be called or make any other order that it considers just. However, the Court may make an order under this subrule only if it considers that there has been unfair prejudice or material irregularity.

5.14.5 The chair of the meeting is not personally liable for costs incurred by any Person in relation to an appeal under this rule.

5.15. **Additional meeting provisions for Authorised Persons**

5.15.1 This rule applies if a Company that is an Authorised Person Goes into Liquidation or proposes to

Go into Liquidation.

5.15.2 The Directors of the Company must give notice of any meeting of the Company at which it is intended to propose a resolution for its winding up to the AFSA, and any other regulator that the AFSA may require by notice to the Company, (the ***Authorities***).

5.15.3 If a creditors meeting is called by the Liquidator, the Liquidator must give notice of the meeting to the Authorities.

5.15.4 If the Company is being wound up by the Court, the Liquidator must give notice of the First Meeting of Creditors and the First Meeting of Contributories to the Authorities.

5.15.5 If, in the winding up (whether voluntary or by the Court), a meeting of creditors or members of the Company is called for the purpose of:

(a) receiving the Liquidator's resignation; or

(b) removing the Liquidator; or

(c) appointing a new Liquidator;

the Convener of the meeting must give notice of the meeting to the Authorities.

5.15.6 If the Authorities are entitled to be given notice of a meeting under this rule, the Authorities are entitled to be represented at the meeting. If the Authorities (or any of them) are to compensate any creditor of the Company, they are entitled to exercise the creditor's vote. If the AFSA has decided to compensate a creditor for only part of the creditor's claim, that part is taken to be a separate claim and this subrule applies in relation to it.

5.16. **Proof of Debts in liquidation**

5.16.1 If a Company is being wound up, a Person claiming to be a creditor of the Company and wishing to recover the Person's Debt, in whole or part, must submit a Written claim to the Liquidator. A creditor who makes a claim is referred to as ***Proving*** the creditor's Debt, and a Document by which the creditor seeks to establish the creditor's claim is the creditor's ***Proof***. A creditor's Proof may be in any form.

5.16.2 If a Company was in Administration immediately before the commencement of its winding up, a creditor proving in the Administration is taken to have Proved in the winding up.

5.16.3 The following matters must be stated in a creditor's Proof of Debt:

(a) the creditor's name and address and, if the creditor is a Company, its company registration number or equivalent;

(b) the total amount of the creditor's claim (including any sales or value added tax) as at the date the Company Went into Liquidation;

(c) whether or not that amount includes outstanding uncapitalised interest;

(d) particulars of how and when the Debt was incurred by the Company;

(e) particulars of any Security Interest held, the date it was given, and the value that the

creditor puts on it;

(f) details of any reservation of title in relation to goods to which the Debt relates;

(g) if the Proof is not signed personally by the creditor—the name, address and authority of the Person signing the Proof.

5.16.4 The Proof must specify any Documents by reference to which the creditor's Debt can be substantiated.

5.16.5 A Person who is the Liquidator, or the Convener or chair of any meeting, may call for any Document or other evidence to be produced to the Person, if the Person considers it necessary for the purpose of substantiating the whole or any part of the claim made in the Proof.

5.16.6 A Person who is affected by a decision of the Convener or chair of a meeting under this rule may appeal to the Court against the decision.

5.17. **Particulars of creditor's claim**

5.17.1 A Person who is the Liquidator, or the Convener or chair of any meeting, in the winding up of a Company may, if the Person considers it necessary for the purpose of clarifying or substantiating the whole or any part of a claim made in a creditor's Proof, call for details of any matter mentioned in rule 5.16.3 (Proof of Debts in liquidation), or for the production to the Person of the Documents or other evidence that the Person may require.

5.17.2 Every creditor bears the cost of Proving the creditor's own Debt, including the cost of providing any Documents or evidence under subrule 5.17.1. However, costs incurred by the Liquidator in estimating the value of any Debt under rule 5.22 (Debts without a certain value) are payable out of the assets, as an expense of the liquidation.

5.17.3 A Person who is affected by a decision of the Convener or chair of a meeting under this rule may appeal to the Court against the decision.

5.18. **Liquidator must allow inspection of Proofs**

The Liquidator in the winding up of a Company must, while Proofs given to the Liquidator are in the Liquidator's possession, allow them to be inspected, at all reasonable times on any business day, by any of the following Persons:

(a) any creditor who has submitted the creditor's Proof (unless the Proof has been completely rejected for purposes of dividend or otherwise);

(b) any member of the Company;

(c) any Person acting on behalf of a Person mentioned in paragraph (a) or (b).

5.19. **Admission and rejection of Proofs for dividend**

5.19.1 A creditor's Proof in the winding up of a Company may be admitted for a dividend either for the whole amount claimed by the creditor or for part of that amount.

5.19.2 If the Liquidator rejects a Proof in whole or part, the Liquidator must, as soon as possible, give the creditor Written reasons for the rejection.

5.20. **Appeal against decision on Proof**

5.20.1 This rule applies to a decision of the Liquidator under rule 5.19 (Admission and rejection of Proofs for dividend) in the winding up of a Company to admit or reject the Proof of a creditor in whole or part (including any decision on the question of preference).

5.20.2 If the creditor is dissatisfied with the Liquidator's decision, the creditor may apply to the Court for the decision to be reversed or varied. The application must be made within 21 days after the creditor is given reasons for the decision under rule 5.19.2.

5.20.3 If a member or any other creditor of the Company is dissatisfied with the Liquidator's decision, the member or creditor may apply to the Court for the decision to be reversed or varied. The application must be made within 21 days after the day the member or creditor becomes aware of the Liquidator's decision.

5.21. **Withdrawal or variation of Proof**

A creditor's Proof in the winding up of a Company may at any time be withdrawn, or the amount claimed in the Proof varied, by agreement between the creditor and the Liquidator.

5.22. **Debts without a certain value**

5.22.1 In the winding up of a company, the Liquidator must estimate the value of any Debt that does not have a certain value because it is subject to a contingency or for any other reason. The Liquidator may revise any previous estimate to take account of any change of circumstances or information that has become available to the Liquidator.

5.22.2 The Liquidator must tell the creditor about the estimate and any revision of it.

5.22.3 If the value of a Debt is estimated under this rule or by the Court, the amount provable in the winding up for the Debt is amount of the estimate for the time being.

5.23. **Secured creditors**

5.23.1 If a secured creditor realises the secured creditor's Security Interest, the secured creditor may Prove for the balance of the Debt, after deducting the amount realised.

5.23.2 If a secured creditor voluntarily surrenders the secured creditor's Security Interest for the general benefit of creditors, the secured creditor may Prove for the whole Debt, as if it were unsecured.

5.24. **Discounts**

In the winding up of a Company, a creditor's claim must be reduced by all trade and other discounts (other than any discount for immediate, early or cash settlement) that would have been available to the Company if it were not in liquidation.

5.25. **Mutual credits and set-off**

5.25.1 This rule applies if, before a Company Goes into Liquidation, there have been mutual credits, mutual Debts or other mutual dealings between the Company and any creditor of the Company Proving or claiming to Prove for a Debt in the liquidation. However, if the Company is an Authorised Market Institution, this rule is subject to the business rules of the Authorised Market

Institution.

5.25.2 The reference in subrule 5.25.1 to ***mutual credits, mutual Debts or other mutual dealings*** does not include:

(a) any Debt of a creditor arising out of an obligation incurred when the creditor had actual notice:

(i) that a meeting of creditors had been called under section 38 (Meeting of creditors) of the AIFC Insolvency Regulations; or

(ii) that a petition for the winding up of the Company was pending; or

(b) any Debt of a creditor arising out of an obligation if:

(i) the Company was in Administration immediately before the commencement of the winding up; and

(ii) when the obligation was incurred, the creditor had actual notice that an application for the appointment of an Administrator was pending or that a Person had given notice of intention to appoint an Administrator; or

(c) any Debt of a creditor arising out of an obligation incurred while the Company was in Administration if the Company was in Administration immediately before the commencement of the winding up; or

(d) any Debt acquired by a creditor, by assignment or otherwise, under an agreement between the creditor and any other Person if the agreement was entered into:

(i) after the Company Went into Liquidation; or

(ii) when the creditor had actual notice that a meeting of creditors of the Company had been called under the AIFC Insolvency Regulations; or

(iii) when the creditor had actual notice that a winding up petition for the Company was pending; or

(iv) if the Company was in Administration immediately before the commencement of the winding up—when the creditor had actual notice that an application for an order to appoint an Administrator was pending or a Person had given notice of intention to appoint an Administrator; or

(v) during a time when the Company was in Administration if the Company was in Administration immediately before the commencement of the winding up; or

(e) any credit, Debt or dealing in Excluded Property.

5.25.3 An account must be taken of what is due from each party to the other in relation to the mutual dealings, and the amounts due from one party must be set off against the amounts due from the other.

5.25.4 An amount is taken to be due to or from the Company for subrule 5.25.3 whether:

(a) it is payable at present or in the future; or

(b) the obligation under which it is payable is certain or contingent; or

(c) its amount is fixed or liquidated, or is estimated under rule 5.22, or can be ascertained by fixed rules or as a matter of opinion.

5.25.5 For subrule 5.24.3, credits and Debts arising under business rules to which section 38 (Insolvency of clearing and settlement intermediaries or Authorised Market Institutions) of the AIFC Personal Property Regulations applies must be determined in accordance with the business rules, despite any provision of these Rules to the contrary.

5.25.6 Rule 5.22 (Debts without a certain value) applies for this rule to any obligation to or from the Company that does not have a certain value because it is subject to a contingency or for any other reason.

5.25.7 Rules 5.26 (Debts in foreign currency), 5.27 (Payments of periodic nature) and 5.28 (Interest on Debts) apply for this rule in relation to any amounts due to the Company:

(a) that are payable in a currency other than US Dollars; or

(b) that are of a periodical nature; or

(c) that bear interest.

5.25.8 Rule 5.29 (Debts payable at future times) applies for this rule to any amount due to or from the Company that is payable in the future.

5.25.9 Only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively, the balance (if any) owed to the Company must be paid to the Liquidator as part of the assets unless all or part of the balance results from a contingent or prospective Debt owed by the creditor and, if so, the balance (or the part of it that results from the contingent or prospective Debt) must be paid if and when the Debt becomes due and payable.

5.25.10 In this rule:

obligation means an obligation however arising, whether under an agreement, rule of law or otherwise.

5.26. **Debts in foreign currency**

5.26.1 For the purpose of Proving a Debt incurred or payable in a currency other than United States Dollars, the amount of the Debt must be converted into United States Dollars at the official exchange rate on the day the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, on the day the Company entered Administration.

5.26.2 In this rule:

official exchange rate, for a day, means the middle exchange rate on the New York Foreign Exchange Market at the close of business as published for that day or, if there is not a published rate for that day, the rate that the Court determines.

5.27. **Payments of periodical nature**

5.27.1 For rent and other payments of a periodical nature, a creditor of the Company may Prove for any amounts due and unpaid up to the day the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, up to the day the Company entered Administration.

5.27.2 If on that day any payment was accruing due, the creditor may Prove for so much of the payment as would have fallen due on that day, if accruing from day-to-day.

5.28. **Interest on Debts**

If a Debt Proved in the liquidation bears interest, the interest is provable as part of the Debt except so far as it is payable in relation to any period after the day that the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, any period after the day the Company entered Administration.

5.29. **Debts payable at future times**

Subject to rule 5.45.8 (Distributing assets), a creditor may Prove for a Debt if payment of the Debt was not yet due on the day the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, on the day the Company entered Administration.

5.30. **Secured creditors**

5.30.1 A secured creditor may, with the agreement of the Liquidator or the leave of the Court, at any time alter the value that the creditor has put on creditor's Security Interest in the creditor's Proof.

5.30.2 If a secured creditor omits to disclose the creditor's Security Interest in the creditor's Proof, the secured creditor must surrender the Security Interest for the general benefit of creditors, unless the Court, on application by the creditor, relieves the creditor from the effect of this subrule on the ground that the omission was inadvertent or because of an honest mistake. If the Court grants relief, it may require or allow the creditor's Proof to be amended on the terms the Court considers just.

5.30.3 The Liquidator may at any time give notice to a creditor whose Debt is secured that the Liquidator proposes, at the end of 28 days after the date of the notice, to redeem the Security Interest at the value put on it in the creditor's Proof.

5.30.4 If a creditor is given a notice under subrule 5.30.3, the creditor has 21 days (or, if the Liquidator allows a longer period, the longer period) to revalue the creditor's Security Interest. If the creditor revalues the Security Interest, the Liquidator may only redeem at the new value. If the Liquidator redeems the Security Interest, the cost of transferring it is payable out of the assets.

5.30.5 A secured creditor may at any time, by notice given to the Liquidator, ask the Liquidator to elect whether the Liquidator will or will not exercise the Liquidator's power to redeem the creditor's Security Interest at the value then placed on it. If the secured creditor gives notice to the Liquidator, the Liquidator has 6 months after the day the Liquidator is given the notice in which to exercise the power or decide not to exercise it.

5.30.6 If the Liquidator is dissatisfied with the value that a secured creditor has put on the creditor's Security Interest (whether in the creditor's Proof or by revaluation under subrule 5.30.4), the Liquidator may require any property to which the Security Interest applies to be offered for sale. The terms of sale must be as agreed or as the Court directs. However, if the sale is by auction, the

Liquidator on behalf of the Company, and the creditor on the creditor's own behalf, may appear and bid.

5.30.7 If a creditor who has valued the creditor's Security Interest subsequently realises it (whether or not at the instance of the Liquidator):

(a) the net amount realised must be substituted for the value previously put by the creditor on the Security Interest; and

(b) that amount must be treated in all respects as an amended valuation made by the creditor.

5.31. **Appointment of Liquidator by creditors or members**

5.31.1 This rule applies if a Person is appointed as Liquidator of a Company by a meeting of creditors or by a meeting of members.

5.31.2 The chair of the meeting must certify the appointment. The date of the certification must be endorsed on the certificate.

5.31.3 The Liquidator's appointment takes effect on the date the appointment is certified. The chair of the meeting (if the chair is not the Liquidator) must give the certificate to the Liquidator and must, in any event, file a copy of it in the Court.

5.31.4 If the Liquidator is appointed by a creditors or members meeting, or by the Company in general meeting, the Liquidator must, on receiving the Liquidator's certificate of appointment, give notice of the appointment in the newspaper that the Liquidator most appropriate for ensuring that it comes to the notice of the Company's creditors and members.

5.31.5 The expense of giving notice under this rule must be borne initially by the Liquidator. But the Liquidator is entitled to be reimbursed out of the assets, as an expense of the liquidation.

5.31.6 In a winding up by the Court, the Liquidator must notify the Registrar of Companies of the Liquidator's appointment.

5.32. **Final meeting of creditors before dissolution**

5.32.1 This rule applies to the meeting of creditors called by the Liquidator of a Company under section 43 (Final meetings before dissolution) of the AIFC Insolvency Regulations.

5.32.2 The Liquidator's account of the winding up given to the meeting must include a summary of the Liquidator's receipts and payments and a statement of the amounts paid to unsecured creditors.

5.32.3 At the meeting, the creditors may question the Liquidator about any matter dealt with in the Liquidator's account, and may resolve against the Liquidator being released.

5.32.4 After the meeting has been held, the Liquidator must give notice to the Court that the meeting has been held. The notice must state whether the meeting resolved against Liquidator being released, and must be accompanied by a copy of the account given to the meeting.

5.32.5 If the creditors did not resolve at the meeting against the Liquidator being released, the Liquidator is released when the notice under subrule 5.32.4 is filed in the Court. If the creditors resolved against the Liquidator being released, the Liquidator must obtain a release from the Court.

5.32.6 If there was not a quorum present at the meeting, the Liquidator must report to the Court that the meeting was called in accordance with these Rules, but a quorum was not present. On filing of the report in the Court, the meeting is taken to have been held, the creditors are taken not to have resolved at the meeting against the Liquidator being released and the Liquidator is released.

5.33. **Liquidator's remuneration**

5.33.1 The Liquidator in the winding up of a Company is entitled to receive remuneration for the Liquidator's services as Liquidator.

5.33.2 The remuneration must be fixed either:

(a) as a percentage of the value of the assets that are realised or the amounts distributed, or as a combination of both; or

(b) by reference to the time properly given by the Liquidator and the Liquidator's employees in attending to matters arising in the winding up.

5.33.3 It is for the liquidation committee (if there is one) or a creditors meeting (if there is not a liquidation committee) to determine whether the remuneration is to be fixed under subrule 5.33.2(a) or (b) and, if it is to be fixed under subrule 5.33.2(a), to determine any percentage to be applied for subrule 5.33.2(a).

5.33.4 If no remuneration is fixed, the Liquidator is entitled to receive remuneration for the Liquidator's services as Liquidator of an amount equal to 5% of the value of the assets realised plus 2.5% of the amounts distributed.

5.34. **Orders by Court about Liquidator's remuneration**

5.34.1 If the Liquidator in the winding up of a Company considers that the remuneration to which the Liquidator is entitled under rule 5.33.4 (Liquidator's remuneration) is insufficient, the Liquidator may apply to the Court for an order increasing its amount or rate.

5.34.2 Any creditor of the Company may, with the agreement of any other creditor or creditors who together hold at least 25% of the total value of the assets of the Company, apply to the Court for an order that the Liquidator's remuneration be reduced on the ground that it is, in all the circumstances, excessive.

5.34.3 If the Court considers the Liquidator's remuneration should be reduced on the ground mentioned in subrule 5.34.2, it must make an order fixing the remuneration at a reduced amount or rate.

5.34.4 Unless the Court orders otherwise, the costs of the application under subrule 5.34.2 must be paid by the applicant, and are not payable out of the assets.

5.35. **Power of Court to set aside certain transactions**

5.35.1 If the Liquidator of a Company enters into a transaction with a Person who is an associate of the Liquidator, the Court may, on the application of any Person interested, set the transaction aside and order the Liquidator to compensate the Company for any loss suffered as a result of it.

5.35.2 Subrule 5.35.1 does not apply to a transaction if:

(a) the transaction was entered into with the prior consent of the Court; or

(b) it is shown to the Court's satisfaction that the transaction was for value, and that it was entered into by the Liquidator without knowing, or having any reason to suspect, that the Person the transaction was with an associate of the Liquidator.

5.35.3 This rule does not affect any rule of law or equity in relation to the Liquidator's dealings with trust property or the fiduciary obligations of any Person.

5.36. **Rule against solicitation**

5.36.1 If the Court is satisfied that any improper solicitation has been used by or on behalf of the Liquidator of a Company in obtaining Proxies for, or otherwise bringing about, the Liquidator's appointment, it may order that no remuneration out of the assets be allowed to any Person by whom, or on whose behalf, the solicitation was exercised.

5.36.2 An order of the Court under this rule overrides any resolution of the liquidation committee or the creditors or any other provision of these Rules relating to the Liquidator's remuneration.

5.37. **Obligations of Liquidator to liquidation committee**

5.37.1 It is the duty of the Liquidator of a Company to report to the liquidation committee on all matters that appear to the Liquidator to be, or that the committee has indicated to the Liquidator as being, of concern to the members of the committee in relation to the winding up.

5.37.2 The Liquidator need not comply with any request by the committee for information if it appears to the Liquidator:

(a) that the request is frivolous or unreasonable; or

(b) that the cost of complying with request would be excessive, having regard to the relative importance of the information; or

(c) that there are not sufficient assets to enable the Liquidator to comply with the request.

5.37.3 If the liquidation committee is appointed more than 28 days after the day the Liquidator is appointed, the Liquidator must report to the committee, in summary form, about the action the Liquidator has taken since the Liquidator's appointment, and must answer all questions that the committee puts to the Liquidator about the Liquidator's conduct of the winding up.

5.37.4 If an individual becomes a member of the liquidation committee at any time after it is established, the individual is not entitled to require a report by the Liquidator, otherwise than in summary form, of any matters arising before the individual's appointment.

5.37.5 This rule does not prevent the liquidation committee, or any member of it, from being entitled to have access to the Liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.

5.38. **Meetings of liquidation committee etc.**

5.38.1 Subject to this rule, meetings of the liquidation committee must be held when and where the Liquidator decides.

5.38.2 The Liquidator must call a first meeting of the committee to take place within 3 months after the

day of the Liquidator's appointment or the committee's establishment (whichever is the later). After the first meeting of the committee, the Liquidator must call a meeting:

(a) if requested by a Creditor Member or the representative of a Creditor Member; and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

5.38.3 A meeting called because of a request under subrule 5.38.2(a) must be called for a date not later than 21 days after the day Liquidator receives the request.

5.38.4 The Liquidator must give 7 days notice of the Venue of a meeting to every member of the committee (or the member's representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

5.38.5 Waiver may be indicated either at or before the meeting.

5.38.6 The chair of any meeting of the committee must be the Liquidator or a Person nominated in Writing by the Liquidator.

5.38.7 A Person nominated by the Liquidator must be either:

(a) an Official Liquidator; or

(b) an employee of the Liquidator or the Liquidator's firm who is experienced in Insolvency Proceedings.

5.38.8 A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 Creditor Members are present or represented.

5.38.9 A member of the committee may, in relation to the business of the committee, be represented by another individual authorised by the member for that purpose.

5.38.10 However, a committee member may not be authorised to represent another committee member, and an individual may not be authorised to represent 2 or more committee members at the same time.

5.38.11 The chair at any meeting of the committee may call on an individual claiming to represent a member to produce the individual's letter of authority, and may exclude the individual if it appears that the authority is deficient.

5.38.12 If a member's representative signs a Document on the member's behalf, the fact that the representative signs on the member's behalf must be stated below the representative's signature.

5.38.13 A member of the committee may resign by notice given to the Liquidator.

5.38.14 A member of the committee automatically ceases to be a member if:

(a) the member becomes bankrupt; or

(b) the member is not present or represented at 3 consecutive meetings of the committee (unless at the third of those meetings it is resolved that this paragraph is not to apply to the member in relation to some or all of those meetings).

5.38.15 A Creditor Member of the committee also automatically ceases to be a member if the member ceases to be, or is found never to have been, a creditor or, if the member is an individual authorised to act on behalf of another Person who is not an individual, the other Person ceases to be, or is found never to have been, a creditor.

5.38.16 A Creditor Member of the committee may be removed by a resolution passed at a meeting of creditors. A member of the committee appointed by the Company may be removed by a resolution passed at a meeting of the Company. In either case, at least 14 days notice must be given of the resolution.

5.39. **Creditor Member vacancy on liquidation committee**

5.39.1 This rule applies if a member of the liquidation committee appointed by the creditors, or under this rule, ceases to be a member of the committee.

5.39.2 The Liquidator may appoint any individual to fill the vacancy, if a majority of the Creditor Members agree to the appointment, and the individual consents to act.

5.39.3 Alternatively, a meeting of creditors may resolve that an individual be appointed (with the individual's consent) to fill the vacancy. At least 14 days notice must have been given of the resolution to make the appointment, but the individual need not have been named in the notice.

5.39.4 However, if there are, for the time being, at least 3 Creditor Members of the committee appointed, the vacancy need not be filled if the Liquidator and a majority of the remaining Creditor Members agree.

5.40. **Liquidation committee: voting rights and resolutions**

5.40.1 At any meeting of the liquidation committee in the winding up of a Company, each member of the committee (whether present personally or by the member's representative) has 1 vote.

5.40.2 A resolution is passed if a majority of the Creditor Members present or represented vote in favour of it.

5.40.3 The votes of any members appointed by the Company do not count towards the number required for passing a resolution, but the way in which they vote on any resolution must be recorded.

5.40.4 Every resolution passed must be recorded in Writing, either separately or as part of the minutes of the meeting. The record must be signed by the chair of the meeting and kept with the records of the liquidation.

5.41. **Liquidator's reports to liquidation committee**

5.41.1 The Liquidator in the winding up of a Company must, as and when directed by the liquidation committee (but not more often than once in any 2 month period), send a written report to every member of the committee setting out the position generally of the progress of the winding up, and matters arising in connection with it to which the Liquidator considers the committee's attention should be drawn.

5.41.2 In the absence of directions by the liquidation committee, the Liquidator must send the members of the committee a report under subrule 5.41.1 not less often than once in every 6 month period.

5.42. **Expenses of members of liquidation committee**

The Liquidator in the winding up of a Company must reimburse, out of the assets of the Company in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in relation to their attendance at committee meetings or otherwise on committee business.

5.43. **Formal defects in relation to liquidation committee**

The acts of the liquidation committee established in the winding up of a Company are valid despite any defect in the appointment, election or qualifications of any member of the committee or any member's representative or in the formalities of its establishment.

5.44. **General duties of Liquidator**

5.44.1 Any duties imposed on the Court by the AIFC Insolvency Regulations in relation to the collection of a Company's assets in its winding up, and their application in discharge of its Liabilities, are discharged by the Liquidator as an officer of the Court subject to its control.

5.44.2 For the purpose of acquiring and retaining possession of the Company's property (other than any Excluded Property), the Liquidator has the same powers as a Receiver appointed by the Court, and the Court may on the Liquidator's application enforce the acquisition or retention accordingly.

5.44.3 If the Company's assets or liabilities include Excluded Property, the Liquidator must comply with any requirements applying to the Company under the AIFC Personal Property Regulations, or any AFSA Rules, in relation to the Excluded Property.

5.44.4 Without limiting subrule 5.44.3, the Liquidator must comply with any instruction made under section 37 (Right of Transfer against insolvent Investment Intermediary) of the AIFC Personal Property Regulations.

5.45. **Distributing assets**

5.45.1 Whenever the Liquidator has sufficient funds for the purpose, the Liquidator must, subject to the retention of the amounts that may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in relation to the Debts that they have respectively Proved.

5.45.2 The Liquidator must give notice of the Liquidator's intention to declare and distribute a dividend.

5.45.3 If the Liquidator declares a dividend, the Liquidator must give notice of it to the creditors. The notice must state how the dividend is proposed to be distributed. The notice must contain sufficient particulars in relation to the Company, and its assets and affairs, to enable the creditors to understand the calculation of the amount of the dividend and the manner of its distribution.

5.45.4 In the calculation and distribution of a dividend, the Liquidator must make provision for:

(a) any Debts that appear to the Liquidator to be due to Persons who, because of the distance of their place of residence, may not have had sufficient time to submit and establish their Proofs; and

(b) any Debts that are the subject of claims that have not yet been determined; and

(c) disputed Proofs and claims.

5.45.5 If a creditor has not Proved the creditor's Debt before the declaration of any dividend, the creditor is not entitled to disturb, because the creditor has not participated in it, the distribution of that dividend or any other dividend declared before the creditor's Debt is Proved. However:

(a) when the creditor has Proved the Debt, the creditor is entitled to be paid, out of any amount for the time being available for the payment of any further dividend, any dividend or dividends that the creditor has failed to receive; and

(b) any dividend or dividends payable under paragraph (a) must be paid before any amount available for payment of dividends is applied to the payment of any further dividend.

5.45.6 An action may not be brought against the Liquidator for a dividend. However, if the Liquidator refuses to pay a dividend that the Liquidator has declared, the Court may order the Liquidator to pay it and also to pay, out of the Liquidator's own money:

(a) interest on the dividend, at the rate payable on judgement debts, from when it was withheld; and

(b) the costs of the proceeding in which the order to pay is made.

5.45.7 Without affecting the provisions of the AIFC Insolvency Regulations about disclaimer, the Liquidator may, with the permission of the liquidation committee, divide any property (other than Excluded Property) in its existing form among the Company's creditors, according to its estimated value, if the property cannot be readily or advantageously sold because of its peculiar nature or other special circumstances.

5.45.8 If a creditor has Proved for a Debt that is not due at the date of the declaration of a dividend, the creditor is entitled to a dividend equally with other creditors, but for the purpose of dividend (and no other purpose), the amount of the creditor's admitted Proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in relation to the creditor's admitted Proof) must be reduced to the net present value of the amount due to the creditor assessed as at the relevant date.

5.45.9 In subrule 5.45.8:

relevant date, in relation to the Company, means:

(a) if the Company was not in Administration immediately before the commencement of the winding up—the date the Company Went into Liquidation or

(b) if the company was in Administration immediately before the commencement of the winding up—the date the Company entered Administration.

5.46. **Debts of Company to rank equally**

5.46.1 Debts other than preferential Debts rank equally between themselves in the winding up of a Company and, after the preferential Debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

5.46.2 Subrule 5.46.1 applies whether or not the Company is Unable to Pay its Debts.

5.47. **Final distribution**

5.47.1 When the Liquidator has realised all the Company's assets or so much of them as can, in the Liquidator's opinion, be realised without needlessly protracting the liquidation, the Liquidator must give notice either:

(a) of the Liquidator's intention to declare a final dividend; or

(b) that no dividend, or further dividend, will be declared.

5.47.2 The notice must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs) that are required to be included a statement of a Company's affairs and must require claims against the assets to be established by a date specified in the notice.

5.47.3 After that date, the Liquidator must:

(a) defray any outstanding expenses of the winding up out of the assets; and

(b) if the Liquidator intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any Person in relation to a Debt not already Proved.

5.47.4 The Court may, on the application of any Person, postpone the date specified in the notice.

5.47.5 A final distribution must not be made until all Excluded Property has been divested by the Company.

5.48. **Disclaiming onerous property**

5.48.1 A notice given by the Liquidator of a Company disclaiming onerous property under section 67 (Power to disclaim onerous property) of the AIFC Insolvency Regulations must contain sufficient particulars of the property to enable it to be easily identified.

5.48.2 The notice must be filed in the Court.

5.48.3 Within 7 days after the day the notice is filed in the Court, the Liquidator must comply with subrules 5.48.4 to 5.48.6.

5.48.4 If the property disclaimed is of leasehold property, the Liquidator must give a copy of the notice to every Person who, to the Liquidator's knowledge, claims under the Company as sub-lessee or Secured Party for a Security Interest.

5.48.5 The Liquidator must in any case give a copy of the notice to every Person who, to the Liquidator's knowledge:

(a) claims an interest in the disclaimed property; or

(b) is under any liability in relation to the property that is not discharged by the disclaimer.

5.48.6 If the disclaimer is of an unprofitable contract, the Liquidator must give a copy of the notice to every Person who, to the Liquidator's knowledge, is a party to the contract or has an interest under it.

5.48.7 If subsequently it comes to the Liquidator's knowledge that a Person has an interest in the disclaimed property that would have entitled the Person to have been given a copy of the notice

under subrule 5.48.4 or 5.48.5, the Liquidator must, as soon as possible, give a copy of the notice to the Person. However, the Liquidator need not give a copy of the notice to the Person if:

(a) the Liquidator is satisfied that the Person has already been made aware of the disclaimer and its date; or

(b) the Court, on the Liquidator's application, orders that the Liquidator need not give a copy of the notice to the Person.

5.48.8 The Liquidator may also, at any time, give notice of the disclaimer to any Person who in the Liquidator's opinion ought, in the public interest or otherwise, to be informed of it.

5.48.9 If, for property that the Liquidator has the right to disclaim, it appears to the Liquidator that a Person claims, or may claim, to have an interest in the property, the Liquidator may, by notice given to the Person, require the Person to declare, by notice given to the Liquidator within 14 days after the day the Person is given the notice, whether the Person claims any interest in the property and, if so, the nature and extent of it. If the Person Fails to comply with the notice, the Liquidator is entitled to assume that the Person does not have an interest in the property that will prevent or impede its disclaimer.

5.49. **Contributories**

5.49.1 Subject to this rule, the Liquidator of a Company must, as soon as practicable after the Liquidator's appointment, settle a list of the Company's contributories.

5.49.2 The Liquidator may make any call that may be outstanding in relation to any obligations owed by contributories and may, with the Court's approval, rectify the Company's Register of Shareholders.

5.49.3 The Liquidator must include in the list of contributories every member and other Person who is liable to make a contribution to the Company's assets because of an order of the Court under section 79(c) (Remedies by Court to protect assets) of the AIFC Insolvency Regulations. The Liquidator's duties under this rule are performed by the Liquidator as an officer of the Court subject to the Court's control.

5.49.4 The list must identify:

(a) the several classes of the Company's shares (if there is more than 1 class); and

(b) the several classes of members; and

(c) any contributories who are not members.

5.49.5 Having settled the list, the Liquidator must, as soon as possible, give notice to every Person included in the list that the list has been settled. The notice given to each Person must state:

(a) in what character, and for what reason, the Person is included in the list; and

(b) the amounts due from the Person; and

(c) that the Person's inclusion in the list may result in the unpaid capital being called; and

(d) that, if the Person objects to any entry in, or omission from, the list, the Person should inform the Liquidator in Writing within 21 days after the day the Person is given the

notice.

5.49.6 If the Liquidator is given an objection by a Person under subrule 5.49.5(d), the Liquidator must within, 14 days after the day the Liquidator is given the objection, give the Person notice either:

(a) that the Liquidator has amended the list (specifying the amendment); or

(b) that the Liquidator considers that the objection is not well-founded and has declined to amend the list.

5.49.7 If a Person objects to any entry in, or exclusion from, the list of contributories as settled by the Liquidator and, despite notice by the Liquidator declining to amend the list, maintains the objection, the Person may apply to the Court for an order removing the entry to which the Person objects or otherwise amending the list. The application must be made within 21 days after the day the Person is given the Liquidator's notice under subrule 5.49.6.

5.49.8 Subject to this rule, the Liquidator may from time to time vary or add to the list of contributories as previously settled by the Liquidator.

5.49.9 The Liquidator is not personally liable for any costs incurred by a Person in relation to an application to set aside or vary an act or decision of the Liquidator in settling the list of contributories, or varying or adding to the list, and is only liable as Liquidator if the Court makes an order to that effect.

5.49.10 The powers given to the Liquidator under the AIFC Insolvency Regulations in relation to the making of calls on contributories are exercisable by the Liquidator as an officer of the Court subject to the Court's control.

5.49.11 If the Liquidator proposes to make a call on contributories, and there is a liquidation committee, the Liquidator may call a meeting of the committee for the purpose of obtaining its approval.

5.49.12 Notice of a call on contributories must be given to each of the contributories, and must specify:

(a) the amount or balance due from the contributory in relation to it; and

(b) whether the call is made with the approval of the Court or the liquidation committee.

5.49.13 Payment of the amount or balance due from any contributory may be enforced by order of the Court.

5.50. **General rule about priority**

The expenses of the liquidation of a Company are payable out of the assets in the following order of priority:

(a) expenses or costs that are properly chargeable or incurred by the Liquidator in preserving, realising or getting in any of the assets of the Company or otherwise relating to the conduct of any legal proceedings that the Liquidator has power to bring or defend, whether in the Liquidator's own name or the name of the Company;

(b) any other expenses incurred or disbursements made by the Liquidator or under the Liquidator's authority, including expenses incurred or disbursement made in carrying on the business of the Company;

(c) the fees payable to the Court or to any official body in relation to the proceedings;

(d) any repayable deposit lodged under these Rules;

(e) the cost of any Security Interest provided by a Provisional Liquidator or Liquidator in accordance with the AIFC Insolvency Regulations or these Rules;

(f) the remuneration of the Provisional Liquidator (if any);

(g) any deposit lodged on an application for the appointment of a Provisional Liquidator;

(h) the costs of the petitioner and of any Person appearing on the petition whose costs are allowed by the Court;

(i) any amount payable to a Person employed to assist in the preparation of a statement of the Company's affairs or of accounts;

(j) any allowance made, by order of the Court, towards costs on an application for release from the obligation to prepare and provide a statement of the Company's affairs or for an extension of time for preparing and providing a statement of the Company's affairs;

(k) any necessary disbursements by the Liquidator in the course of the Liquidator's administration (including any expenses incurred by members of the liquidation committee or their representatives and allowed by the Liquidator, but not including any payment of tax in circumstances mentioned in paragraph (n));

(l) the remuneration and allowances of any Person who has been employed by the Liquidator to perform any services for the Company, as required or authorised under the AIFC Insolvency Regulations or these Rules;

(m) the remuneration of the Liquidator;

(n) the amount of any tax on chargeable gains accruing on the realisation of any asset of the Company (without regard to whether the realisation is effected by the Liquidator, a secured creditor, or a receiver or manager appointed to deal with a Security Interest);

(o) any other expenses properly chargeable by the Liquidator in Exercising the Liquidator's Functions in the liquidation.

5.51. **Priority for winding up commencing as Voluntary Winding Up**

If the winding up of a Company by the Court follows immediately on a Voluntary Winding Up (whether a Creditors Voluntary Winding Up or a Members Voluntary Winding Up) of the Company, the remuneration of the Liquidator in the Voluntary Winding Up, and costs and expenses of the Voluntary Winding Up, allowed by the Court rank in priority with the expenses mentioned in rule 5.50(a) (General rule about priority).

5.52. **Saving for powers of the Court**

5.52.1 In a winding up by the Court, the priorities provided by rule 5.50 (General rule about priority) are subject to the power of the Court to make orders under section 70 (Reference of questions to Court) of the AIFC Insolvency Regulations, if the assets are insufficient to satisfy the Liabilities.

5.52.2 These Rules do not apply to or affect the power of the Court, in proceedings by or against the Company, to order costs to be paid by the Company or the Liquidator. These Rules also do not affect the rights of any Person to whom costs are ordered to be paid by the Company or the Liquidator.

5.53. **Confidentiality of Documents**

5.53.1 The Responsible Insolvency Practitioner in any Insolvency Proceedings in relation to a Company may refuse to allow a Person to inspect a Document forming part of the records of the Insolvency Proceedings, even though the Person would otherwise be entitled to inspect the Document, if the Insolvency Practitioner considers that the Document:

(a) should be treated as confidential; or

(b) is of such a nature that its disclosure would be unreasonably injurious to the interests of the members or the creditors of the Company in its winding up.

5.53.2 Without limiting subrule 5.53.1, the Responsible Insolvency Practitioner may, under that subrule, refuse to allow the members of a liquidation committee or creditors committee to inspect a Document.

5.53.3 If the Responsible Insolvency Practitioner refuses to allow a Person to inspect a Document under subrule 5.53.1, the Person may apply to the Court for an order allowing the Person inspect the Document. The Court may make the orders on the application that it considers just.

PART 6: REGISTRATION OF INSOLVENCY PRACTITIONERS AND OFFICIAL LIQUIDATORS

6.1. Members of recognised professional bodies

Any Person who is a member of a professional body recognised by the AFSA for the purpose is qualified to be registered as an insolvency practitioner or official liquidator, as the case may be, under the AIFC Insolvency Regulations.

6.2. Individual recognition by Court

The Court may, on the application of a Person, make an order to the effect that the Person is qualified to be registered an insolvency practitioner or official liquidator (or both).

PART 7: FINANCIAL MARKETS

7.1. Business rules of Authorised Market Institutions

7.1.1 Despite anything in these Rules, in any Insolvency Proceedings, to the extent that a claim:

(a) is to an Investment Entitlement subject to the control of an Authorised Market Institution; and

(b) is subject of a provision of the business rules of the Authorised Market Institution relating to the finality of acquisitions or dispositions effected under the business rules;

the claim must be decided in accordance with the provision.

7.1.2 In any Insolvency Proceedings, a transaction made by, or claim by or against, a Person under a provision mentioned in subrule 7.1.1 is not subject to any provision of these Rules reversing, voiding, disclaiming or staying, enabling or empowering the reversal, voiding, disclaimer or staying of relating to, or imposing any other requirement on, such a transaction or claim.

7.2. Eligible Security Interests

7.2.1 In this rule:

eligible Security Interest means a Security Interest granted:

(a) by a Person other than an individual; and

(b) to a Secured Party that is an Investment Intermediary (including, to remove any doubt, an Authorised Market Institution).

financial collateral means financial assets held in an Investment Account, or Money, if the financial assets or Money secures an eligible Security Interest.

7.2.2 An eligible Security Interest in financial collateral may be enforced despite any provision of these Rules reversing, voiding, disclaiming or staying, enabling or empowering the reversal, voiding, disclaimer or staying of, or imposing any other requirement on, the enforcement of Security Interests, if the eligible Security Interest attached to the financial collateral before the commencement of insolvency proceedings (whether within the AIFC or otherwise) of the debtor.

PART 8: MISCELLANEOUS

8.1. Claims provable as Debts

In any Insolvency Proceedings in relation to a Company, all claims by creditors (other than claims in relation to Excluded Property) are provable as Debts against the Company whether they are present or future, certain or contingent, ascertained or sounding only in damages.

8.2. Conduct of meetings generally

8.2.1 If the AIFC Insolvency Regulations or these Rules require or permit a meeting of creditors or members or contributories to be held, the provisions of Schedule 1 apply in relation to the meeting.

8.2.2 In the application of Schedule 1 to a meeting of contributories, that Schedule has effect as if a reference to a meeting of members included a reference to a meeting of contributories, a reference to a member included a reference to a contributory, and all other necessary changes were made.

8.2.3 If the AIFC Insolvency Regulations or these Rules require or permit a committee of creditors to be established, the provisions of Schedule 2 apply in relation to the committee.

8.2.4 If a provision of these Rules (other than a provision of Schedule 1 or Schedule 2) is inconsistent with a provision of Schedule 1 or Schedule 2, the first provision prevails to the extent of the inconsistency, but the provisions must not be treated as inconsistent merely because the provisions deal with the same matter if the second provision can both be obeyed without contravening the first provision.

8.3. Provisions relating to Administrators appointed by Court

8.3.1 If the Court appoints an Administrator for a Company under the AIFC Insolvency Regulations, the appointment takes effect from the date specified in the Court's order.

8.3.2 The Administrator must, within 28 days after the day of the Administrator's appointment, give notice of the appointment to all creditors and members of the Company of whom the Administrator is aware. Alternatively, if the Court allows, the Administrator may advertise the appointment in accordance with the Court's directions.

8.4. Handover of assets to new Administrator

8.4.1 If an Administrator of a Company intends to vacate office, whether by resignation or otherwise, the Administrator must give notice of the Administrator's intention to the Court and to all relevant parties.

8.4.2 If any property (or any relevant property) of the Company has not been realised, applied, distributed or otherwise fully dealt with in the Administrator's administration, the notice must include details of the nature of the property, its value (or the fact that it has no value), its location, any action taken by the Administrator to deal with the property or any reason for not dealing with it, and the current position in relation to it.

8.4.3 If a Person who is an Administrator of a Company ceases to be an Administrator of the Company, the Person must, as soon as possible, deliver up to the Person's successor as Administrator the assets of the Company held by the Person (after deducting any expenses properly incurred and distributions made). The Person must also deliver up to the successor:

(a) the records of the Person's administration, including any correspondence, Proofs and other related papers; and

(b) the Company's books, papers and other records.

8.4.4 If the Liquidator of a Company vacates office after the final meeting of creditors, the Liquidator must deliver up to the Court the Company's books, papers and other records that have not already been disposed of in the course of the liquidation.

8.4.5 If an Administrator (***A2***) of a Company is appointed in succession to another Administrator (***A1***) (including a Provisional Liquidator), A2 must, on taking possession of the Company's assets, discharge any balance owing to A1 on account of:

(a) expenses properly incurred by A1 and payable under the AIFC Insolvency Regulations or these Rules; and

(b) any advances made by A1 in relation to the assets, together with interest on the advances as may be appropriate.

Alternatively, A2 may (before taking office) give A1 a written undertaking to discharge any balance out of the first realisation of assets.

8.4.6 A1 has a Security Interest in the Company's assets in relation to any amounts due to A1 under subrule 8.4.5. But, if A2 realises assets to pay the amounts, A1's Security Interest does not apply to amounts deductible by A2 from the proceeds of realisation for expenses properly incurred in realising the assets.

8.4.7 A2 must, from time to time out of the proceeds of realisation of Company property, discharge all guarantees properly given by A1 for the benefit of the Company.

8.4.8 A1 must give A2 all information relating to the affairs of the Company, and the course of A1's administration, as A1 considers to be reasonably necessary for the effective discharge of A2's duties as Administrator.

8.5. **Proxies**

8.5.1 For these Rules, a ***Proxy*** is an authority given by a Person (the ***principal***) to another Person (the ***proxy-holder***) to attend a meeting and speak and vote as the principal's representative.

8.5.2 Only 1 Proxy may be given by a Person for any meeting at which the Person wishes to be represented, and it may only be given to 1 Person who is an individual aged 18 years or older. But the principal may specify 1 or more other individuals aged 18 years or older to be proxy-holder in the alternative, in the order in which they are named in the Proxy.

8.5.3 A Proxy for a particular meeting may be given to the Person who is to be the chair of the meeting.

8.5.4 A Person given a Proxy under subrule 8.5.3 cannot decline to be the proxy-holder in relation to the Proxy.

8.5.5 A Proxy requires the proxy-holder to give the principal's vote on matters arising for decision at the meeting, to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the proxy-holder's own discretion.

8.5.6 Proxies used for voting at any meeting must be kept by the chair of the meeting, and must be given, as soon as possible after the meeting, to the Responsible Insolvency Practitioner (if the chair is not the Responsible Insolvency Practitioner).

8.6. **Service of notices etc.**

8.6.1 This rule applies to a notice or other Document that is required or permitted under the AIFC Insolvency Regulations or these Rules to be served on a Person (whether the word 'deliver', 'give', 'notify', 'send' or another word is used).

8.6.2 If the Document is a notice (however described), the Document must be served on the Person in Writing, unless the AIFC Insolvency Regulations or these Rules otherwise provide or the Court requires or permits the notice to be given in another way.

8.6.3 The Document may be served on the Person:

(a) by personal service; or

(b) by sending it to the Person by prepaid, certified post.

8.6.4 Subrule 8.6.3 does not affect the operation of a provision of any AIFC Regulations or any other provision of any AIFC Rules that requires or permits the Document to be served on the Person otherwise than as provided in that subrule.

8.6.5 If 2 or more Persons are acting jointly as the Responsible Insolvency Practitioner in any Insolvency Proceedings, service of the Document on any of them is taken to be service of the Document on all of them.

8.6.6 If the Document is a notice (however described) that is required or permitted to be served by the Responsible Insolvency Practitioner in any Insolvency Proceedings, service of the Document may be proved by means of a certificate, stating that the Document was duly posted, given by the Responsible Insolvency Practitioner, the practitioner's authorised representative, or a partner or employee of either of them.

SCHEDULE 1: MEETINGS

Note: See rule 8.2.1 and 8.2.2.

1.1. General power to call meetings of creditors or members

1.1.1 The Administrator of a Company may, at any time, call and conduct meetings of creditors or members for the purpose of ascertaining their wishes on any matter relating to the relevant Insolvency Proceedings.

1.1.2 When a Venue for the meeting has been fixed, notice of the meeting must be given by the Administrator:

(a) for a creditors meeting—to every creditor who is known to the Administrator or is identified in any statement of the Company's affairs prepared under these Rules; and

(b) for a members meeting—to every Person recorded in the Company's Register of Shareholders as a Shareholder.

1.1.3 Notice of the meeting must be given at least 21 days before the date fixed for it, and must specify the purpose of the meeting.

1.1.4 The notice must specify a time and date, not more than 4 days before the date fixed for the meeting, by which, and the place where, creditors must lodge Proofs and Proxies to be entitled to vote at the meeting; and the same applies in relation to members and their Proxies.

1.1.5 The Administrator may give additional notice of the meeting by public advertisement, and must give additional notice of the meeting by public advertisement if the Court orders.

1.2. Quorum at meetings of creditors or members

1.2.1 Any meeting of creditors or members in Insolvency Proceedings of a Company is competent to act if a quorum is present.

1.2.2 A quorum is:

(a) for a creditors meeting—at least 1 creditor entitled to vote; and

(b) for a members meeting—at least 2 members entitled to vote or, if only 1 member is entitled to vote, that member.

1.2.3 For this rule, a Person is taken to be present at a meeting if the Person is present personally or is represented by Proxy by any Person (including the chair of the meeting).

1.2.4 If, at any meeting of creditors or members:

(a) the provisions of this rule about a quorum being present are satisfied by the attendance of:

(i) the chair of the meeting alone; or

(ii) 1 other Person in addition to the chair of the meeting; and

(b) the chair is actually aware, because of Proofs and Proxies received or otherwise, that 1 or

more additional Persons would, if attending, be entitled to vote;

the meeting must not commence until at least the expiry of 15 minutes after the time fixed for its commencement.

1.3. **Reports of meetings of creditors or members etc.**

1.3.1 If a meeting of creditors or members of a Company is called, the chair of the meeting must prepare a report of the meeting.

1.3.2 The report must:

(a) state whether a proposal was approved by the meeting and whether the approval was with any modifications; and

(b) set out the resolutions that were taken at the meeting, and the decision on each resolution; and

(c) list the creditors or members of the Company (with their respective values) who were present or represented at the meetings, and how they voted on each resolution; and

(d) include any further information that the chair considers it appropriate to make known to the Court.

1.3.3 The chair of the meeting must file a copy of the report in the Court within 4 days after the day the meeting is held. The Court must endorse the date of filing on the copy of the report filed in the Court.

1.3.4 As soon as possible after the copy of the report is filed in the Court, the chair of the meeting must give a copy of the report to each Person who was given notice of the meeting.

1.4. **Attendance of Company personnel etc. at meetings of creditors or members**

1.4.1 In this rule:

relevant Person, in relation to a Company, means:

(a) a present or past officer, employee or contractor of the Company; or

(b) any other Person who is or has been involved in the administration or management of the Company.

1.4.2 Whenever a meeting of creditors or members of a Company is called, the Convener must give at least 21 days notice of the meeting to the relevant Persons that the Convener considers should be told of, or be present at, the meeting.

1.4.3 The Convener may give notice to a relevant Person that the relevant Person is required to be present at the meeting.

1.4.4 Any other Person (including a relevant Person who is not given notice under subrule 1.4.3) may be admitted to the meeting, but:

(a) the Person must have given reasonable notice to the Convener of the Person's wish to be

present; and

(b) it is a matter for the discretion of the chair of the meeting whether or not the Person is to be admitted; and

(c) the decision of the chair is final about what (if any) intervention may be made by the Person.

1.4.5 If the meeting wishes to put questions to a relevant Person who is not present at the meeting, the chair may adjourn the meeting to obtain the Person's attendance.

1.4.6 If a relevant Person is present at the meeting, the only questions that may be put to the Person are those that the chair of the meeting, in the chair's discretion, allows.

1.5. **Calling meetings of creditors or members**

1.5.1 In fixing the Venue for a meeting of creditors or members, the Convener of the meeting must have regard to the convenience of the Persons (other than the meeting chair) who are invited to attend.

1.5.2 Meetings of creditors or members of a Company must be called to start between 10 a.m. and 4 p.m. on a business day.

1.5.3 A proxy form must accompany a notice calling a meeting.

1.6. **Chair of meetings of creditors or members**

1.6.1 The Convener is the meeting chair. However, if the Convener is unable to attend the meeting for any reason, the Convener may nominate another Person to be the chair of the meeting.

1.6.2 The chair must not, using any Proxy held by the chair, vote to increase or reduce the amount of the remuneration or expenses of an Administrator, Nominee or Supervisor unless the Proxy specifically directs the chair to vote in that way.

1.6.3 The chair may exclude any present or former Director or Officer of the Company from attendance at a meeting, either completely or for any part of it.

1.7. **Entitlement to vote at meetings of creditors**

1.7.1 Subject to this rule, every creditor of a Company who has notice of a creditors meeting of the Company is entitled to vote at the meeting or any adjournment of it.

1.7.2 Votes are to be calculated pro rata according to the amount of each creditor's Debt at the date of the meeting (after deducting any repayment of Debt made by the Company).

1.7.3 A creditor may vote in relation to a Debt for an unliquidated amount or any Debt with an unascertained value and, for the purposes of voting (but not otherwise), the creditor's Debt must be valued at US$1 unless the chair of the meeting agrees to put a higher value on it.

1.7.4 A secured creditor may vote only in relation to the unsecured part of the creditor's Debt.

1.7.5 A Person is entitled to vote at the creditors meeting only if the Person has given, not later than midday on the business day before the day fixed for the meeting, Written details of the Debt that the Person claims to be due to the Person from the Company, and the claim has been duly admitted.

1.7.6 The chair of the meeting may allow a creditor to vote even though the creditor has Failed to comply with subrule 1.7.5, if satisfied that the Failure was caused by circumstances beyond the creditor's control.

1.7.7 The chair of the meeting may call for any Document or other evidence to be produced to the chair if the chair considers it necessary for the purpose of substantiating the whole or any part of the claim.

1.8. **Admission of claims of creditors for voting purposes**

1.8.1 Subject to this rule, at any creditors meeting of a Company the chair of the meeting must ascertain the entitlement of Persons wishing to vote and must admit or reject their claims accordingly.

1.8.2 The chair of the meeting may admit or reject a claim in whole or part.

1.8.3 Any creditor or member of the Company may appeal to the Court against decision of the chair of the meeting on any matter under this rule.

1.8.4 If the chair of the meeting is in doubt about whether a claim should be admitted or rejected, the chair must mark it as objected to and allow votes to be cast in relation to it, subject to the votes being subsequently declared invalid.

1.8.5 If on an appeal a decision of the chair is reversed or varied, or votes are declared invalid, the Court may order that another meeting be called or make any other order that it considers just. However, the Court may make an order under this subrule only if it considers that there has been unfair prejudice or material irregularity.

1.8.6 The chair of the meeting is not personally liable for any costs incurred by any Person in relation to an appeal to the Court under this rule.

1.9. **Majority required for meetings of creditors**

1.9.1 Unless these Rules otherwise require, at any creditors meeting of a Company a resolution is taken to be passed only if it is passed by a majority of more than one-half in value of the creditors present in person or by Proxy and voting on the resolution.

1.9.2 Any creditor or member of the Company may appeal to the Court against any decision of the chair of the meeting on any matter relating to whether a resolution has been passed at the meeting.

1.10. **Entitlement to vote at meetings of members**

1.10.1 At a meeting of members of a Company, members of the Company vote according to the rights respectively attaching to their Shares, or any other interests in the Company, under the Company's Articles of Association.

1.10.2 At a meeting of members of a Company, if a Person is liable to contribute to the assets of the Company, but has no voting rights under the Company's Articles of Association, the Person does not have a vote at the meeting. However, if the Person would ordinarily acquire voting rights under the Articles of Association if the contribution were to be made, the Person is entitled to those voting rights.

1.11. **Majority require for meetings of members**

Subject to any express provision of the Articles of Association of a Company, at a meeting of the members of the Company a resolution is taken to have been passed only if it is passed by a majority of more than one-half in value of the members present in person or by Proxy and voting on the resolution. The value of members is determined by reference to the number of votes given to each member by the Articles of Association. If the votes for and against a question are equal, the chair of the meeting has a casting vote.

1.12. **Role of chair of meetings of creditors or members etc.**

1.12.1 A creditors meeting and a members meeting of a Company may be held together if the chair (or chairs) of the meetings considers it appropriate.

1.12.2 The chair of a creditors or members meeting of a Company may, and must if the meeting so resolves, adjourn that meeting for no longer than 14 days.

1.12.3 If there are subsequently further adjournments of the meeting, the final adjournment must not be to a day later than 14 days after the day the meeting was originally held.

1.12.4 If, following the only or final adjournment of the meeting, a proposal (with or without modifications) has not been approved by the meeting, the proposal is taken to have been rejected.

1.12.5 The chair of a creditors or members meeting of a Company must make a record of the proceedings. The record must be kept as part of the records of the relevant Insolvency Proceedings. The record of the meeting must include a list of the Persons who were present or represented at the meeting and, if a creditors committee is established at the meeting, the names and addresses of the members appointed to the committee.

1.12.6 If the chair of a creditors or members meeting of a Company holds a Proxy that requires the chair to vote for a particular resolution, and no other Person proposes that resolution:

(a) the chair must propose the resolution, unless the chair considers that there is good reason for not doing so; and

(b) if the chair does not propose the resolution, the chair must, as soon as possible after the meeting, tell the Person who gave the chair the Proxy why the chair did not propose the resolution.

1.13. **Expenses of calling meetings of creditors or members etc.**

1.13.1 Subject to this rule, the expenses of calling and holding a meeting of creditors or members of a Company at the request of a Person (other than the Administrator) must be paid by the Person. The Person must deposit security for payment of the expenses with the Administrator.

1.13.2 The Administrator must decide the amount to be deposited as security and need not act on the request unless the amount is deposited.

1.13.3 If a meeting of creditors is called at the request of a Person other than the Administrator, the meeting may vote that the expenses of calling and holding the meeting, and of calling and holding any meeting of members called at the same time, are to be payable out of the assets of the Company as an expense of the administration.

1.13.4 If a meeting of members is called at the request of members, the meeting may vote that the expenses of calling and holding the meeting are to be payable out of the assets of the Company,

but subject to the right of creditors to be paid in full with interest.

1.13.5 The Administrator must refund any amount deposited by a Person under subrule 1.13.1 to the extent that it is not required for the payment of expenses of calling and holding the requested meeting.

1.14. **Requests by creditors and members for meetings**

1.14.1 Any request by a creditor to the Administrator of a Company for a meeting of creditors or members to be called must include, or be accompanied by:

(a) a list of the creditors who have agreed to the request and the amount of their respective claims in the winding up; and

(b) for each creditor agreeing to the request—Written confirmation of the agreement; and

(c) a statement of the purpose of the proposed meeting.

1.14.2 If the Administrator considers the request to be properly made in accordance with the AIFC Insolvency Regulations and these Rules, the Administrator must fix the Venue for the meeting. The date fixed must not be more than 35 days after the day the Administrator receives the request.

1.14.3 The Administrator must give the creditors or members, as the case may be, 21 days notice of the meeting and the Venue for it.

1.14.4 Subrules 1.14.1 to 1.14.3 apply to a request by a member of a Company for a members meeting as if:

(a) the reference in subrule 1.14.1(a) to the ***respective claims*** of creditors were a reference to substitute the members' respective voting rights (worked out in accordance with rule 1.10 (Entitlement to vote at meetings of members) of this Schedule); and

(b) the Persons to be given notice under subrule 1.14.3 were those appearing (by the Company's books or otherwise) to be members of the Company or otherwise entitled to vote at the meeting under rule 1.10 of this Schedule; and

(c) all other necessary changes were made.

SCHEDULE 2: CREDITORS COMMITTEE

Note: See rule 8.2.3.

2.1. Establishment of Creditors Committee etc.

2.1.1 A creditors committee may be established for a Company:

(a) if an Administrator is appointed for the Company—at the Administrator's request; or

(b) by a creditors meeting.

2.1.2 The committee must consist of at least 3 and not more than 5 creditors of the Company.

2.1.3 Any creditor of the Company is eligible to be a member of the committee if the creditor's claim has not been rejected for the purpose of the creditor's entitlement to vote. A creditor of the Company who is not an individual may only act through a named representative.

2.1.4 The committee is not established until at least 3 of the Persons who are to be members of the committee have agreed to become members.

2.2. Functions and meetings of creditors committee

2.2.1 The creditors committee of a Company must assist the Administrator to Exercise the Administrator's Functions, and must act in relation to the Administrator in the way that may be agreed from time to time.

2.2.2 The creditors committee may consent on behalf of creditors to any proposal by the Administrator. If the creditors committee consents to a proposal on behalf of the creditors, the proposal is binding on all creditors.

2.2.3 The creditors committee may withdraw its consent to a proposal. However, any withdrawal takes effect from when it is made, and does not invalidate the original consent.

2.2.4 Meetings of the creditors committee are to be held when and where the Administrator decides.

2.2.5 However, the Administrator must call a first meeting of the committee to take place within 3 months after the day it is established. After the first meeting of the committee, the Administrator must call a meeting:

(a) if requested by a member of the committee or the representative of a member; and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

2.2.6 A meeting called because of a request under paragraph (a) must be called for a date not later than 21 days after the day the Administrator receives the request.

2.2.7 The Administrator must give 7 days notice of the Venue of a meeting to every member of the committee (or the member's representative, if designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver

may be indicated either at or before the meeting.

2.3. **Proceedings at meetings of creditors committee etc.**

2.3.1 The chair of any meeting of the creditors committee must be the Administrator or a Person nominated in Writing by the Administrator.

2.3.2 A meeting of the committee is duly constituted if due notice has been given to all the members, and at least 2 members are present or represented.

2.3.3 A member of the committee may, in relation to the business of the committee, be represented by an individual authorised by the member.

2.3.4 However, a committee member may not be authorised to represent another committee member and an individual may not be authorised to represent 2 or more committee members at the same time.

2.3.5 The chair at any meeting of the committee may call on an individual claiming to represent a member to produce the individual's letter of authority, and may exclude the individual if it appears that the authority is deficient.

2.3.6 If a member's representative signs a Document on the member's behalf, the fact that the representative signs on the member's behalf must be stated below the representative's signature.

2.3.7 A member of the committee may resign by notice given to the Administrator.

2.3.8 A member of the committee automatically ceases to be a member if:

(a) the member becomes bankrupt; or

(b) the member is not present or represented at 3 consecutive meetings of the committee (unless at the third of those meetings it is resolved that this paragraph is not to apply to the member in relation to some or all of those meetings); or

(c) the member ceases to be, or is found never to have been, a creditor.

2.3.9 A member of the committee may be removed by a resolution passed at a meeting of creditors. At least 14 days notice must be given of the resolution.

2.3.10 If a member of the creditors committee ceases to be a member of the committee, the Administrator may appoint any creditor to fill the vacancy, if a majority of the members of the committee agree to the appointment and the creditor consents to act. However, if there are at least 2 members of the Committee after the vacancy, the vacancy need not be filled if the Administrator and the remaining members of the committee agree.

2.3.11 At any meeting of the committee, each member of the committee (whether present personally or by the member's representative) has 1 vote. A resolution is passed if a majority of the members present or represented vote in favour of it.

2.3.12 Every resolution passed must be recorded in Writing, either separately or as part of the minutes of the meeting. The record must be signed by the chair of the meeting and kept with the records of the relevant Insolvency Proceedings.

2.3.13 The Administrator may seek the agreement of the members of the committee to a resolution by sending a copy of the proposed resolution to every member (or the member's representative designated for the purpose). The proposed resolution must be set out so that agreement or disagreement with the resolution may be indicated by the recipient on the copy sent to the recipient, separately from any other resolution sent to the recipient at the same time. Any member of the committee may, within 7 business days after the day the member receives the resolution, require the Administrator to call a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is taken to have been passed by the committee if the Administrator is notified in Writing by a majority of the members that they agree with it.

2.4. **Expenses of members of creditors committee**

The Administrator of a Company must reimburse, out of the assets of the Company in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors committee or their representatives in relation to their attendance at committee meetings or otherwise on committee business.

2.5. **Dealings of creditor committee members with Company**

2.5.1 Membership of the creditors committee of a Company does not prevent a Person from dealing with the Company while there is an Administrator of the Company if any transactions between the Company and the Person are entered into in good faith and for value.

2.5.2 The Court may, on the application of any Person interested, set aside a transaction between the Company and a member of the creditors committee if the transaction was not entered into in good faith and for value, and may give the consequential directions that it considers appropriate to compensate the Company for any loss that it may have incurred as a result of the transaction.

2.6. **Formal defects in relation to creditors committee**

The acts of the creditors committee of a Company are valid despite any defect in the appointment, election or qualifications of any member of the committee or any member's representative or in the formalities of its establishment.

SCHEDULE 3: REQUIRED CONTENT FOR STATEMENT OF AFFAIRS

Note: See rules 2.2.2, 4.4.3, 5.5.3 and 5.50.2.

3.1. Required content for statement of affairs

A statement of a Company's affairs must include particulars of the following matters:

(a) the Company's assets, divided into the categories that are appropriate for easy identification, with estimated values assigned to each category;

(b) the extent (if any) to which the assets are secured in favour of creditors, with in each case particulars of the claim and its amount, and of how and when the Security Interest was created;

(c) the nature and amount of the Company's Liabilities;

(d) amounts due to Preferential Creditors;

(e) creditors who are, or claim to be, secured;

(f) whether any and, if so, what guarantees have been given of the Company's Debts by other Persons, specifying which (if any) of the guarantors are Persons connected with the Company;

(g) the jurisdictions where assets of the Company are situated;

(h) whether there are, to the knowledge of the Person or Persons preparing the statement, any circumstances giving rise to the possibility that, if the Company were to go into liquidation, claims may be made under section 96 (Transactions at undervalue), 97 (Preferences) or 99 (Invalid security interests) of the AIFC Insolvency Regulations;

(i) the names and addresses of the Company's Preferential Creditors, with the amounts of their respective claims;

(j) the names and addresses of the Company's secured creditors, with details of their Security Interests, valuations of their Collateral, and information about the size of their respective claims;

(k) the names and addresses of the Company's unsecured creditors, with the amounts of their respective claims;

(l) any Debts owed by or to the Company to or by Persons connected with it;

(m) the names and addresses of the Company's members, with details of their respective shareholdings.

SCHEDULE 4: INTERPRETATION

Note: See rule 1.5.

4.1. Meaning of *Debt* and *Liability*

4.1.1 In these Rules:

Debt, in relation to the winding up of a Company, means, subject to subrule 4.1.2, any of the following:

(a) any debt or Liability to which the Company is subject on the day it Goes into Liquidation;

(b) any debt or Liability to which the Company may become subject after that day because of any obligation incurred on or before that day;

(c) any interest accrued on any debt mentioned in paragraph (a) or (b) that is provable;

but excludes any obligation of the Company under or in relation to Excluded Property.

4.1.2 In working out whether, for any provision of the AIFC Insolvency Regulations or these Rules about the winding up of a Company, any Liability in tort is a debt provable in the winding up, the Company is taken to become subject to that Liability because of an obligation incurred when the cause of action accrued.

4.1.3 For any provision of the AIFC Insolvency Regulations or these Rules about the winding up of a Company, a reference to a ***Liability*** is a reference a liability to pay money or money's worth, including, for example, any liability under any AIFC Regulations or AIFC Rules, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution or as otherwise provided under the AIFC Regulations on Obligations.

4.1.4 In working out whether, for any provision of the AIFC Insolvency Regulations or these Rules about winding up of a Company, an obligation (however described) is a debt or liability, it is immaterial whether is a present or future obligation, whether it is certain or contingent, or whether its amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

4.2. Definitions for these Rules

Administration: a Company is in ***Administration*** if there is an Administrative Receiver appointed for it.

AFSA Rules means rules adopted by the Board of Directors of the AFSA.

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

Authorised Person means an Authorised Person under the AIFC Financial Services Framework Regulations.

Collateral, in relation to a Security Interest, has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Convener, of a meeting, means the Person who calls the meeting.

Creditor Member, of the liquidation committee in the winding up of a Company, means a member of the committee appointed by the creditors or under rule 5.39 (Creditor Member vacancy on liquidation committee).

Debt, in relation to the winding up of a Company, has the meaning given by rule 4.1 (Meaning of *Debt* and *Liability*) of this Schedule.

Director, in relation to a Company, means a director of the Company.

Excluded Property, in relation to a Company that is an Investment Intermediary, means:

(a) if section 36 (Effect of insufficiency on Account Holders' rights) of the AIFC Personal Property Regulations applies in relation to the Company—any property to that section applies in relation to the Company; or

(b) if any AFSA Rules relating to the holding by Investment Intermediaries of Money belonging to third parties apply in relation to the Company—any Money to which those Rules apply in relation to the Company.

First Meeting of Creditors and ***First Meeting of Contributories*** have the meanings respectively given by rule 5.10.4 (First meetings of creditors and contributories).

Future has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Insolvency Proceedings means any proceedings, whether in the Court or otherwise, under the AIFC Insolvency Regulations or these Rules.

Investment has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Investment Account has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Investment Entitlement has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Investment Intermediary has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Liability, in relation to the winding up of a Company, has the meaning given by rule 4.1 (Meaning of *Debt* and *Liability*) of this Schedule.

Money includes money, or a money claim (including a claim in relation to a balance credited to an account or arising in connection with a close out Netting Agreement), in any currency.

Netting Agreement has the meaning given by Schedule 1 (Interpretation) of the AIFC Netting Regulations.

Preferential Creditor means a creditor who, under any provision of the Acting Law of the AIFC,

is entitled to be paid in priority to ordinary creditors.

Proof and ***Proving***, in relation to the winding up of a Company, have the meanings respectively given by rule 5.16.1 (Proof of Debts in liquidation).

Proxy has the meaning given by rule 8.5.1 (Proxies).

Responsible Insolvency Practitioner, for any Insolvency Proceedings in relation to a Company, means the Insolvency Practitioner who is the Supervisor of an approved Voluntary Arrangement for the Company or the Administrator of the Company.

Secured Party, in relation to a Security Interest, has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Security Interest has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Venue, for a meeting, means the time, date and place of the meeting.