



**FINANCIAL SERVICES FRAMEWORK REGULATIONS**

**AIFC REGULATIONS No.18 OF 2017**

Consolidated Version (July 2018)  
**Astana, Kazakhstan**

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## **Part 1. INTRODUCTION**

### **1. Title**

These Regulations may be cited as the Framework Regulations.

### **2. Legislative Authority**

These Regulations are enacted by the Governor in exercise of the powers conferred on the AIFC Bodies, including the Governor by the Constitutional Statute, and specifically by Article 4(3) of the Constitutional Statute.

### **3. Application of these Regulations**

These Regulations apply in the AIFC.

### **4. Commencement**

These Regulations will commence on 1 January 2018.

### **5. Interpretation**

Words and expressions used in these Regulations and interpretative provisions applying to these Regulations are set out in the Glossary.

### **6. Meaning of “in the AIFC”**

- (1) A Person will be deemed to be carrying on activities in the AIFC for the purposes of these Regulations if:
  - (a) that Person is a Centre Participant and the day-to-day management of those activities (even if those activities are undertaken in whole or in part from outside the AIFC) is the responsibility of the Centre Participant in its capacity as such; or
  - (b) that Person’s head office is outside the AIFC but the activity is carried on from a branch maintained by it in the AIFC; or
  - (c) the activities are conducted in circumstances that are deemed to amount to activities carried on in the AIFC under Rules made by the AFSA.
- (2) The AFSA may issue Rules and guidance as to the circumstances in which activities capable of having an effect in the AIFC are or are not to be regarded as conducted in the AIFC.



## Part 2. THE FRAMEWORK OF REGULATION

### Chapter 1. The AFSA

#### 7. Main functions, powers and objectives of the AFSA

- (1) The AFSA has such functions and powers as are conferred, or expressed to be conferred, on it:
  - (a) by or under the Constitutional Statute of the Republic of Kazakhstan “On the Astana International Financial Centre” (“the Constitutional Statute”); and
  - (b) by or under any other law made by the Governor or the Management Council.
- (2) The AFSA has power to do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred in accordance with (1).
- (3) In performing its functions and exercising its powers, the AFSA will pursue the following objectives (“the Regulatory Objectives”):
  - (a) the regulation, control and supervision of financial activities in the AIFC by Centre Participants with a view to the maintenance of the safety and soundness of the financial system within the AIFC;
  - (b) ensuring that financial markets in the AIFC are fair, efficient, transparent and orderly;
  - (c) creating fair, transparent and non-discriminatory conditions for Centre Participants;
  - (d) fostering and maintaining confidence in the AIFC’s financial system and regulatory regime;
  - (e) fostering and maintaining the financial stability of the AIFC’s financial services industry and capital markets, including the reduction of systemic risks;
  - (f) preventing, detecting and restraining actions that may cause damage to the reputation of the AIFC or to the financial activities carried out in the AIFC by taking appropriate measures, including by imposing sanctions;
  - (g) protecting interests of investors and users of financial services;



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- (h) implementing in the AIFC a regulatory regime that complies with international standards in the sphere of regulation of financial services;
  - (i) fostering the development of financial technologies in the AIFC; and
  - (j) pursuing such other objectives as may be specified by AIFC's Regulations from time to time.
- (4) The AFSA may prepare and make available forms for any purpose under these Regulations or Rules made hereunder and may give instructions for their completion.

### 8. AFSA power to make Rules

Any provision in these Regulations to the effect that the AFSA may make Rules on a particular issue is without prejudice to the general rulemaking power of the AFSA and other Centre Bodies under Article 4(3) of the Constitutional Statute.

### 9. AFSA power to modify or waive Rules

- (1) The AFSA may, on the application of a Person or on its own initiative and by written notice, direct that a provision of any Rules made pursuant to these Regulations:
- (a) applies to the Person with the modifications mentioned in the notice; or
  - (b) does not apply in relation to the Person.
- (2) The AFSA must not make a direction under (1) unless it is satisfied that:
- (a) compliance by the Person with the Rules, or with the Rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the Rules were made, and
  - (b) the direction would not adversely affect the advancement of any of the AFSA's Regulatory Objectives.
- (3) A direction under (1) may be given subject to conditions.
- (4) The AFSA may:
- (a) revoke a direction; or
  - (b) vary it, on the application or with the consent of the Person to whom it relates.



## 10. AFSA decision making procedure

- (1) Where a provision in these Regulations or Rules made thereunder requires the AFSA to make a decision, the AFSA will follow the decision making procedures set out in Schedule 1.
- (2) Should it consider it necessary or desirable to do so, the AFSA may establish a mechanism whereby a decision made in accordance with (1) may be reviewed by officers of the AFSA who were not involved in making such decision or an objective independent third party competent to carry out such function.

## 11. Appeals against decisions of the AFSA

- (1) A Person aggrieved by a decision of the AFSA may appeal to the AIFC Court against the decision.
- (2) The grounds of an appeal under this section are that:
  - (a) the decision was ultra vires or there was some other error of law;
  - (b) the decision was unreasonable;
  - (c) the decision was made in bad faith;
  - (d) there was a lack of proportionality; or
  - (e) there was a material error as to the procedure.
- (3) The procedure to be adopted by parties to an appeal and by the AIFC Court on such an appeal is set out in Schedule 2.

## Chapter 2. Centre Participants

### 12. Definition of Centre Participant

A Centre Participant is defined under Article 1(5) of the Constitutional Statute.

### 13. Definition of Authorised Firm

An Authorised Firm is a Centre Participant which has been licensed by the AFSA to carry on one or more Regulated Activities.



#### **14. Definition of Authorised Market Institution**

An Authorised Market Institution is a Centre Participant which has been licensed by the AFSA to carry on one or more Market Activities.

#### **15. Definition of Authorised Person**

An Authorised Person is either an Authorised Firm or an Authorised Market Institution.

#### **16. Definition of Ancillary Service Provider**

An Ancillary Service Provider is a Centre Participant which has been licensed by the AFSA to carry on one or more Ancillary Services.

### **Chapter 3. Activities performed by Centre Participants**

#### **17. Definition of Regulated Activity**

The AFSA may make Rules prescribing which kinds of Regulated Activities, with such modifications or limitations as may be specified, may be carried on by an Authorised Firm.

#### **18. Definition of Market Activity**

- (1) The activities specified in Schedule 3 constitute Market Activities for the purposes of these Regulations and Rules made thereunder.
- (2) The AFSA may make Rules adding to, removing activities from, or otherwise modifying the lists of Market Activities prescribed under section 18(1).

#### **19. Definition of Ancillary Service**

The AFSA may make Rules prescribing which kinds of Ancillary Services, with such modifications or limitations as may be specified, may be carried on by an Ancillary Service Provider.

### **Chapter 4. Controlled and Designated Functions**

#### **20. Definition of Controlled Function**

- (1) The AFSA may make Rules prescribing functions (“Controlled Functions”) of an Authorised Person that may only be carried out by individuals who have been approved by the AFSA to carry out those functions.



- (2) Controlled Functions prescribed under section 20(1) may include the functions of senior officers or employees with material responsibility for both or either:
  - (a) managing an Authorised Person; or
  - (b) the carrying on by an Authorised Person of its Regulated or Market Activities.

## **21. Definition of Approved Individual**

An Approved Individual is an individual who is approved by the AFSA to carry out a Controlled Function.

## **22. Definition of Designated Function**

The AFSA may make Rules prescribing functions (“Designated Functions”) of an Authorised Person that may only be carried out by individuals who have been appointed by the Authorised Person as a Designated Individual in relation to that function

## **23. Definition of Designated Individual**

A Designated Individual is an individual who is appointed by an Authorised Person to carry out a Designated Function.

# **Chapter 5. Prohibitions**

## **24. The General Prohibition**

A Centre Participant must not carry on a Regulated Activity, Market Activity or Ancillary Service unless it is licensed to do so by the AFSA.

## **25. Prohibition relating to Controlled Functions**

- (1) A Person must not carry out a Controlled Function for an Authorised Person unless he is approved by the AFSA as an Approved Individual to carry out that Controlled Function for the Authorised Person.
- (2) An Authorised Person must take all reasonable steps to ensure that no Person performs a Controlled Function on its behalf:
  - (a) without being authorised by the AFSA as an Approved Individual in relation to the relevant Controlled Function; or
  - (b) contrary to a restriction imposed by the AFSA; or



- (c) where Approved Individual status of that individual has been suspended or withdrawn.

## 26. Prohibition relating to Designated Functions

An Authorised Person must take all reasonable steps to ensure that no Person performs a Designated Function on its behalf

- (a) without being appointed by the Authorised Person as a Designated Individual in relation to the relevant Designated Function; or
- (b) contrary to a restriction imposed by the AFSA; or
- (c) where Designated Individual status of that individual has been suspended or withdrawn.

## 27. Prohibition relating to Financial Promotions

- (1) A "Financial Promotion" is any communication (made via any medium including brochures, telephone calls and presentations) the purpose or effect of which is:
  - (a) to promote or advertise (i) Investments or (ii) any Regulated Activity; or
  - (b) to invite or induce any Person (i) to enter into an agreement with any Person in relation to Investments or (ii) to engage in any Regulated Activity.
- (2) A Centre Participant may not make a Financial Promotion except as provided by or under these Regulations.
- (3) The AFSA may make Rules relating to:
  - (a) the circumstances in which a Centre Participant may make, or will be deemed to make, a Financial Promotion; and
  - (b) the form and content of such Financial Promotion.

## 28. Enforceability of Agreements

- (1) Subject to section 28(5), a Centre Participant who makes an agreement whilst acting in breach of the General Prohibition, or who makes an agreement as a result of the making by himself or another Person of a Financial Promotion which is in breach of the Financial Promotions Prohibition, will not be entitled to enforce such agreement against any party (a "relevant party") to the agreement.



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- (2) Subject to any agreement that may otherwise be reached between the parties, a relevant party may apply to the AIFC Court to recover:
- (a) any money paid or property transferred by him under the agreement;
  - (b) compensation reflecting any loss sustained by the relevant party as a direct result of such payment or transfer; and
  - (c) compensation for an amount becoming due that is dependent upon a contingency occurring under the relevant agreement, provided that such contingency has occurred prior to the relevant party being notified by the other party or by the AFSA that the agreement was entered into in breach of the General Prohibition or the Financial Promotions Prohibition.
- (3) If the relevant party chooses not to perform the agreement or, under section 28(2), recovers money paid or property transferred by him under the agreement, he must in turn repay any money or property received under the agreement.
- (4) The compensation recoverable under section 28(2)(b) is the amount agreed between the parties to the agreement or, following an application to the AIFC Court, the amount determined by the AIFC Court.
- (5) If the AIFC Court is satisfied that the Centre Participant:
- (a) who acted in breach of the General Prohibition reasonably believed that he was not in breach of the General Prohibition by entering into such agreement; or
  - (b) who made the Financial Promotion reasonably believed that he was not in breach of the Financial Promotions Prohibition; or
  - (c) who made an agreement as a result of the making by another Person of a Financial Promotion which was in breach of the Financial Promotions Prohibition, did not know that the relevant Financial Promotion was in breach of the Financial Promotions Prohibition.

and that it is fair and just in the circumstances to make such an order, it may make one or more of the following orders:

- (d) an order that the agreement be enforced between the parties to such extent and under such terms and conditions as the AIFC Court sees fit; or
- (e) an order that money paid or property transferred under the agreement be retained or dealt with in accordance with the agreement or in such manner as the AIFC Court deems fit.





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- (6) For the purposes of (5), it is not relevant that the relevant Centre Participant was unaware of the existence of either the General Prohibition or the Financial Promotion Prohibition.
- (7) Where property transferred under the agreement has been transferred to a third party, a reference in this section to such property will be interpreted as a reference to the value of the property at the time of the transfer under the agreement.
- (8) In this section, "agreement" means an agreement, the making or performance of which constitutes, purports to constitute or is part of, the carrying on of a Regulated Activity, Market Activity or Ancillary Service.

#### **29. False claims to be a Centre Participant**

- (1) A Person who is not a Centre Participant must not represent that he is a Centre Participant.
- (2) A Centre Participant who is not an Authorised Firm, an Authorised Market Institution or an Ancillary Service Provider must not represent that he is such a Person.



## Part 3. LICENSING OF CENTRE PARTICIPANTS

### Chapter 1. Licensing of Authorised Firms

#### 30. Application for a Licence to carry on Regulated Activities

- (1) A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Regulated Activities.
- (2) An Authorised Firm may apply to the AFSA to extend, vary or withdraw its Licence to carry on Regulated Activities.
- (3) The applicant for a Licence, variation of a Licence or withdrawal of a Licence may withdraw its application by giving the AFSA notice at any time before the AFSA issues, varies or withdraws the Licence or rejects the application.

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

- (1) An application for a Licence or variation or withdrawal of a Licence must be in such form and contain such information as may be prescribed by the AFSA from time to time.
- (2) The AFSA may make Rules providing that certain Centre Participants or types of Centre Participant may not be granted a Licence to carry on particular Regulated Activities.
- (3) The AFSA may make Rules providing for such requirements referred to in 31(1) to be varied in cases where an application is made by or on behalf of a Centre Participant which is, at the time of application, regulated in a jurisdiction other than the AIFC.
- (4) The AFSA may waive all or any part of its generally adopted requirements as to form and contents either in individual cases or generally, provided it is satisfied in either case that:
  - (a) materially similar, up-to-date information is provided in other documentation already issued or completed by the applicant; or
  - (b) such information is not necessary in the light of any registration or authorisation of the applicant in another jurisdiction; or
  - (c) such information is not considered by the AFSA to be relevant in the context of any particular application.
- (5) The AFSA may require the applicant to provide additional information reasonably required for the AFSA to be able to decide the application.



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- (6) If at any time between the filing of an application and the grant of a Licence or the grant of an extension to a Licence the applicant becomes aware of a material change reasonably likely to be relevant to the application under consideration, it must inform the AFSA in writing of such change without delay.

### 32. Financial technology

The AFSA may, on the application of a Person or its own initiative and by written notice, waive or modify the requirements of these Regulations or Rules made thereunder where it considers it necessary or desirable to do so in the field of financial technology.

### 33. Exemption

The AFSA may issue an order or make Rules:

- (a) prescribing certain Centre Participants or categories of Centre Participant to be exempted from
  - (i) the General Prohibition in respect of Regulated Activities; or
  - (ii) the requirements referred to in section 34(1); and
- (b) providing for any such exemptions to be:
  - (i) limited to certain Regulated Activities or specified circumstances; or
  - (ii) subject to certain conditions and restrictions.

### 34. Criteria for the grant of a Licence to carry on Regulated Activities

- (1) The AFSA may only grant a Licence authorising a Centre Participant to carry on one or more Regulated Activities if it is satisfied that the Centre Participant:
- (a) has adequate and appropriate resources, including financial resources;
  - (b) is fit and proper;
  - (c) is capable of being effectively supervised; and
  - (d) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements.
- (2) The AFSA may make Rules prescribing the matters to which the AFSA will have regard in making the above assessment.



### 35. Grant or rejection of application

- (1) The AFSA may:
  - (a) grant an application for a Licence, variation or withdrawal of a Licence either without conditions, restrictions or requirements or with such conditions, restrictions or requirements as it considers appropriate; or
  - (b) reject the application.
- (2) Where the AFSA grants an application for a Licence or variation or withdrawal of a Licence, the AFSA will notify the applicant of:
  - (a) such decision;
  - (b) the date on which the Licence or extension will be deemed to take effect;
  - (c) the Regulated Activity or Regulated Activities that the applicant is authorised to carry on; and
  - (d) any conditions and restrictions applicable to the Licence or the newly extended Licence.
- (3) Where the AFSA rejects an application for Authorisation or variation or withdrawal of an Authorisation, the AFSA will inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal, and of the applicant's right to appeal that decision to the AIFC Court.

## Chapter 2. Licensing of Authorised Market Institutions

### 36. Application for a Licence to carry on Market Activities

- (1) A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Market Activities.
- (2) An Authorised Market Institution may apply to the AFSA to extend, vary or withdraw its Licence to carry on Market Activities.
- (3) The applicant for a Licence, variation of a Licence or withdrawal of a Licence may withdraw its application by giving the AFSA notice at any time before the AFSA issues, varies or withdraws the Licence or rejects the application.
- (4) An application under this section must be made in such manner as the AFSA may require.



### 37. Criteria for the grant of a Licence to carry on Market Activities

- (1) The AFSA may only grant a Licence authorising a Centre Participant to carry on one or more Market Activities if it is satisfied that the Centre Participant:
  - (a) has adequate and appropriate resources, including financial resources and technology resources;
  - (b) is fit and proper;
  - (c) is capable of being effectively supervised; and
  - (d) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements, including the Rules.
- (2) The AFSA may make Rules prescribing the matters to which the AFSA will have regard in making the above assessment.

### 38. Grant or rejection of application

- (1) The AFSA may:
  - (a) grant an application under section 36, either without conditions, restrictions or requirements or with such conditions, restrictions or requirements as it considers appropriate; or
  - (b) reject the application.
- (2) Where the AFSA grants an application under section 36, the AFSA will notify the applicant of:
  - (a) such decision;
  - (b) the date on which the Licence will be deemed to take effect;
  - (c) the Market Activity or Market Activities that the applicant is authorised to carry on; and
  - (d) any conditions and restrictions applicable to the Licence.
- (3) Where the AFSA rejects an application under section 36, the AFSA will inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal, and of the applicant's right to appeal that decision to the AIFC Court .



- (4) The AFSA may vary the terms of a Licence granted by it under this section, either on the application of the Authorised Market Institution or upon its own initiative.

### **39. Exemption for Authorised Market Institutions**

- (1) An Authorised Investment Exchange is exempt from the General Prohibition in respect of any Regulated Activity:
  - (a) which is carried on as a part of the Authorised Investment Exchange's business as an investment exchange; or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the Authorised Investment Exchange of services designed to facilitate the provision of clearing services by another Person.
- (2) An Authorised Clearing House is exempt from the General Prohibition in respect of any Regulated Activity:
  - (a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the Authorised Clearing House; or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the Authorised Clearing House of services designed to facilitate the provision of clearing services by another Person.
- (3) An Authorised Private E-currency Trading Facility is exempt from the General Prohibition in respect of any Regulated Activity:
  - (a) which is carried on as a part of the Authorised Private E-currency Trading Facility's business as a private E-currency trading facility; or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the Authorised Private E-currency Trading Facility of services designed to facilitate the provision of clearing services by another Person.

## **Chapter 3. Licensing of Ancillary Service Providers**

### **40. Application for a License to carry on Ancillary Services**

- (1) A Person may apply to the AFSA for a License permitting a Centre Participant to carry on one or more Ancillary Services.
- (2) An Ancillary Service Provider may apply to the AFSA to extend, vary or withdraw its Licence to carry on Ancillary Services.



- (3) An application under this section must be made in such manner as the AFSA may by Rules require.

#### **41. Criteria for the grant of a Licence to carry on Ancillary Services**

- (1) The AFSA may only grant a Licence permitting a Centre Participant to carry on one or more Ancillary Services if it is satisfied that the Centre Participant is fit and proper.
- (2) The AFSA may prescribe by Rules:
  - (a) the Centre Participants or class of Centre Participants who may be permitted to carry on Ancillary Services;
  - (b) the requirements for the grant of such a Licence; and
  - (c) the circumstances in which the AFSA may revoke such a Licence.



## **Part 4. CONTROLLED AND DESIGNATED FUNCTIONS**

### **Chapter 1. Controlled Functions**

#### **42. Applications for Controlled Function approval**

- (1) The AFSA may make Rules detailing:
  - (a) the procedure for application to the AFSA for registration as an Approved Individual including requirements as to the form and content of the application, any fees payable by an Authorised Person in respect of its Approved Individuals and the procedures for modification or withdrawal of an Approved Individual's registration;
  - (b) principles or other requirements to which Approved Individuals are required to adhere in the performance of Controlled Functions;
  - (c) requirements for Approved Individuals to report to the AFSA; and
  - (d) the circumstances in which registration of an Approved Individual may be withdrawn at the instance of the AFSA.
- (2) The AFSA may waive all or any part of its generally adopted requirements as to the form and content of an application under section 42(1) if it is satisfied that such information is not necessary in the light of any registration, authorisation or approval the relevant individual may have in a jurisdiction outside the AIFC.

#### **43. Criteria for approval**

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





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

#### **44. Grant or rejection of application**

- (1) The AFSA may:
  - (a) grant or vary an approval under section 42 either without conditions restrictions or requirements or with such conditions restrictions or requirements as it considers appropriate; or
  - (b) reject the application.
- (2) Where the AFSA grants an application for approval or variation of an approval under section 42, the AFSA will notify the Authorised Person accordingly.
- (3) Where the AFSA rejects an application for approval or variation of an approval under section 42, the AFSA will inform the Authorised Person in writing of such refusal and, where requested by the Authorised Person, the reasons for such refusal, and of the Authorised Person's right to appeal that decision to the AIFC Court.

#### **45. Residency requirement for Authorised Individual**

The AFSA may require an Authorised Person to ensure that a particular Controlled Function is carried on by an Authorised Individual who is resident in the Republic of Kazakhstan.

## **Chapter 2. Designated Functions**

#### **46. Criteria for appointment of Designated Individual**

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



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

#### **47. Review of appointments by the AFSA**

- (1) An Authorised Person must maintain records of the assessment process that it conducts in respect of each Designated Individual appointed by it.
- (2) An Authorised Person must make such records available to the AFSA on request.
- (3) If the AFSA considers that a Designated Individual is not fit and proper, it may take such steps as it considers necessary or desirable in the interests of the AIFC.



## **Part 5. CONTROL OF AUTHORISED PERSONS**

### **48. Requirement for AFSA approval to change in control**

A Person must not take any steps to:

- (a) become a Controller of an Authorised Person incorporated in the AIFC ; or
- (b) increase the level of control which that Person has in an Authorised Person incorporated in the AIFC beyond a threshold specified in Rules by the AFSA;

unless that Person has obtained the prior written approval of the AFSA to do so.

### **49. Rules governing controllers**

The AFSA may make Rules in connection with the change of control of Authorised Persons incorporated in the AIFC, including Rules as to:

- (a) when a Person becomes or ceases to be a Controller of an Authorised Person;
- (b) when the acquisition or increase in the level of control of an Authorised Person requires either the prior approval of, or notification to, the AFSA;
- (c) when the AFSA is likely object to an existing Controller;
- (d) the procedures relating to the approval, notification and objections referred to in section 49(b) and 49(c); and
- (e) any other matter necessary or incidental to give effect to the provisions governing controllers.

### **50. Powers of the AFSA in respect of Controllers**

(1) Without limiting the generality of the AFSA powers, the AFSA may:

- (a) approve or object to a Person becoming a Controller of an Authorised Person incorporated in the AIFC;
- (b) approve or object to an increase in the level of control of an existing controller of an Authorised Person incorporated in the AIFC;
- (c) object to an existing controller of an Authorised Person incorporated in the AIFC where it has reasonable grounds to believe that such a Person is no longer an acceptable controller; and



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- (d) approve a Person as a Controller or approve an increase of control by an existing Controller subject to such conditions as it considers appropriate.
- (2) Where the AFSA considers an existing Controller of an Authorised Person incorporated in the AIFC to be an unacceptable Controller it may:
- (a) notify the Controller and the Authorised Person in writing that the Controller is no longer an acceptable Controller; and
  - (b) require that the Controller and the Authorised Person take such action as specified by the AFSA.
- (3) Without limiting the generality of the AFSA powers, the AFSA may, for the purposes of section 50(2)(b):
- (a) require an Authorised Person incorporated in the AIFC to take such action as specified by the AFSA in relation to an unacceptable Controller; or
  - (b) where an Authorised Person has failed to comply with a requirement referred to in section 50(3)(a) to the satisfaction of the AFSA, either withdraw, or impose conditions, on the Authorised Person's licence; or
  - (c) require the unacceptable Controller to take such action as specified by the AFSA.



## Part 6. CAPITAL MARKETS

### Chapter 1. Authorised Market Institutions

#### 51. Requirement to have Business Rules

An Authorised Market Institution must establish rules (“Business Rules”) governing relations between itself and the participants in the market and dealing with such matters as may be prescribed for this purpose in rules by the AFSA.

#### 52. Approval and consultation on Business Rules

- (1) An Authorised Market Institution may only bring its Business Rules and any amendment thereto into effect after such rules have been approved by the AFSA.
- (2) The AFSA may require an Authorised Market Institution to make its Business Rules and any amendment thereto available for public consultation prior to their becoming effective.

#### 53. Legal effect of Business Rules

The Business Rules (other than Listing Rules) of an Authorised Market Institution have effect as a contract:

- (a) between the Authorised Market Institution and each participant in the market; and
- (b) between a participant and each other participant;

under which each of those Persons agrees to observe the Business Rules to the extent that they apply to the Person and to engage in conduct that the Person is required by the Business Rules to engage in.

#### 54. Enforcement of Business Rules

- (1) If a Person who is under an obligation to comply with or enforce any of an Authorised Market Institution’s Business Rules fails to meet that obligation, an application to the AIFC Court may be made by:
  - (a) the AFSA; or
  - (b) the Authorised Market Institution; or
  - (c) the operator of a clearing and settlement facility with which the Authorised Market Institution has clearing and settlement arrangements; or



- (d) a Person aggrieved by the failure.
- (2) After giving an opportunity to be heard to the applicant and the Person against whom the order is sought, the AIFC Court may make orders giving directions to:
  - (a) the Person against whom the order is sought; or
  - (b) if that Person is a Body Corporate, the directors of the Body Corporate;about compliance with, or enforcement of, the Business Rules.
- (3) For the purposes of this section, if a Body Corporate fails to comply with or enforce provisions of the Business Rules of an Authorised Market Institution, a Person who holds Securities of that Body Corporate that are able to be traded on a market operated by the Authorised Market Institution is taken to be a Person aggrieved by the failure.
- (4) There may be other circumstances in which a Person may be aggrieved by a failure for the purposes of this section.

#### **55. Persons eligible for Membership**

- (1) Subject to such further admission criteria as the AFSA may prescribe by Rules, an Authorised Market Institution may only admit as a Member:
  - (a) an Authorised Firm; or
  - (b) a Recognised Non-AIFC Member.
- (2) An Authorised Person engaged in the activity of Operating a Private E-currency Business may only admit as a Member a Person who satisfies admission criteria set out in its Membership Rules and which is either:
  - (a) an Authorised Firm;
  - (b) a Recognised Non-AIFC Member; or
  - (c) a body corporate or an individual (natural person) that carries on the activity solely as principal.

#### **56. AFSA power to require report from an Authorised Market Institution**

Without prejudice to its powers under section 96 (Power to gather information), the AFSA may require, at such frequency and in such manner and in such form as it may prescribe in Rules, an Authorised Market Institution to provide the AFSA with a report or reports relating to the conduct of or the performance of the regulatory functions of an Authorised Market Institution, including but not limited to a report or reports addressing:



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- (a) ongoing compliance of the Authorised Market Institution with the terms of its Licence; or
- (b) complaints received and dealt with and disciplinary matters arising and dealt with; or
- (c) adequacy and performance of systems and controls; or
- (d) financial matters concerning the operation of the Authorised Market Institution.

### **57. AFSA power to impose requirements on an Authorised Market Institution**

Without limiting the powers available to the AFSA under Part 8 (Supervision of Authorised Persons), the AFSA may direct an Authorised Market Institution to do or not do specified things that the AFSA considers are necessary or desirable or to ensure the integrity of the AIFC financial markets, including but not limited to directions:

- (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution; or
- (b) requiring an Authorised Market Institution to act in a specified manner in relation to a transaction conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or
- (c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made; or
- (d) excluding the application of any requirements for engaging in the activity of Operating a Private E-currency Business imposed by the Rules; or
- (e) imposing on an Authorised Person engaged in the activity of Operating a Private E-currency Business any additional requirements that the AFSA considers appropriate.

### **58. AFSA power to give directions to an Authorised Market Institution**

Without limiting the application of section 95 (Exercise of supervisory powers by the AFSA), the AFSA may direct an Authorised Market Institution to:

- (a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period; or
- (b) suspend transactions on the market or through the facilities operated by the Authorised Market Institution; or



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- (c) suspend transactions in Securities or Private E-currencies conducted on the market or through the facilities operated by the Authorised Market Institution; or
- (d) prohibit trading in Securities or Private E-currencies conducted on the market or through the facilities operated by the Authorised Market Institution; or
- (e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by the Authorised Market Institution; or
- (f) prohibit a specified Person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or
- (g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the AFSA's objectives.

### 59. Liability of Authorised Market Institutions and their Employees

Neither an Authorised Market Institution nor any Employee of an Authorised Market Institution may be held liable for anything done or omitted to be done in the performance or discharge or purported performance or discharge of their respective duties and regulatory functions if the act or omission is shown to have been committed or omitted in good faith.

## Chapter 2. Offer of Securities

### 60. Prohibition – Offer of Securities

A Person must not make an Offer of Securities except as provided in Rules made by the AFSA.

### 61. Definition of an Offer of Securities

An Offer of Securities means a communication to any Person in any form or by any means, presenting information on the terms of the Offer and the Securities offered, so as to enable an investor to decide whether or not to buy or subscribe to those Securities but excluding:

- (a) any communication in connection with the trading of Securities admitted to trading on an Authorised Investment Exchange; or
- (b) any communication made for the purposes of complying with the on-going reporting requirements of the AFSA or an Authorised Market Institution; or
- (c) any other communication prescribed in the Rules by the AFSA.





## Chapter 3. Admission to trading

### 62. Prohibition – Admission to trading

A Person may not have Securities admitted to trading on an Authorised Investment Exchange unless:

- (a) such Securities have been admitted to the Official List maintained by the Authorised Investment Exchange; and
- (b) a Prospectus in relation to the relevant Securities containing the information prescribed for this purpose by the AFSA has been approved by the Authorised Investment Exchange.

### 63. Exemptions

The AFSA may, at its discretion and on its own initiative, identify by Rules:

- (a) Exempt Offerors; and
- (b) Exempt Securities

to which the prohibition in section 62 does not apply or applies in a modified manner.

## Chapter 4. Listing

### 64. Maintaining an Official List of Securities

- (1) Subject to (3), an Official List of Securities for an Authorised Investment Exchange may be maintained by either the relevant Authorised Investment Exchange or the AFSA.
- (2) An Authorised Investment Exchange must, when maintaining an Official List of Securities, comply with the relevant requirements in these Regulations and the Rules made thereunder.
- (3) The AFSA may, at any time, transfer the responsibility for maintaining an Official List of Securities hitherto maintained by an Authorised Investment Exchange to the AFSA where it considers it necessary or desirable to do so.
- (4) An Authorised Investment Exchange must not permit trading of Securities on its facilities unless those Securities are admitted to, and not suspended from, an Official List of Securities maintained by the Authorised Investment Exchange or the AFSA except where otherwise prescribed in the Rules.



## 65. Listing Rules Requirements

- (1) An Authorised Investment Exchange must, when maintaining an Official List of Securities, establish and maintain Listing Rules as part of its Business Rules.
- (2) The Listing Rules of an Authorised Investment Exchange must contain such provisions as are prescribed in the Rules.
- (3) Where the AFSA maintains an Official List of Securities, it will, by Rules, prescribe the relevant Listing Rules.

## 66. Admission of Securities to an Official List of Securities

- (1) An Authorised Investment Exchange or the AFSA may grant admission of Securities to an Official List of Securities maintained by it only where it is satisfied that such admission is in accordance with the relevant Listing Rules.
- (2) Where a Person applies to have Securities admitted to an Official List of Securities maintained by an Authorised Investment Exchange or the AFSA, the Authorised Investment Exchange or the AFSA, as is relevant, must notify the applicant in writing of its decision in relation to the application for admission of Securities to the Official List of Securities.
- (3) Where a Person has any Securities included on an Official List of Securities, such Securities must be admitted to trading on an Authorised Investment Exchange as soon as possible.
- (4) Where any Securities included in an Official List of Securities are not admitted to trading in accordance with the requirement in section 66(3), such Securities must be removed from the Official List of Securities.
- (5) The AFSA may, by Rules, prescribe any circumstances in which Securities admitted to an Official List of Securities need not comply with the requirement in section 66(3)

## 67. AFSA objection to admission of Securities to an Official List of Securities

- (1) Where an Authorised Investment Exchange maintains an Official List of Securities, the AFSA may:
  - (a) object to the admission of Securities to such an Official List of Securities; or
  - (b) impose conditions or restrictions in respect of the admission of Securities to such an Official List of Securities, or vary or withdraw such conditions or restrictions,in the circumstances specified in section 67(3).



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- (2) Where the AFSA maintains an Official List of Securities, the AFSA may:
  - (a) refuse an application for admission of Securities to such an Official List of Securities; or
  - (b) impose conditions or restrictions, in respect of the admission of Securities to such an Official List of Securities, or vary or withdraw such conditions or restrictions, in the circumstances specified in section 67(3).
- (3) The AFSA may exercise its powers under section 67(1) or 67(2) where:
  - (a) the AFSA reasonably considers that:
    - (i) granting the Securities admission to an Official List of Securities would be detrimental to the interests of Persons dealing in the relevant Securities using the facilities of an Authorised Investment Exchange or otherwise; or
    - (ii) any requirements in the Listing Rules as are applicable have not been or will not be complied with; or
    - (iii) any requirement imposed by the AFSA has not been or will not be complied with; or
    - (iv) the Issuer of the Securities has failed or will fail to comply with any obligations applying to it including those relating to having its Securities admitted to an Official List of Securities or listed or traded in another jurisdiction; or
  - (b) the AFSA otherwise considers it necessary or desirable to do so.
- (4) Where the AFSA objects to the admission of Securities to an Official List of Securities pursuant to section 67(3)(a), such Securities must not be admitted by an Authorised Investment Exchange to its Official List of Securities.
- (5) Where the AFSA imposes conditions or restrictions on the admission of Securities to an Official List of Securities pursuant to section 67(3)(b), such Securities must not be admitted by an Authorised Investment Exchange to its Official List of Securities unless there is compliance with those conditions and restrictions.

### **68. Suspending and delisting Securities from an Official List of Securities**

- (1) The AFSA or an Authorised Investment Exchange may, in accordance with its Listing Rules, suspend or delist Securities from its Official List of Securities with immediate effect or



from such date and time as may be specified where it is satisfied that there are circumstances that warrant such action or it is in the interests of the AIFC.

- (2) The AFSA may direct an Authorised Investment Exchange to suspend or delist Securities from an Official List of Securities with immediate effect or from such date and time as may be specified if it is satisfied there are circumstances that warrant such action or it is in the interests of the AIFC.
- (3) The AFSA may withdraw a direction made under section 68(2) at any time.
- (4) Securities that are suspended from an Official List of Securities remain admitted to an Official List of Securities for the purposes of this Part.
- (5) The AFSA may, by Rules, prescribe any additional requirements or procedures relating to the delisting or suspension of Securities from or restoration of Securities to an Official List of Securities.

## Chapter 5. Prospectus Requirement

### 69. Prospectus content

A Prospectus must contain:

- (a) information which is material to an investor for making an informed assessment of:
  - (i) the assets and liabilities, profits and losses, financial position, and prospects of the Issuer and of any guarantor;
  - (ii) the rights attaching to the Securities; and
  - (iii) the reasons for the issuance and its impact on the Issuer; and
- (b) such further information and documents as may be specified by the AFSA pursuant to section 70.

### 70. AFSA power to prescribe Prospectus content

- (1) The AFSA may, by Rules, prescribe the information that must be included in a Prospectus.
- (2) The AFSA may, in prescribing the information to be included in a Prospectus, require specific content for a Prospectus of a particular type of Security.



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- (3) The Issuer or other Person responsible for the issue of a Prospectus must include in the Prospectus all the information required under subsections (1) and (2) that would be reasonable for him to have knowledge of, or acquire through reasonable enquiries.
- (4) The AFSA may by Rules prescribe:
  - (a) the circumstances in which a Prospectus may incorporate any material by reference; and
  - (b) the Persons liable for the content of a Prospectus.

### **71. AFSA power to authorise omission of information**

The AFSA may authorise the omission from the Prospectus, or constituent parts thereof, of certain information to be included therein, where it considers that any of the following conditions is met:

- (a) disclosure of such information would be contrary to the public interest;
- (b) disclosure of such information would be seriously detrimental to the Issuer or to the guarantor, if any, provided that the omission of such information would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the Issuer or guarantor, if any, and of the rights attached to the securities to which the prospectus relates;
- (c) such information is of minor importance in relation to admission to trading on an Authorised Investment Exchange and would not influence the assessment of the financial position and prospects of the Issuer or guarantor, if any.

### **72. AFSA power to publish or require publication of information**

Where a Person issuing a Prospectus fails to publish any information which that Person is required to publish by or under these Regulations, the AFSA may direct the Issuer to publish such information or in a time frame prescribed by the AFSA or publish such information itself.

### **73. Obligation to issue a Supplementary Prospectus**

If at any time after the issue of a Prospectus there is a significant change in, or a material mistake or inaccuracy affecting any matter contained in the Prospectus or a significant new matter arises, the Issuer or the Person responsible for the issue of the Prospectus must issue a Supplementary Prospectus which provides details of the change, mistake, inaccuracy or new matter.



#### **74. Right to withdraw**

- (1) Where the obligation to issue a Supplementary Prospectus arises, investors who have already agreed to purchase or subscribe for the Securities before the Supplementary Prospectus is published have the right to withdraw their acceptances. Subject to (2), such right is exercisable within five working days after the issue of the Supplementary Prospectus or such longer period as either the Issuer may decide or the Authorised Investment Exchange or the AFSA may direct.
- (2) Investors may exercise the right to withdraw their acceptances if the significant new factor, material mistake or material inaccuracy in (1) arose or was noted before the closing of the offer period or the delivery of the securities, whichever occurs first.

### **Chapter 6. Misleading and deceptive statements or omissions**

#### **75. Prohibition against misleading and deceptive statements or omissions**

- (1) A Person must not issue a Prospectus if there is:
  - (a) a misleading or deceptive statement in the Prospectus; or
  - (b) any material omission from the Prospectus; or
  - (c) a significant new matter or a significant change in circumstances is known to the Issuer before the Prospectus is issued.
- (2) A Person does not contravene the prohibition in section 75(1) if that Person can prove the circumstances or matters specified in sections 76 or 77.

#### **76. Defence of reasonable inquiries and reasonable belief**

A Person does not commit a contravention of section 75(1), if that Person proves that he:

- (a) made all inquiries that were reasonable in the circumstances; and
- (b) after making such inquiries, believed on reasonable grounds that the Prospectus was not misleading or deceptive.

#### **77. Defence of reasonable reliance on information given by another Person**

- (1) A Person does not commit a contravention of section 75(1) if the Person proves that he placed reasonable reliance on information given to him by:



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- (a) if the Person is not a natural Person, someone other than a member of the governing body, employee or agent of the Person; or
  - (b) if the Person is a natural Person, someone other than an employee or agent of the natural Person.
- (2) For the purposes of this Part, a Person is not the agent of a Person merely because he performs a particular professional or advisory function for the Person.

### 78. Statements about future matters

- (1) A Person is taken to make a misleading or deceptive statement about a future matter whether by himself or through his agent, if he, at the time of making the statement or causing the statement to be made, did not have reasonable grounds for making the statement or causing the statement to be made.
- (2) The onus for proving that reasonable grounds existed for the purposes of section 78(1) is on the Person who made the statement or caused the statement to be made.
- (3) A Person referred to in section 78(2) may rely on the circumstances referred to in section 76 or 77 in order to prove that he had reasonable grounds for making the statement relating to the future matter.

### 79. Civil compensation

- (1) Any Person prescribed in Rules made by the AFSA as being liable for a Prospectus is liable to pay compensation to another Person who has acquired Securities to which the Prospectus relates and who has suffered loss or damage arising from any untrue or misleading statement in the Prospectus or the omission from it of any material matter required to have been included in the Prospectus under these Regulations or Rules made thereunder.
- (2) The AFSA may make Rules prescribing circumstances in which a Person who would otherwise be liable under section 79(1) will not be so liable.
- (3) Nothing in this section affects the powers, rights or liabilities that any Person may have apart from this section including the power to institute proceedings under section 129 (Action for Damages).

### 80. Stop orders

If the AFSA is satisfied that an Offer of Securities to the Public would contravene or has contravened these Regulations or the Rules made for the purposes of these Regulations or it is necessary or desirable in the interest of the AIFC, the AFSA may issue a stop order



directing that no offer, issue, sale or transfer of the Securities be made for such a period of time as it thinks appropriate.

## Chapter 7. Obligations of Reporting Entities

### 81. Definition of Reporting Entity

A Person is a Reporting Entity if the Person:

- (a) has Securities admitted to an Official List of Securities; or
- (b) is declared by the AFSA to be a Reporting Entity.

### 82. Governance

- (1) A Reporting Entity must have a corporate governance framework which is adequate to promote prudent and sound management of the Reporting Entity in the long-term interest of the Reporting Entity and its shareholders.
- (2) For the purposes of the requirement in section 82(1), the AFSA may, by Rules, prescribe:
  - (a) corporate governance principles and standards that apply to a Reporting Entity, including any requirements applicable to its board of directors and individual members, controllers, employees or any other Person as appropriate;
  - (b) requirements relating to fair treatment of shareholders; and
  - (c) provisions to address conflicts of interests.
- (3) The AFSA may, by Rules, prescribe any circumstances in which such requirements do not apply to certain Reporting Entities.

### 83. Market disclosure

- (1) A Reporting Entity must, subject to section 83(5), make disclosures to the market of information specified by the AFSA in the circumstances prescribed by the Rules.
- (2) Without limiting the generality of section 83(1), the AFSA may, by Rules, prescribe the type of information and the circumstances in which such information must be disclosed including:
  - (a) financial information;
  - (b) Inside Information as defined in section 87(a); and





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- (c) any other information or material change which occurs in relation to a Reporting Entity.
- (3) Where information is required to be disclosed pursuant to section 83(1), the Reporting Entity must:
  - (a) issue a release of information to the market disclosing the information; and
  - (b) file a report with the AFSA,in the manner prescribed by the Rules.
- (4) Where a Reporting Entity has failed to publish information required to be published pursuant to section 83(1) and the Rules made for the purposes of this section, the AFSA may publish such information in a manner considered appropriate by the AFSA.
- (5) The AFSA may, by Rules, prescribe the circumstances in which a Reporting Entity need not comply with the disclosure requirement in section 83(1).

### 84. Financial reports

The AFSA may prescribe by Rules:

- (a) financial reports to be filed by a Reporting Entity;
- (b) audit requirements to be observed by a Reporting Entity.

### 85. Sponsors and compliance advisers

- (1) The AFSA may, where it considers it appropriate to do so, require that a Reporting Entity or a Person that intends to have Securities admitted to an Official List of Securities or admitted to trading on an Authorised Investment Exchange appoints an Authorised Firm or Accredited Firm to act as a sponsor or compliance adviser.
- (2) The AFSA may, by Rules, prescribe:
  - (a) the circumstances in which a Reporting Entity is required to appoint a sponsor or compliance adviser;
  - (b) the requirements applicable to the Reporting Entity and to an Authorised Firm or Accredited Firm appointed as a sponsor or compliance adviser; and
  - (c) any other matter necessary to give effect to such appointments.



## Chapter 8. Prevention of Market Abuse

### 86. Market Abuse

A Person must not:

- (a) acquire or dispose of, or attempt to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, an Investment, on the basis of Inside Information relating to the Investment; or
- (b) disclose Inside Information to another Person otherwise than in the proper course of the exercise of his employment, profession or duties; or
- (c) recommend or induce any Person, on the basis of Inside Information, to acquire or dispose of an Investment to which that information relates; or
- (d) effect, or participate in effecting, transactions or orders to trade (otherwise than for legitimate reasons in conformity with accepted market practice on the relevant market) which:
  - (i) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price or value of, one or more Investments; or
  - (ii) secure the price of one or more Investments at an abnormal or artificial level;
- (e) effect, or participate in effecting, transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; or
- (f) disseminate, or cause the dissemination of, information by any means which gives, or is likely to give, a false or misleading impression as to an Investment by a Person who knew or could reasonably be expected to have known that the information was false or misleading.

### 87. Rules relating to Market Abuse

The AFSA may issue Rules in respect of the scope and effect of section 86, including:

- (a) the meaning of Inside Information;
- (b) particular types of conduct that are to be regarded as contravening or not contravening section 86;
- (c) particular types of conduct that are not to be regarded as contravening section 86; and



- (d) reasons which may or may not be regarded as legitimate, and practices that may or may not be regarded as accepted market practice for the purposes of section 86(d),

and such Rules will be binding on all Persons to whom section 86 relates.

## Chapter 9. Takeovers

### 88. Takeover Rules

- (1) The AFSA may prescribe by Rules (“the Takeover Rules”):
  - (a) the procedures for and obligations of Persons in respect of a Takeover of a Reporting Entity with a view to ensuring:
    - (i) that where a Takeover takes place, it does so in an efficient, competitive, fair and informed market;
    - (ii) that shareholders are treated fairly and shareholders of the same class are treated the same; and
    - (iii) that a Takeover is conducted in an orderly framework;
  - (b) principles to be observed by a Person involved in a Takeover (“the Takeover Principles”), relating to, but not limited to:
    - (i) treatment of shareholders and of classes of shareholders in a Takeover;
    - (ii) adequacy of time and of information provided to shareholders to enable proper consideration of a Takeover bid;
    - (iii) avoidance of the creation of false markets; and
    - (iv) avoidance of oppression of minorities.
- (2) A Person who is involved in a Takeover of a Reporting Entity must comply with and observe the spirit and the wording of the Takeover Principles.



## Chapter 10. Recognition

### 89. Recognition of Non-AIFC Market Institutions

- (1) A Person which operates an investment exchange, clearing house from a place of business in a jurisdiction other than the AIFC may apply to the AFSA for an order declaring it to be a Recognised Non-AIFC Investment Exchange or Recognised Non-AIFC Clearing House as appropriate (together “Recognised Non-AIFC Market Institutions”).
- (2) An application under subsection (1) must be made in such manner as the AFSA may by Rules require.
- (3) The AFSA may make an order referred to in subsection (1) if, having regard to the law and practice of the country or territory in which the applicant's head office is situated and to the rules and practice of the applicant, it appears to the AFSA that the following requirements are met:
  - (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with the relevant requirements for the licensing of an Authorised Market Institution in Chapter 2 of O;
  - (b) there are adequate procedures for dealing with a Person who is unable, or likely to become unable, to meet his obligations in respect of one or more Market Contracts connected with the investment exchange or clearing house;
  - (c) the applicant is able to co-operate with the AFSA by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between the AFSA and those responsible for the supervision of the applicant in the country or territory in which the applicant or the applicant's head office is situated.

### 90. Exemption for Recognised Non-AIFC Market Institutions from General Prohibition

- (1) An Recognised Non-AIFC Investment Exchange will not be deemed to be carrying on any Market Activity or Regulated Activity in the AIFC where such activity:
  - (a) is carried on as a part of the Recognised Non-AIFC Investment Exchange's business as an investment exchange; or
  - (b) is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another Person.



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- (2) An Recognised Non-AIFC Clearing House will not be deemed to be carrying on any Market Activity or Regulated Activity in the AIFC where such activity:
  - (a) is carried on for the purposes of, or in connection with, the provision of clearing services by the Recognised Non-AIFC Clearing House; or
  - (b) is carried on for the purposes of, or in connection with, the provision by the Recognised Non-AIFC Clearing House of services designed to facilitate the provision of clearing services by another Person.

### 91. Recognised Non-AIFC Member

- (1) A Person located in a jurisdiction other than the AIFC may apply to the AFSA for an order declaring it to be a Recognised Non-AIFC Member.
- (2) An application under subsection (1) must be made in such manner as the AFSA may by Rules require.
- (3) The AFSA may make an order referred to in subsection (1) if, the applicant satisfies the AFSA that the following requirements are met:
  - (a) the applicant is licensed or otherwise authorised to trade on or use the facilities of an exchange or clearing house in a jurisdiction acceptable to the AFSA;
  - (b) the applicant is regulated in respect of trading in such jurisdiction by a regulator to a standard satisfactory to the AFSA;
  - (c) the law and practice under which the applicant is licensed or otherwise authorised is broadly equivalent to the AFSA's regulatory regime as it applies to a Member;
  - (d) when using the facilities of an Authorised Investment Exchange or Authorised Clearing House, the applicant does not exceed the scope of the activities it is authorised to carry on by those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated;
  - (e) the applicant has agreed to cooperate with the AFSA and subject itself to such parts of the legal and regulatory framework administered by the AFSA as the AFSA may require.
- (4) The AFSA will only make an order referred to in subsection (1) if adequate arrangements exist, or will exist, for co-operation between the AFSA and those responsible for the supervision of the applicant in the country or territory in which the applicant or the applicant's head office is situated.



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- (5) The AFSA may prescribe by Rules ongoing criteria which a Person must satisfy in order to continue to be a Recognised Non-AIFC Member.
  
- (6) If it is necessary or desirable in pursuit of its Regulatory Objectives, the AFSA may revoke or vary an order declaring a Person to be a Recognised Non-AIFC Member in the circumstances and manner prescribed in the Rules made for the purposes of this section.



## Part 7. COLLECTIVE INVESTMENT SCHEMES

### 92. Definition of Collective Investment Scheme

- (1) "Collective Investment Scheme" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable Persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the Persons who are to participate do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.
- (3) The arrangements must also have either or both of the following characteristics:
  - (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
  - (b) the property is managed as a whole by or on behalf of the operator of the scheme.
- (4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single Collective Investment Scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) The AFSA may by Rules provide that arrangements do not amount to a Collective Investment Scheme:
  - (a) in specified circumstances; or
  - (b) if the arrangements fall within a specified category of arrangement.

### 93. Registration of Collective Investment Schemes

- (1) The AFSA may make Rules relating to the registration by it of Collective Investment Schemes.
- (2) Rules made by the AFSA under section 93(1) may provide that all or certain categories of Collective Investment Schemes may not be established or promoted by Authorised Persons unless they have been registered.
- (3) Rules made by the AFSA under section 93(1) may also include provisions as to:



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- (a) the constitution, management and operation of such Collective Investment Schemes;
- (b) the investment and borrowing powers of such Collective Investment Schemes;
- (c) the procedure for application to the AFSA for registration of Collective Investment Schemes;
- (d) operating duties and responsibilities in respect of Collective Investment Schemes;
- (e) the registration of offering material or particulars and reporting requirements for Collective Investment Schemes; and
- (f) suspension of dealings in and termination of Collective Investment Schemes.

### 94. Power to make directions in respect of Collective Investment Schemes

- (1) The AFSA may give a direction under this section if it appears to the AFSA that:
  - (a) in respect of a Collective Investment Scheme registered under section 93(1), one or more of the requirements under Rules made pursuant to section 93(1) is no longer satisfied or is likely to be breached; or
  - (b) it is necessary or desirable to give such a direction in order to protect the interests of participants in a registered Collective Investment Scheme.
- (2) A direction under this section may:
  - (a) require the Person or Persons responsible for the management or operation of a registered Collective Investment Scheme:
    - (i) to cease the issue or redemption of both the issue and redemption of units in the Collective Investment Scheme; or
    - (ii) to wind up the Collective Investment Scheme;
  - (b) withdraw the AFSA's registration of that Collective Investment Scheme; or
  - (c) restrict or suspend promotion or sale of units in a Collective Investment Scheme.





## Part 8. SUPERVISION OF AUTHORISED PERSONS

### Chapter 1. Supervisory powers of the AFSA

#### 95. Exercise of supervisory powers by the AFSA

- (1) The AFSA may exercise any of the powers set out in this Chapter at any time where it considers it necessary or desirable to do so in accordance with its Regulatory Objectives.
- (2) The AFSA may set out in Rules or guidance circumstances in which it is likely to exercise such powers.
- (3) Where the AIFC has exercised one or more of the powers set out in this Chapter it may, where it considers it necessary or desirable to do so in accordance with its Regulatory Objectives:
  - (a) withdraw a prohibition, restriction or requirement; or
  - (b) substitute or vary an existing prohibition, restriction or requirement.
- (4) A requirement imposed on a Person as a result of the exercise by the AFSA of powers under this Part may be enforceable by injunction on the application of the AFSA to the AIFC Court.
- (5) Any prohibition or requirement including any variation or substitution of such prohibition or requirement, does not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published in relation to such imposition, withdrawal, substitution or variation.

#### 96. Power to gather information

- (1) The AFSA may, by notice in writing, require an Authorised Person, Approved Individual, Designated Individual or other Employee of an Authorised Person to:
  - (a) give, or procure the giving of, such specified information; or
  - (b) produce, or procure the production of, such specified documents;to the AFSA as the AFSA considers necessary or desirable to meet the objectives of the AFSA.
- (2) The AFSA may require an Authorised Person to allow the AFSA to enter its premises during normal business hours or at any other time as may be agreed for the purpose of



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inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the Regulatory Objectives of the AFSA.

- (3) The AFSA may exercise its powers under this section 96 in respect of any information, documents or premises wherever they may be located in the Republic of Kazakhstan.
- (4) Information given or a document produced as a result of the exercise by the AFSA of powers under this section is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.

### **97. Power to require the production of a report**

- (1) The AFSA may, by notice in writing, require an Authorised Person to provide the AFSA with a report on any matter as the AFSA considers necessary or desirable to meet the objectives of the AFSA.
- (2) The Person appointed to make a report required by section 97(1) must be a Person nominated or approved by the AFSA.
- (3) Where a requirement has been made of an Authorised Person under this section, the Authorised Person must take all reasonable steps to ensure that:
  - (a) any Person who is providing or has provided services to the Authorised Person must provide all such assistance as the appointed Person may reasonably require; and
  - (b) the appointed Person co-operates with the AFSA.
- (4) The obligation in section 97(1) is enforceable on application by the AFSA to the AIFC Court.
- (5) The costs of providing a report under section 97(1) will be borne by the Authorised Person to whom a notice has been given under section 97(1).
- (6) Subject to section 97(7), information given or a document produced as a result of the exercise by the AFSA of powers under this section is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (7) The AFSA may not disclose a statement made by a Person in a report made pursuant to a requirement made of the Person under section 97(1) to any law enforcement agency for the purpose of criminal proceedings against the Person unless:



- (a) the Person consents to the disclosure; or
- (b) the AFSA is required by law or court order to disclose the statement.

#### **98. Power to restrict, withdraw or suspend a Licence**

The AFSA may:

- (a) impose or vary such conditions, restrictions and requirements on a Licence as the AFSA considers appropriate; or
- (b) withdraw an Authorised Person's Licence or vary its Licence to remove one or more Regulated Activities or Market Activities; or
- (c) suspend an Authorised Person's Licence in relation to one or more Regulated Activities or Market Activities.

#### **99. Power to impose a prohibition**

The AFSA may prohibit an Authorised Person from:

- (a) entering into certain specified transactions or types of transactions; or
- (b) soliciting business from certain specified Persons or types of Persons; or
- (c) carrying on business in a specified manner or other than in a specified manner; or
- (d) using a particular name or description in respect of the Authorised Person; or
- (e) dealing with any relevant property in a specified manner or other than in a specified manner; or
- (f) assisting, counselling or procuring another Person to deal with any relevant property in a specified manner or other than in a specified manner.

#### **100. Power to impose a requirement**

- (1) The AFSA may require an Authorised Person to:
  - (a) take or refrain from taking such action as the AFSA considers appropriate;
  - (b) carry on business in, and only in, a specified manner;
  - (c) deal with any relevant property in a specified manner;
  - (d) deal with any relevant property such that:



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- (i) the property remains of a value and in a condition that appears to the AFSA to be desirable with a view to ensuring that the Person will be able to meet its liabilities in relation to the business which constitutes a Regulated Activity for which it holds a Licence; and
  - (ii) the Person is able at any time to transfer or dispose or otherwise deal with the property when instructed to do so by the AFSA.
- (2) For the purposes of this section:
- (a) “dealing” in relation to property includes the maintaining, holding, disposing and transferring of property; and
  - (b) “relevant property”, in relation to an Authorised Person, means:
    - (i) any property held by the Person on behalf of any of the clients of the Person, or held by any other Person on behalf of or to the order of the Person; or
    - (ii) any other property which the AFSA reasonably believes to be owned or controlled by the Person.

### 101. Power to enter into enforceable agreement

- (1) The AFSA may enter into a written agreement with any Person.
- (2) An agreement under (1) may include an agreement to:
  - (a) pay any sum to any Person (including the AFSA); or
  - (b) take remedial action; or
  - (c) do any other thing.
- (3) The terms of such an agreement may be varied with the consent of the AFSA.
- (4) If the AFSA considers that the Person who entered into the agreement has been or is in breach of any of its terms, it may apply to the AIFC Court for:
  - (a) an order directing the Person to comply with the terms of the agreement; or
  - (b) an order directing the Person to pay to any Person or to the AFSA an amount up to the amount of any financial benefit that the Person has obtained directly or indirectly and that is reasonably attributable to the breach; or



- (c) any order that the AIFC Court considers appropriate directing the Person to compensate any other Person who has suffered loss or damage as a result of the breach; or
- (d) any other order that the AIFC Court considers appropriate.

## Chapter 2. Obligations of Authorised Persons

### 102. Obligation of disclosure to the AFSA

- (1) Subject to (2), an Authorised Person must disclose to the AFSA anything which reasonably tends to show:
  - (a) a breach, or likely breach of a provision of legislation administered by the AFSA; or
  - (b) a failure, or likely failure, to comply with any obligation to which a Person is subject under such legislation; or
  - (c) any other matter as the AFSA may prescribe in Rules;which may be attributable to the conduct of the Authorised Person or its Employees.
- (2) Section 102(1) does not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (3) An Authorised Person must establish and implement appropriate systems and internal procedures to enable its compliance with section 102(1).
- (4) Any provision in an agreement between an Authorised Person and a director, officer, employee, agent or auditor thereof is void in so far as it purports to hinder compliance with an obligation under section 102(1).
- (5) No Person may be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an Authorised Person to comply with an obligation under section 102(1).
- (6) The AIFC Court may, on application of an aggrieved Person, make any order for relief where a Person has been subjected to any such detriment or loss or damage as referred to in section 102(5).

### 103. Obligation to comply with an order or requirement of the AFSA

Where the AFSA makes an order, issues a direction or prohibition, or makes any requirement in relation to an Authorised Person pursuant to a provision of this Law or



Rules or legislation administered by the AFSA, such Authorised Person must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

#### **104. Provision of information to the AFSA**

An Authorised Person must not:

- (a) provide information which is false, misleading or deceptive to the AFSA; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the AFSA.

#### **105. Obstruction of the AFSA**

An Authorised Person must not engage in conduct that is intended to obstruct the AFSA in the exercise of any powers under this Part or Part 9 (Enforcement), including without limitation the:

- (a) destruction of documents;
- (b) failure to give or produce information or documents specified by the AFSA;
- (c) failure to attend before the AFSA at a specified time and place to answer questions;
- (d) giving of information that is false or misleading; and
- (e) failure to give any assistance in relation to an investigation which the Person is able to give.

#### **106. No liability for provision of information or documents to the AFSA**

An Authorised Person, an Approved Individual, a Designated Individual or any other Employee of an Authorised Person is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of:

- (a) complying, or proposing to comply, with a requirement made, or purporting to have been made, under any provision of this Part for inspection of, copying of, giving of or production of, information or documents;
- (b) the giving of information or production of a document by the Person to the AFSA in good faith and in reasonable belief that the information or document is relevant to any functions of the AFSA whether such information or document is given or produced pursuant to a requirement at law or otherwise.



### 107. Self-incrimination

Subject to section 108(1), it is not a reasonable excuse for a Person to refuse or fail to:

- (a) permit inspection and copying of any information or document; or
- (b) give or produce, or procure the giving or production of, any information or document; or
- (c) answer questions;

pursuant to any requirement under either this Part 8 (Supervision of Authorised Persons) or Part 9 (Enforcement) on the grounds that any such information or document or answer, as the case may be:

- (d) might tend to incriminate the Person or make the Person liable to a penalty; or
- (e) is, or contains, or might reveal a Privileged Communication; or
- (f) is, or contains, or might reveal a communication made in confidence.

### 108. Privilege

- (1) Where the AFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a Privileged Communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless:
  - (a) where the Person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or
  - (b) otherwise, the Person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.
- (2) Where a lawyer so refuses to comply with a requirement, he must, as soon as practicable, give to the AFSA a written notice setting out:
  - (a) where the lawyer knows the name and address of the Person to whom, or by whom, or on behalf of whom, the communication was made, then that name and address; and



- (b) where the requirement to give information or produce a document relates to a communication which was made in writing, then sufficient particulars to identify the document containing the communication.
- (3) “Privileged Communication” means a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law, but does not include a general duty of confidentiality.

## Chapter 3. Accounting / Auditing

### 109. Requirement to appoint an auditor

An Authorised Person must appoint an auditor who is an Ancillary Service Provider.

### 110. Auditor rules

The AFSA may make such Rules regarding:

- (a) the appointment, term of office, registration or removal of auditors;
- (b) the qualification or approval of auditors;
- (c) the duties, functions and powers of auditors;
- (d) the scope, content and timing of any reports, reviews or audits to be undertaken by auditors;
- (e) the remuneration of auditors;
- (f) the notification or reporting obligations of auditors (whether to the relevant Authorised Person, the AFSA or otherwise); and
- (g) such other related or ancillary matters the AFSA thinks fit.

## Chapter 4. Financial Service Transfers

### 111. Relevant Transfer

The AFSA may provide by Rules that the transfer of the business of carrying on specified Regulated Activities by an Authorised Firm (a “Relevant Transfer”) either:

- (a) may only be made by an order of the AIFC Court under section 112; or





- (b) may be made by such an order if the transferor elects.

### **112. Application to the AIFC Court**

- (1) An application to the AIFC Court for an order sanctioning a Relevant Transfer may be made by either the transferor or the transferee under the Relevant Transfer or both.
- (2) Where an application is made to the AIFC Court for an order sanctioning a Relevant Transfer, the AFSA may give directions in respect of:
  - (a) the preparation of a report in relation to the transfer;
  - (b) the notification of specified Persons of the transfer; and
  - (c) the publication of notices in relation to the transfer.
- (3) On an application under (1), the following are entitled to be heard:
  - (a) any Person who alleges that he would be adversely affected by the carrying out of the transfer; and
  - (b) the AFSA.

### **113. Powers of the Court in relation to a transfer scheme**

- (1) The AIFC Court may make an order under this section sanctioning a Relevant Transfer if:
  - (a) any directions made by the ASFA pursuant to section 112(2) have been complied with;
  - (b) on or before the Relevant Transfer becoming effective, the transferee:
    - (i) will have the authorisation required (if any) to enable it to carry on the business which is to be transferred to it in the place to which it is to be transferred; and
    - (ii) will possess adequate financial resources to carry on the business concerned in accordance with the legislation applicable in the place to which it is to be transferred; and
  - (c) the AIFC Court considers, in all the circumstances of the case, it is appropriate to sanction the Relevant Transfer.
- (2) If the AIFC Court makes an order sanctioning a Relevant Transfer, it may by that or any subsequent order make such provision (if any) as it thinks fit:



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- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the Authorised Firm concerned; or
  - (b) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the firm concerned; or
  - (c) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the Relevant Transfer is fully and effectively carried out; or
  - (d) for dealing with the interests of any Person who, within such time and in such manner as the AIFC Court may direct, objects to the Relevant Transfer; or
  - (e) for the dissolution, without winding up, of any firm concerned.
- (3) An order may:
- (a) transfer property or liabilities whether or not the Authorised Firm concerned otherwise has the capacity to effect the transfer in question; or
  - (b) make provision in relation to property which was held by the Authorised Firm concerned as trustee; or
  - (c) make provision as to future or contingent rights or liabilities of the Authorised Firm concerned, including provision as to the construction of instruments under which such rights or liabilities may arise.
- (4) If an order makes provision for the transfer of property or liabilities:
- (a) the property is transferred to and vests in; and
  - (b) the liabilities are transferred to and become liabilities of;
- the transferee as a result of the order.
- (5) If any property or liability included in the order is governed by the law of any jurisdiction other than the AIFC, the order may require the Authorised Firm concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (6) Property transferred as the result of an order under this section may, if the AIFC Court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.



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- (7) An order under this section which provides for the transfer of property is to be treated as an instrument of transfer for the purposes of any Regulation or Rule requiring the delivery of an instrument of transfer to register property.



## Part 9. ENFORCEMENT

### Chapter 1. Power to conduct investigations

#### 114. Power of the AFSA to conduct an investigation

- (1) The AFSA may conduct such investigation as it considers appropriate and expedient:
  - (a) where it has reason to suspect that a contravention of any legislation administered by the AFSA is being or may have been committed; or
  - (b) further to a request made by a Financial Services Regulator.
- (2) A Person is entitled to legal representation during the course of an investigation.

#### 115. Costs of an Investigation

- (1) The AFSA will pay the costs and expenses of an investigation save that, where, as a result of an investigation under section 114, the Person under investigation is found to have contravened any legislation administered by the AFSA, the AFSA or, where appropriate, the AIFC Court, may order that the Person must pay the AFSA in respect of the whole or any part of the costs and expenses of the investigation.
- (2) The AFSA may apply to the AIFC Court for an order under section 115(1) only where there is a proceeding before the AIFC Court relating to the alleged contravention by the Person.

#### 116. Powers to Obtain Information and Documents for Investigation

- (1) Where the AFSA considers that a Person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:
  - (a) enter the business premises of such Person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;
  - (b) require such Person, by written notice, to
    - (i) give, or procure the giving of, specified information in such form as it may reasonably require; or
    - (ii) produce, or procure the production of, specified documents; or
    - (iii) to attend before an officer, employee or agent of the AFSA at a specified time and place to answer questions in private (compulsory interview); or



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- (iv) give it any assistance in relation to the investigation which the Person is able to give.
- (2) Where the AFSA exercises its power under section 116(1)(a) to enter business premises, it may:
- (a) require any appropriate Person to make available any relevant information stored at those premises for inspection or copying;
  - (b) require any appropriate Person to convert any relevant information into a form capable of being copied; and
  - (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) Where the AFSA exercises its power under section 116(1)(b)(iii) to conduct a compulsory interview, it may give a direction:
- (a) concerning who may be present;
  - (b) preventing any Person present during any part of the compulsory interview from disclosing to any other Person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
  - (c) concerning the conduct of any Person present, including as to the manner in which they will participate in the interview;
  - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
  - (e) requiring the interviewee to answer any questions relevant to the investigation.
- (4) The AFSA may require the relevant Person to give such information or produce such documents by the end of a reasonable period, at a place and in a form specified in the notice.
- (5) The AFSA may exercise its powers under section 116(1) in respect of any Person within, or outside of, the AIFC provided that, if the Person is outside the AIFC and is not an Authorised Person or Approved Individual, the AFSA will either:
- (a) use any arrangements it has with a regulatory authority in the jurisdiction in which the Person is resident or domiciled, or the premises are located, to assist it to exercise the power; or



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- (b) apply to the AIFC Court for an order compelling the Person to provide the information, produce or procure the production of the documents, or answer questions, or permitting the AFSA to enter the premises of that Person.

### 117. Use and effect of information and documents obtained for an Investigation

- (1) Subject to section 117(2), any information given or document produced as a result of the exercise by the AFSA of powers under section 116 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (2) The AFSA may not disclose a statement made by a Person in answer to any question asked pursuant to a requirement made of the Person under section 116(1)(b)(iii) to any law enforcement agency for the purpose of criminal proceedings against the Person unless:
  - (a) the Person consents to the disclosure; or
  - (b) the AFSA is required by law or court order to disclose the statement.
- (3) The AFSA may retain possession of any information and documents given to it pursuant to a requirement made under section 116(1) for so long as is necessary:
  - (a) for the purposes of the investigation to which the notice relates; or
  - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
  - (c) for such a proceeding to be completed.
- (4) A Person is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under section 116(1), but any lien is not otherwise prejudiced.
- (5) Where a Person is unable to produce information or documents in compliance with a requirement made under section 116(1), the AFSA may require the Person to state, to the best of that Person's knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (6) Where the AFSA considers that, if disclosed, the fact of the issuing of a notice requiring a Person to:
  - (a) produce documents; or
  - (b) give information; or



- (c) attend a compulsory interview; or
- (d) give assistance;

may hinder the investigation to which it relates, the AFSA may direct a Person who receives a notice under section 116(1) and/or that person's legal representative not to disclose the receipt of the notice or any information relating to compliance therewith to any other Person, other than his legal representative under a duty of confidentiality.

## Chapter 2. Disciplinary sanctions

### 118. Sanctions for contraventions

- (1) If the AFSA considers that a Person has committed a Contravention, it may:
  - (a) fine the Person such amount as it considers appropriate in respect of the contravention; and/or
  - (b) censure the Person in respect of the contravention; and/or
  - (c) make a direction requiring the Person to effect restitution or compensate any other Person in respect of the contravention within such period and on such terms as the AFSA may direct; and/or
  - (d) make a direction requiring the Person to account for, in such form and on such terms as the AFSA may direct, such amounts as the AFSA determines to be profits or unjust enrichment arising from the contravention; and/or
  - (e) make a direction requiring the Person to cease and desist from such activity constituting or connected to the contravention as the AFSA may stipulate; and/or
  - (f) make a direction requiring the Person to do an act or thing to remedy the contravention or matters arising from the contravention; and/or
  - (g) make a direction prohibiting the Person from holding office in or being an employee of any Authorised Person.
- (2) Nothing in this section prevents the AFSA from exercising any other power that it may exercise under any legislation administered by it.

### 119. General contravention provision

A Person commits a Contravention if he:



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- (a) fails to comply with any prohibition or requirement imposed on him by the AFSA , any undertaking given by him to the AFSA, or any agreement made by him with the AFSA; or
- (b) does anything that is prohibited under, or that contravenes any legislation administered by the AFSA; or
- (c) does not do something that the Person is required to do under any legislation administered by the AFSA; or
- (d) commits an act of fraud or abuses any fiduciary duty which he owes to his clients or customers or to an Authorised Person; or
- (e) acts in a deceptive, misleading or dishonest manner in any context; or
- (f) otherwise commits any contravention described as such in these Regulations or Rules made by the AFSA.

### 120. Involvement in contraventions

- (1) If a Person is knowingly concerned in a Contravention by another Person of legislation administered by the AFSA, that Person also commits a Contravention of the relevant legislation.
- (2) A Person is knowingly concerned in a Contravention if, and only if, that Person:
  - (a) has aided, abetted, counselled, or procured the Contravention; or
  - (b) has induced, whether by threats or promises or otherwise, the Contravention; or
  - (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
  - (d) has conspired with another or others to commit the Contravention.

### 121. Contraventions by Bodies Corporate

- (1) If a Contravention committed by a Body Corporate is shown:
  - (a) to have been committed with the consent or connivance of an officer; or
  - (b) to be attributable to any neglect on his part;

the officer as well as the Body Corporate commits the Contravention and is liable to sanctions accordingly.





- (2) If the affairs of a Body Corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the Body Corporate.
- (3) The AFSA may by Rules provide for the application of any provision of this section, with such modifications as the AFSA considers appropriate, to a Body Corporate formed or recognised under the law of a territory outside the AIFC.

## Chapter 3. Other enforcement powers

### 122. Appointment of Managers

- (1) Where it considers it necessary or desirable in the pursuit of its objectives, the AFSA may issue a written notice requiring an Authorised Person to appoint one or more individuals to act as managers of the business of such Person on such terms as the AFSA may specify in any such notice.
- (2) The terms specified in the written notice may be varied by the AFSA from time to time by further written notice.
- (3) An individual so appointed by an Authorised Person must be either nominated or approved by the AFSA.

### 123. Compulsory Winding up

- (1) The AFSA may present a petition to the AIFC Court for the winding up of an Authorised Person.
- (2) On such a petition, the AIFC Court may wind up the Authorised Person if it is of the opinion that it is just and equitable that it should be wound up.

## Chapter 4. Injunctions, Restitution and Actions for Damages

### 124. Injunction – contraventions

- (1) Where a Person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention within the meaning of section 119 the AIFC Court may, on application of the AFSA or any aggrieved Person, make one or more of the following orders:
  - (a) an order restraining the Person from engaging in the conduct including but not limited to, engaging in conduct that may constitute a contravention;



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- (b) an order requiring that Person to do any act or thing including, but not limited to, acts or things to remedy the contravention or to minimise loss or damage;
- (c) any other order as the AIFC Court sees fit.

### 125. Injunction – investigations and proceedings

(1) Where:

- (a) the AFSA is conducting or has conducted an investigation into the acts or omissions of a Person (the ‘relevant Person’) which may constitute a contravention within the meaning of section 119; or
- (b) a civil or regulatory proceeding has been instituted, by the AFSA or otherwise, against a relevant Person in relation to an alleged contravention,

the AIFC Court may, on application of the AFSA or any aggrieved Person, make one or more of the following orders:

- (c) an order restraining the relevant Person from paying, transferring, disposing of, or otherwise dealing with, any assets of his which he is reasonably likely to dispose of or otherwise deal with;
- (d) an order restraining any other Person holding assets on behalf of the relevant Person from paying, transferring, disposing of, or otherwise dealing with, any assets of the relevant Person which are reasonably likely to be disposed of or otherwise dealt with;
- (e) an order prohibiting the relevant Person or any other Person from taking or sending out of the jurisdiction of the AIFC Court any assets of the relevant Person or held on his behalf;
- (f) in the event that the relevant Person is a natural Person
  - (i) an order appointing a receiver or trustee, having such powers as the AIFC Court may see fit, of the property or any of the property of the relevant Person;
  - (ii) an order requiring him to deliver up to the AIFC Court his passport and such other documents as the AIFC Court sees fit; or
  - (iii) an order prohibiting him from leaving the Republic of Kazakhstan without the consent of the AIFC Court;



- (g) in the event that the relevant Person is a Body Corporate, an order appointing a receiver or receiver and manager, having such powers as the AIFC Court may see fit, of the property or any of the property of the relevant Person.
- (2) Nothing in section 125 affects the powers that any Person or the AIFC Court may have apart from this section.

### 126. Injunction – market abuse

- (1) If, on the application of the AFSA, the AIFC Court is satisfied:
  - (a) that there is a reasonable likelihood that any Person will engage in Market Abuse; or
  - (b) that any Person is or has engaged in Market Abuse and that there is a reasonable likelihood that the Market Abuse will continue or be repeated;

the AIFC Court may make an order restraining the Market Abuse.

- (2) If on the application of the AFSA the AIFC Court is satisfied:
  - (a) that any Person is or has engaged in Market Abuse; and
  - (b) that there are steps which could be taken for remedying the Market Abuse;

the AIFC Court may make an order requiring him to take such steps as the AIFC Court may direct to remedy it.

- (3) If, on the application of the AFSA, the AIFC Court is satisfied that any Person:
  - (a) may be engaged in Market Abuse; or
  - (b) may have been engaged in Market Abuse.

the AIFC Court may make an order restraining the Person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.

- (4) In subsection (2), references to remedying any Market Abuse include references to mitigating its effect.



### 127. Restitution Order – contraventions

- (1) The AIFC Court may, on the application of the AFSA, make an order under subsection (2) if it is satisfied that a Person has committed a contravention within the meaning of section 119, and:
  - (a) that profits have accrued to him as a result of the contravention; or
  - (b) that one or more Persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The AIFC Court may order the Person concerned to pay to the AFSA such sum as appears to the Court to be just and equitable having regard:
  - (a) in a case within paragraph (a) of subsection (1), to the profits appearing to the AIFC Court to have accrued; and
  - (b) in a case within paragraph (b) of subsection (1), to the extent of the loss or other adverse effect; and
  - (c) in a case within both of those paragraphs, to the profits appearing to the AIFC Court to have accrued and to the extent of the loss or other adverse effect.
- (3) Any amount paid to the AFSA in pursuance of an order under subsection (2) must be paid by it to such Person or distributed by it among such Persons as the AIFC Court may direct.
- (4) On an application under subsection (1) the AIFC Court may require the Person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes:
  - (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of subsection (1);
  - (b) establishing whether any Person or Persons have suffered any loss or adverse effect as mentioned in paragraph (b) of subsection (1) and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (3).
- (5) The AIFC Court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.
- (6) Nothing in this section affects the right of any Person other than the AFSA to bring proceedings in respect of the matters to which this section applies.



### 128. Restitution Order – market abuse

- (1) The AIFC Court may, on the application of the AFSA, make an order under subsection (4) if it is satisfied that a Person:
  - (a) has engaged in Market Abuse; or
  - (b) by taking or refraining from taking any action, has required or encouraged another Person or Persons to engage in behaviour which, if engaged in by the Person concerned, would amount to Market Abuse;and the condition mentioned in subsection (2) is fulfilled.
- (2) The condition is that:
  - (a) profits have accrued to the Person concerned as a result; or
  - (b) one or more Persons have suffered loss or been otherwise adversely affected as a result.
- (3) But the AIFC Court may not make an order under subsection (4) if it is satisfied that:
  - (a) the Person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).
- (4) The AIFC Court may order the Person concerned to pay to the AFSA such sum as appears to the AIFC Court to be just having regard:
  - (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the AIFC Court to have accrued;
  - (b) in a case within paragraph (b) of subsection (2), to the extent of the loss or other adverse effect;
  - (c) in a case within both of those paragraphs, to the profits appearing to the AIFC Court to have accrued and to the extent of the loss or other adverse effect.
- (5) Any amount paid to the AFSA in pursuance of an order under subsection (4) must be paid by it to such Person or distributed by it among such Persons as the AIFC Court may direct.



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- (6) On an application under subsection (1) the AIFC Court may require the Person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes:
  - (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of subsection (2);
  - (b) establishing whether any Person or Persons have suffered any loss or adverse effect as mentioned in paragraph (b) of subsection (2) and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (5).
- (7) The AIFC Court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.
- (8) Nothing in this section affects the right of any Person other than the AFSA to bring proceedings in respect of the matters to which this section applies.

### 129. Action for damages

- (1) Unless otherwise provided under Rules made by the AFSA, where a Person:
  - (a) intentionally, recklessly or negligently commits a breach of duty, requirement, prohibition, obligation or responsibility imposed by or under these Regulations; or
  - (b) commits fraud or other dishonest conduct in connection with a matter arising under such Regulations;that Person is liable to compensate any other Person for any loss or damage caused to that other Person as a result of such conduct, and otherwise is liable to restore such other Person to the position they were in prior to such conduct.
- (2) The AIFC Court may, on application of the AFSA or a Person who has suffered loss or damage caused as a result of conduct described in subsection (1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the AIFC Court sees fit, except where such liability is excluded under these Regulations or any Rules made by the AFSA.
- (3) Nothing in this section affects the powers that any Person or the Court may have apart from this section.



**130. Power of the AFSA to intervene in proceedings**

- (1) The AFSA may intervene as a party in any proceedings in the AIFC Court where it considers such intervention appropriate to meet one or more of its Regulatory Objectives.
- (2) Where the AFSA so intervenes, it will, subject to any other law, have all the rights, duties and liabilities of such a party.



## Schedule 1: Decision-making procedures of the AFSA

### 1. Interpretation

For the purposes of this Schedule “Relevant Person” means a Person in relation to whom the AFSA exercises or proposes to exercise a power.

### 2. Application of Schedule

This Schedule applies to the AFSA, subject to paragraph 3, where a provision in these Regulations or Rules made thereunder requires or enables the AFSA to make a decision.

### 3. Decisions to which procedures do not apply

- (1) The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the AFSA:
  - (a) to withdraw a direction, requirement, restriction or prohibition; or
  - (b) to withdraw a condition or restriction imposed in relation to a Licence, registration, authorisation or approval; or
  - (c) in relation to a Person, if the Person has requested, or consented in writing to, the making of the decision.
- (2) In the cases referred to in sub-paragraph (1), the AFSA must notify the Person in writing of the decision and the date on which it is to take effect.
- (3) If the AFSA makes a decision in relation to a Person after a determination of the AIFC Court relating to the conduct of the Person, the requirement to give the Person an opportunity to make representations under paragraph 4 or 6 (as applicable) does not apply in relation to findings of fact of the AIFC Court.

### 4. Opportunity to make representations before a decision

- (1) If the AFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:
  - (a) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (2); and
  - (b) an opportunity to make representations to the AFSA in Person and in writing concerning the decision the AFSA proposes to take.





- (2) The Preliminary Notice must:
  - (a) specify the proposed decision;
  - (b) specify the reasons for that proposed decision, including any proposed findings of fact;
  - (c) include a copy of the relevant materials which were considered in making the proposed decision;
  - (d) inform the Person that they may make representations to the AFSA concerning the proposed decision; and
  - (e) specify how and by when any representations may be made.
- (3) For the purposes of sub-paragraph (2)(c), the AFSA:
  - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
  - (b) is not required to provide material that is the subject of legal professional privilege.
- (4) If the AFSA does not receive any representations within the period specified in the Preliminary Notice, it may proceed to make the proposed decision and give the Person a Decision Notice in accordance with paragraph 5.
- (5) If the AFSA receives representations within the period specified in the Preliminary Notice, it must consider the representations in making the decision.
- (6) If, after considering the representations, the AFSA decides:
  - (a) to make the proposed decision (either as proposed or with variations), then it must give the Person a Decision Notice under paragraph 5; or
  - (b) not to make the proposed decision, then it must as soon as practicable notify the Person in writing that it has decided not to make the decision.
- (7) If the AFSA concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of direct or indirect users of financial services or otherwise prejudicial to the interests of the AIFC:
  - (a) the requirements in sub-paragraphs (1) to (6) do not apply; and
  - (b) the AFSA must provide the Person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.



## 5. Decision Notice

- (1) If the AFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a “Decision Notice”) specifying:
  - (a) the decision;
  - (b) the reasons for the decision, including its findings of fact;
  - (c) the date on which the decision is to take effect;
  - (d) if applicable, the date by which any relevant action must be taken by the Person; and
  - (e) the Person’s right to seek review of the decision by the AIFC Court.
- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of sub-paragraph (2), the AFSA:
  - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
  - (b) is not required to provide material that is the subject of legal professional privilege.

## 6. Opportunity to make representations after a decision

- (1) If this paragraph applies under paragraph 4(7), the AFSA must:
  - (a) provide the Relevant Person with an opportunity to make representations to the AFSA in Person and in writing within a period of 14 days, or such further period as may be agreed, from the date on which the Decision Notice is given to the Person under paragraph 5; and
  - (b) inform the Relevant Person in the Decision Notice that they may make representations concerning the decision and specify how and by when any representations may be made.
- (2) If the AFSA does not receive any representations within the period specified in the Decision Notice, it must inform the Person in writing that the decision is to stand (subject to any right of the Person to refer the matter to the AIFC Court for review).



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- (3) If the AFSA receives representations within the period specified in the Decision Notice, it must consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (4) If after considering representations received the AFSA decides:
  - (a) to confirm the decision, it must as soon as practicable notify the Person in writing that the decision is to stand (subject to any right of the Person to refer the matter to the AIFC Court for review); or
  - (b) to withdraw the decision, it must as soon as practicable notify the Person in writing that the decision has been withdrawn; or
  - (c) to vary the decision, it must as soon as practicable give the Person an amended Decision Notice under paragraph 5.
- (5) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
  - (a) if the Person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made; or
  - (b) in respect of an amended Decision Notice given under sub-paragraph (4)(c).



## Schedule 2: Appeal to the AIFC Court

### 1. Time frame for instituting an appeal

- (1) An appeal under section 11 may be instituted:
  - (a) within a period of 28 days immediately following the date of the Decision Notice issued by the AFSA, and
  - (b) by serving a Claim Form on the AFSA, in accordance with the service provisions of the AIFC Court Rules, stating the grounds and material facts on which the appellant relies.
- (2) An appeal does not operate as a stay of the decision being appealed.

### 2. Power of AIFC Court to dismiss appeal for want of prosecution

- (1) The AFSA may, where an appeal under section 11 has been instituted, apply to the AIFC Court, for an order that the appeal be dismissed for want of prosecution; and on hearing the application the AIFC Court may:
  - (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the AIFC Court may direct), or
  - (b) make such other order as the AIFC Court considers just.
- (2) The provisions of this paragraph are without prejudice to the AIFC Court Regulations, the AIFC Court Rules and the inherent powers of the AIFC Court.

### 3. Power of AIFC Court to set aside or confirm decision

On an appeal under section 11 the AIFC Court may:

- (a) set the decision of the AFSA aside and, if the AIFC Court considers it appropriate to do so, remit the matter to the AFSA with such directions as the AIFC Court thinks fit;
- (b) confirm the decision, in whole or in part;
- (c) suspend or modify the operation of the decision on such terms as the AIFC Court thinks just, pending the determination of the appeal.



#### 4. Appeal of decision to publish a statement to be held in private

- (1) An appeal against a decision to publish a statement in respect of a Person will be held in private unless:
  - (a) the parties agree that all or part of the hearing should be held in public, or
  - (b) the AIFC Court so orders.
- (2) Where an appeal against a decision to publish a statement is upheld the AFSA will, if the appellant so requests, publish a statement of that fact.



## Schedule 3: Market Activities

### 1. Operating an Exchange

- (1) Operating an Exchange means operating a facility which functions regularly and brings together multiple third party buying and selling interests in Investments, in accordance with its non discretionary rules, in a way that can result in a contract in respect of Investments admitted to trading or traded on the facility.
- (2) The facility referred to in (1) may be organised on a temporary or permanent basis and can be an order driven system, a quote driven system or a hybrid of such systems that enables the market to operate electronic trading or trading by other means.

### 2. Operating a Clearing House

- (1) Operating a Clearing House means operating a facility where confirmation, clearance and/or settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:
  - (a) becomes a Central Counterparty (“CCP”); or
  - (b) provides a book-entry Securities Settlement System (“SSS”),regardless of whether or not such a Person also operates a Central Securities Depository.
- (2) In (1):
  - (a) “confirmation” means verifying the terms of a transaction and checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transaction ;
  - (b) “clearance” means transmitting and reconciling orders prior to settlement and establishing settlement positions, including the calculation of net positions arising from a transactions in Investments; and
  - (c) “settlement” means the completion of a transaction with the aim of securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transaction.
- (3) In (1)(a), a Person operates as a CCP where it:
  - (a) ensures the performance of open contracts relating to Investments made on a facility for trading Securities; and



- (b) does so by interposing itself between counterparties to such contracts by becoming either the buyer to every seller, or the seller to every buyer.
- (4) In (1)(b), a Person operates an SSS where it operates a system which enables Investments held in accounts to be transferred and settled by book entry according to a set of predetermined multilateral rules.
- (5) Acting as a Central Securities Depository in (1) means holding Investments in uncertificated (dematerialised) form to enable book entry transfer of such Investments for the purposes of clearing or settlement of transactions on its own facility and on any other similar facility.

### **3. Operating a Private E-currency Trading Facility**

Operating a Private E-currency Trading Facility means operating a facility which functions regularly and brings together multiple parties (whether as principal or agent) with a view to the entering into of contracts:

- (a) to buy, sell or exchange Private E-currencies for a Fiat currency; and/or
- (b) to exchange one Private E-currency for another Private E-currency,

in its Facility, in accordance with its non-discretionary rules.