



**AIFC PAYMENT SYSTEM SETTLEMENT FINALITY
REGULATIONS**

AIFC REGULATIONS No. 9 OF 2017

**December 20, 2017
Astana, Kazakhstan**



CONTENTS

PART 1: GENERAL

1. Name
2. Date of enactment
3. Commencement
4. Legislative Authority
5. Application of these Regulations
6. Interpretation
7. Object of these Regulations etc.

PART 2: DESIGNATION

8. Application for designation
9. Consideration of application for designation
10. Decision on application for designation

PART 3: EFFECT OF DESIGNATION

11. Payment System Rules of Designated Payment Systems valid and enforceable
12. Settlements and provision of Collateral Security must not be reversed etc.
13. Limits on application of section 12(1)
14. Netting valid and enforceable
15. Limits on effect of sections 11, 12 and 14

PART 4: VARIATION OR REVOCATION OF DESIGNATION

16. Variation of designation
17. Revocation of designation
18. Settlement and Netting not affected by variation or revocation of designation
19. Matters AFSA must and may have regard in deciding whether to vary or revoke designation
20. Procedure for variation or revocation of designation

PART 5: PROVISION OF INFORMATION

21. Provision of information relating to Designated Payment System
22. Designated Contact must be notified of Insolvency Proceeding

PART 6: MISCELLANEOUS

23. Exemption from liability
24. Applicable law relating to securities held as Collateral Security
25. AFSA and Central Bank etc.
26. Power to adopt rules
27. Publication of proposed rules
28. Notification of AFSA's decisions and reasons
29. Language

SCHEDULE 1: INTERPRETATION

1. Definitions



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

PART 1: GENERAL

1. Name

These Regulations are the *AIFC Payment System Settlement Finality Regulations 2017*.

2. Date of enactment

These Regulations are enacted on the day they are adopted by the Governor.

3. Commencement

These Regulations commence on 1 January 2018.

4. Legislative Authority

These Regulations are adopted by the Governor under article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

5. Application of these Regulations

These Regulations apply within the Jurisdiction of the AIFC.

6. Interpretation

Schedule 1 contains definitions and other interpretative provisions used in these Regulations.

7. Object of these Regulations etc.

- (1) The object of these Regulations is to provide the process for and in relation to, and the effects of, the designation of payment systems in the AIFC, having particular regard to the importance of payment systems to the monetary and financial stability of the AIFC and the Republic of Kazakhstan and to the functioning of the AIFC as an international financial centre.
- (2) The Functions of the AFSA under these Regulations will be Exercised:
 - (a) to promote the maintenance of a sound and efficient financial system in the AIFC; and
 - (b) to avoid the risk of significant damage to the financial system in the AIFC that could result from the Failure of a participant in a Designated Payment System.



PART 2: DESIGNATION

8. Application for designation

- (1) If a Person wishes to have a payment system established in the AIFC declared to be a Designated Payment System, the Person must apply to the AFSA.
- (2) The application must be accompanied by:
 - (a) a copy of the Payment System Rules of the payment system and any information required by the AFSA; and
 - (b) the application fee (if any) determined by the AFSA.

9. Consideration of application for designation

- (1) The AFSA must consider any application made in accordance with section 8. AFSA may ask the Person for further information.
- (2) In considering the application, the AFSA must have regard to:
 - (a) the object of these Regulations under section 7(1) (Object of these Regulations etc.); and
 - (b) the need for the AFSA to Exercise its Functions under these Regulations in accordance with section 7(2).
- (3) In considering the application, the AFSA may have regard to any or all of the following matters:
 - (a) the purpose and scope of the payment system;
 - (b) the Payment System Rules of the payment system;
 - (c) any AIFC Regulations and AIFC Rules, and any regulatory requirements, relating to the operation of the payment system and the extent to which the payment system complies with them;
 - (d) any other matters that the AFSA considers appropriate.

10. Decision on application for designation

- (1) After considering the application, the AFSA may:
 - (a) declare the payment system to be a Designated Payment System; or
 - (b) refuse to make that declaration.
- (2) If the AFSA declares the payment system to be a Designated Payment System, the declaration must specify the following:
 - (a) the payment system;
 - (b) the documents that evidence the Payment System Rules;
 - (c) the name or title of a Person to whom notices relating to the payment system



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

must be given (the *Designated Contact*); and

- (d) the conditions (if any) to which the designation is subject.



PART 3: EFFECT OF DESIGNATION

11. Payment System Rules of Designated Payment Systems valid and enforceable

- (1) The Payment System Rules of a Designated Payment System are valid and enforceable despite any enactment or rule of law to the contrary.
 - (2) However, subsection (1) applies only to the extent that the Payment System Rules of the Designated Payment System provide for or in relation to the following:
 - (a) the basis on which Payment Instructions are given;
 - (b) the basis on which payments are calculated;
 - (c) the basis on which Settlements are effected (including whether on a gross basis or using Netting);
 - (d) the basis on which Collateral Security is to be provided in connection with the payment system;
 - (e) the action to be taken if:
 - (i) a participant in the payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
 - (A) an operator of the payment system;
 - (B) another participant in the payment system;
 - (C) any other party to the Payment System Rules; or
 - (ii) an operator of the payment system is unable, or likely to become unable, to meet the operator's obligations to any or all of the following:
 - (A) participant in the payment system;
 - (B) any other party to the Payment System Rules.
- including, for example, any action to be taken for the realisation and disposal of any applicable Collateral Security.
- (3) The claim of the secured parties to any Collateral Security provided in connection with the Designated Payment System rank, and must be paid, in priority to the claims of all other Persons despite any enactment or rule of law to the contrary, unless the terms on which the Collateral Security was provided expressly provide that the other Persons are to be paid in priority.

12. Settlements and provision of Collateral Security must not be reversed etc.

- (1) A Settlement, or the provision or enforcement of Collateral Security that is effected under the Payment System Rules of a Designated Payment System must not be reversed, repaid, recovered or set aside, whether in whole or part, despite any enactment or rule of law to the contrary.
- (2) A claim or right arising, or an account or other record maintained, under the Payment



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

System Rules of a Designated Payment System must not be attached, charged, assigned, executed on, distrained, or otherwise made the subject of an adverse legal process despite any enactment or rule of law to the contrary, unless expressly permitted by the Payment System Rules.

- (3) Any application made to the Designated Payment System or the Court by a court, a Liquidator, a creditor, or another interested Person, from a Jurisdiction outside the AIFC, if the application relates to an Insolvency Proceeding or debt recovery proceeding in that Jurisdiction and the purpose of the proceeding is:
- (a) to obtain the reversal, repayment, recovery or setting aside of a Settlement, or the provision or enforcement of Collateral Security, whether in whole or part; or
 - (b) to attach, charge, assign, execute on, distrain, or otherwise make the subject of an adverse legal process, any claim or right arising, or any account or other record maintained, under the Payment System Rules of the payment system, unless expressly permitted by the Payment System Rules,

does not override subsections (1) and (2).

13. Limits on application of section 12(1)

- (1) Section 12(1) (Settlements and provision of Collateral Security must not be reversed etc.) does not apply to a Settlement, or the provision of Collateral Security, that is effected under the Payment System Rules of a Designated Payment System if:
- (a) a participant in the payment system in respect of which the Settlement is effected becomes insolvent under the insolvency laws applying in the Jurisdiction where the participant is incorporated or otherwise formed; and
 - (b) the Settlement, or the provision of Collateral Security, is effected after the commencement of an Insolvency Proceeding in respect of the participant, unless the Designated Contact did not have notice of the commencement of the Insolvency Proceeding when the Settlement, or the provision of Collateral Security, was effected.
- (2) For subsection (1):
- (a) a Settlement, or the provision of Collateral Security, is treated as effected when, in accordance with the Payment System Rules of the Designated Payment System, the relevant Payment Instruction or Collateral Instruction is incapable of being revoked by any party to the rules; and
 - (b) a Designated Contact is taken to have notice of the commencement of an Insolvency Proceeding if, for example:
 - (i) the Designated Contact Fails to make any inquiries into the matter that an honest and reasonable Person would have made in the circumstances; or
 - (ii) the Designated Contact Fails to have regard to any public notice of the commencement of an Insolvency Proceeding that an honest and reasonable Person would have had regard to in the circumstances (including the place where, and how, the public notice was given and the location of the Designated Contact).



14. Netting valid and enforceable

If the Payment System Rules of a Designated Payment System provide for Netting, any Netting under the Payment System Rules is valid and enforceable despite any enactment or rule of law to the contrary.

15. Limits on effect of sections 11, 12 and 14

(1) Sections 11 (Payment System Rules of Designated Payment Systems valid and enforceable), 12 (Settlements and provision of Collateral Security must not be reversed etc.) and 14 (Netting valid and enforceable) do not prevent:

(a) the operation of any enactment or rule of law in relation to an underlying transaction (including, for example, any relevant provisions of the AIFC Insolvency Regulations); or

(b) any Person from taking action against another Person who has acted fraudulently or dishonestly if the remedy sought or obtained does not affect the application of those sections.

(2) If a Person brings an action under any enactment or rule of law in relation to an underlying transaction (including, without limitation, any relevant provisions of the AIFC Insolvency Regulations), the Person may produce evidence of a settlement before the Court for the purpose of proving that:

(a) a participant received value by means of the settlement; and

(b) the value received was an element of the underlying transaction.

(3) In this section:

underlying transaction means a transaction that gives rise to a payment or payment obligation, but does not include:

(a) a Payment Instruction; or

(b) a Settlement in accordance with the Payment System Rules of a Designated Payment System.



PART 4: VARIATION OR REVOCATION OF DESIGNATION

16. Variation of designation

The AFSA may vary any designation made under section 10(1)(a) (Decision on application for designation):

- (a) by amending the documents that evidence the Payment System Rules or amending the name or title of a Person to whom notices relating to the payment system must be given; or
- (b) by revoking or amending any condition to which the designation is subject; or
- (c) by making the designation subject to a new condition.

17. Revocation of designation

The AFSA may revoke any designation made under section 10(1)(a).

18. Settlement and Netting not affected by variation or revocation of designation

The variation or revocation of a designation under section 10(1)(a) does not affect the application of sections 11 (Payment System Rules of Designated Payment Systems valid and enforceable), 12 (Settlements and provision of Collateral Security must not be reversed etc.) and 14 (Netting valid and enforceable) to Settlements that were effected, and Netting that took place, before the variation or revocation.

19. Matters AFSA must and may have regard in deciding whether to vary or revoke designation

- (1) In deciding whether to vary or revoke the designation of a Designated Payment System under section 10(1)(a), the AFSA must have regard to:
 - (a) the object of these Regulations under section 7(1) (Object of these Regulations etc.); and
 - (b) the need for the AFSA to Exercise its Functions under these Regulations in accordance with section 7(2).
- (2) In deciding whether to vary or revoke the designation of a Designated Payment System under section 10(1)(a), the AFSA may have regard to any or all of the following matters
 - (a) the purpose and scope of the payment system;
 - (b) the Payment System Rules of the payment system;
 - (c) any AIFC Regulations and AIFC Rules, and any regulatory requirements, relating to the operation of the payment system and the extent to which the payment system complies with them;
 - (d) any Failure to comply with any condition to which the designation is subject; and
 - (e) any other matters that the AFSA considers appropriate.



20. Procedure for variation or revocation of designation

- (1) Before deciding to vary or revoke a designation of a Designated Payment System under section 10(1)(a), the AFSA must, unless it considers that the financial system may be prejudiced as a result:
 - (a) give the Designated Contact notice of:
 - (i) the reasons for considering whether to vary or revoke the designation; and
 - (ii) if the AFSA is considering whether to vary the designation—the variation being considered; and
 - (iii) the fact that the Designated Contact may make submissions to the AFSA in relation to the variation or revocation;
 - (b) give the Designated Contact an opportunity to make submissions to the AFSA within a specified period that the AFSA considers reasonable in the circumstances; and
 - (c) consider any submissions made by the Designated Contact before the end of the specified period.
- (2) The notice mentioned in subsection (1)(a) may be given either in Writing or orally depending on the circumstances of the particular case.



PART 5: PROVISION OF INFORMATION

21. Provision of information relating to Designated Payment System

- (1) The AFSA may, by Written notice, require any or all of the following Persons to provide specified information to it relating to a Designated Payment System:
 - (a) an operator of the payment system;
 - (b) a participant in the payment system;
 - (c) the Designated Contact of the payment system.
- (2) The AFSA may require information to be provided to it under subsection (1) only if it considers that the information is reasonably required to enable it to Exercise its Functions under these Regulations.
- (3) A notice under subsection (1) may specify:
 - (a) the periods for which, and the form in which, the information must be provided; and
 - (b) how the information must be verified.
- (4) The AFSA may require any information to be provided under this section to be in English.
- (5) If the AFSA is satisfied that a Person has Contravened this section, it may impose a fine on the Person for the Contravention.

22. Designated Contact must be notified of Insolvency Proceeding

- (1) This section applies if:
 - (a) an Insolvency Proceeding is or has been commenced in respect of a participant in a Designated Payment System (**participant A**); or
 - (b) an Insolvency Proceeding is or has been commenced in respect of any other participant whose Settlements are effected by participant A through the Designated Payment System.
- (2) As soon as practicable after becoming aware of the Insolvency Proceeding, Participant A must notify the Designated Contact of the Insolvency Proceeding.
- (3) It is sufficient compliance with the requirement to notify the Designated Contact under subsection (2) if:
 - (a) participant A takes all reasonable steps to comply with the requirement; or
 - (b) the Designated Contact was already actually aware of the commencement of the Insolvency Proceeding by the time participant A had to notify the Designated Contact under that subsection.
- (4) The Designated Contact must notify the AFSA promptly if the Designated Contact receives a notification under subsection (2) or otherwise becomes aware of the commencement of an Insolvency Proceeding in respect of a participant in the



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

Designated Payment System.



PART 6: MISCELLANEOUS

23. Exemption from liability

The AFSA, and its officers, employees and agents, are not liable for anything done or omitted to be done in the Exercise, or purported Exercise, of the AFSA's Functions under these Regulations unless it is proven that the thing was done or omitted to be done in bad faith.

24. Applicable law relating to securities held as Collateral Security

If:

- (a) securities (including rights in securities) are provided, under the Payment System Rules of a Designated Payment System, as Collateral Security to a party to the rules; and
- (b) a register, account or centralised deposit system located in a Jurisdiction records the entitlement of the Person to the Collateral Security;

the rights of the Person as a holder of Collateral Security in relation to the securities is governed by the law of the Jurisdiction where the register, account or centralised deposit system is located.

25. AFSA and Central Bank etc.

- (1) In Exercising its Functions under these Regulations, the AFSA may consult with, and have regard to the views of, the Central Bank.
- (2) The AFSA may share any documents or information obtained by it under these Regulations with any or all of the following:
 - (a) the Central Bank;
 - (b) the central bank or monetary authority of any other Jurisdiction;
 - (c) any banking or financial services regulatory body of any other Jurisdiction;
 - (d) any other AIFC Bodies.

26. Power to adopt rules

- (1) The Board of Directors of the AFSA may adopt rules prescribing matters:
 - (a) required or permitted by these Regulations to be prescribed by the Rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to these Regulations.
- (2) However, the Board may not adopt rules under this section on matters related to the regulation of financial services and related operations in the AIFC.
- (3) Without limiting subsection (1), the Board may adopt rules:
 - (a) with respect to any matters relating to the AFSA's Functions under these Regulations; or



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

- (b) to facilitate the administration of, or further the object or purposes of, these Regulations; or
 - (c) prescribing the Contraventions of these Regulations and the Rules for which fines may be imposed by the AFSA;
 - (d) with respect to the procedures for the imposition or recovery of fines, including any circumstances in which the procedures do not apply to the imposition of a fine; or
 - (e) setting limits for fines and other penalties that may be imposed for Contraventions of these Regulations or the Rules
- (4) Without limiting subsection (1), rules adopted by the Board may do any of the following:
- (a) make different provision for different cases or circumstances;
 - (b) include supplementary, incidental and consequential provisions;
 - (c) make transitional and savings provisions.
- (5) If any rules purport to be adopted in the exercise of a particular power or powers, the rules are taken also to be adopted in the exercise of all the powers under which they may be adopted.
- (6) Until rules mentioned in subsection (3)(e) are adopted by the Board, there are no limits on the fines and other penalties that may be imposed for a Contravention of these Regulations or the Rules.

27. Publication of proposed rules

- (1) Before making rules under section 26 (Power to adopt rules), the Board of Directors of the AFSA must publish a notice under this section.
- (2) The notice must include, or have attached to it:
- (a) a summary of the proposed rules; and
 - (b) the text of the rules; and
 - (c) a statement of the substance and purpose of the material provisions of the rules.
- (3) The notice must invite interested Persons to make representations about the proposed rules within a stated period of at least 30 days.
- (4) Subsections (1), (2) and (3) do not apply to the making of rules if the Board of Directors of the AFSA considers:
- (a) that any delay likely to arise because of complying with those subsections is prejudicial to the interests of the AFSA; or
 - (b) that the rules are merely consequential on any other Rules adopted (or proposed to be adopted) by the Board; or



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

- (c) that the rules do not change, or significantly change, the policy intended to be give effect to by these Regulations and the Rules or any other AIFC Regulations or AIFC Rules.

28. Notification of AFSA's decisions and reasons

- (1) This section applies if, under these Regulations or the Rules:
 - (a) the AFSA makes a decision (including a decision refusing to make a decision) on the application (however described) of a Person (the **affected Person** for the decision); or
 - (b) the AFSA makes a decision affecting the interests of a Person (the **affected Person** for the decision) on the AFSA's own initiative.
- (2) As soon as practicable after the AFSA makes the decision, the AFSA must give the affected Person Written notice of the decision.
- (3) Without limiting subsection (2), the notice must:
 - (a) if the decision is to take effect on the day after the day the notice is given to the Person—state that fact; or
 - (b) if the decision is to take effect at a different time—specify the time; or
 - (c) if the decision is to grant or issue (however described) a designation, licence, permit, registration or anything else subject to conditions, restrictions or limitations of any kind—state the conditions, restrictions or limitations; or
 - (d) if the decision is to grant or issue (however described) a designation, licence, permit, registration or anything else for a period—specify the period.
- (4) The notice must include, or be accompanied by, a statement of the AFSA's reasons for the decision.
- (5) However, if the decision was made on the application (however described) of the affected Person, subsection (4) does not apply to the decision so far as the decision was the decision the affected Person applied for.
- (6) Also, subsection (4) does not apply to the decision if a provision of any AIFC Regulations or AIFC Rules expressly provides that the AFSA need not provide reasons for the decision.
- (7) This section is additional to, and does not limit, any other provision of any the AIFC Regulations or AIFC Rules.

29. Language

The AFSA may require communications to which the AFSA is a party under these Regulations or the Rules to be conducted in the English language.



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

SCHEDULE 1: INTERPRETATION

1. Definitions

In these Regulations:

AFSA means the Astana Financial Services Authority.

AIFC means the Astana International Financial Centre.

AFSA means the Astana Financial Services Authority.

AIFC Bodies has the meaning given by article 9 of the Constitutional Statute and the document entitled *The Structure of the Bodies of the Astana International Financial Centre* adopted by the Management Council on 26 May 2016.

AIFC Regulations means regulations adopted by the Management Council or the Governor, and includes, for example, these Regulations.

AIFC Rules means rules adopted by the Board of Directors of the AFSA, the Board of Directors of the AFSA or the Governor, and includes, for example, the Rules made under these Regulations.

Central Bank means the Central Bank of the Republic of Kazakhstan.

Collateral Instruction, in relation to a payment system, means an instruction by a participant in the payment system that:

- (a) is made in accordance with the Payment System Rules; and
- (b) results, or is intended to result, in the provision of Collateral Security being effected.

Collateral Security, in relation to a payment system, means any realisable assets (including money) provided under a charge, repurchase or similar agreement, or otherwise, for the purpose of securitising rights and obligations potentially arising under the Payment System Rules.

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

Contravene includes Fail to comply with.

Court means the Astana International Financial Centre Court.

Designated Contract, in relation to a Designated Payment System, has the meaning given by section 10(2)(c).

Designated Payment System means a payment system that is declared to be a Designated Payment System under section 10(1)(a).

Exercise a Function includes perform the Function.

Fail includes refuse.

Failure includes refusal.



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

Function includes authority, duty and power.

Insolvency Proceeding means any procedure or proceeding under any law relating to bankruptcy, liquidation (including any compulsory winding up procedure or proceeding), reorganisation, composition with creditors, receivership or conservatorship, or any other similar procedure or proceeding.

Jurisdiction means any jurisdiction in any country, and includes the AIFC.

Liquidator, in relation to a participant in a Designated Payment System, means any liquidator, provisional liquidator, receiver, administrative receiver, receiver and manager, liquidation committee, nominee, trustee, conservator, supervisor or other Person who administers the affairs of the participant under or for an Insolvency Proceeding or is appointed under or for an insolvency procedure or proceeding of any kind in relation to the participant.

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

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

Netting, in relation to a payment system, means the conversion into one net claim or obligation, or the set-off of different claims or obligations between participants in the payment system, that results from the issue and receipt of Payment Instructions involving 2 or more participants in the payment system, or that is otherwise provided for under the Payment System Rules:

- (a) whether on a bilateral or multilateral basis; and
- (b) whether or not through the interposition of an operator of the payment system; and
- (c) whether or not the obligations or claims constitute mutual credits, mutual debts or other mutual dealings; and
- (d) irrespective of the currency in which the obligations or claims are denominated.

Payment Instruction, in relation to a payment system, means an instruction by a participant in the payment system that:

- (a) is made in accordance with the Payment System Rules; and
- (b) results, or is intended to result, in 1 or more Settlements being effected.

Payment System Rules means:

- (a) in relation to a payment system that is a Designated Payment System—the rules of the payment system that are contained in the documents specified in the declaration under section 10(2)(b) (Decision on application for designation) in relation to the payment system, as amended by any amendments of the rules that have been notified in Writing to, and agreed to in Writing by, the AFSA; and
- (b) in relation to a payment system not covered by paragraph (a)—the rules of the



AIFC PAYMENT SYSTEM SETTLEMENT FINALITY REGULATIONS

payment system (whether made under by-laws, agreements, procedures, contracts or other documents) that are evidenced in Writing and that provide, among other things, for the following:

- (i) the basis on which Payment Instructions are given;
- (ii) the basis on which payments are calculated;
- (iii) the basis on which Settlements are effected (whether on a gross basis or using Netting);
- (iv) any action to be taken if a participant in the payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
 - (A) an operator of the payment system;
 - (B) another participant in the payment system;
 - (C) any other party to the rules.

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

Rules means rules adopted by the Board of Directors of the AFSA under section 26 (Power to adopt rules).

Settlement, in relation to a payment system, means:

- (a) the making of a payment:
 - (i) that is done in accordance with a Payment Instruction; and
 - (ii) that is on a gross basis or that uses Netting; and
 - (iii) whether by way of book entry on the accounts of a central bank, another bank, the operator of the payment system or otherwise; or
- (b) anything else that discharges a payment obligation in accordance with a Payment Instruction or as contemplated by the Payment System Rules.

Writing includes:

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