



AIFC FOUNDATIONS REGULATIONS

AIFC REGULATIONS No.24 OF 2019

(with amendments as of 25 November 2021,
which commence on 1 January 2022)

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Astana, Kazakhstan



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PART 1: GENERAL

1. Name

These Regulations may be cited as the *AIFC Foundations Regulations 2019*.

2. Commencement

These Regulations commence on 1 April 2019.

3. Legislative authority

These Regulations are adopted by the Governor under paragraph 1 of article 3 and article 4 of the Constitutional Statute and subparagraphs 3) and 3-1) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

4. Application of these Regulations

These Regulations apply within the jurisdiction of the AIFC.

5. Interpretation

- (1) Schedule 1 (Interpretation) contains definitions and other interpretative provisions used in these Regulations.
- (2) Schedule 2 (Application of the *AIFC Arbitration Regulations*) contains provisions relating to the application of the *AIFC Arbitration Regulations* in relation to these Regulations.
- (3) Schedule 3 (Fines and Fees) contains fines applicable for Contravention of these Regulations, and fees in respect of notifications and applications in relation to these Regulations.



PART 2: NATURE OF AN AIFC FOUNDATION

6. Nature of a Foundation

- (1) A Foundation is a body corporate with a legal personality separate from that of its Founder(s) and any other Person.
- (2) A Foundation has the capacity, rights and privileges of a natural person. The validity of an act done by a Foundation shall not be called into question on the ground of lack of capacity by reason of anything in its Charter or By-laws.
- (3) The property of a Foundation is not held by it upon Trust for any other Person.
- (4) A Founder has such rights (if any) in respect of a Foundation as provided for in its By-laws.
- (5) A Person specified in the By-laws (other than a Founder, a member of the Council, and any Guardian) has such rights (if any) in respect of a Foundation as provided for in its By-laws.
- (6) Any rights a Person may have in respect of a Foundation may be assigned to some other Person, if its By-laws so provide.
- (7) If rights are assigned under subsection (6), the Person assigning the rights must within a period of thirty (30) days provide a copy of the assignment to the Registrar. A Person who fails to comply with this requirement is liable to a fine, as set out in Schedule 3 (Fines and Fees).

7. Duration of a Foundation

- (1) A Foundation may, but need not, be established for a fixed period or for a specified limited period, provided that it may be dissolved at an earlier time in accordance with the provisions of these Regulations.
- (2) Subject to section 55 (Application of insolvency rules in winding up), if a Foundation is to be wound up and dissolved upon:
 - (a) the happening of some event; or
 - (b) the expiration of a fixed period of time, the details of the event or period must be specified in its By-laws.
- (3) If a Person is to have the right to wind up and dissolve a Foundation, the details of such right must be specified in its By-laws, subject to any right arising under any applicable law.

8. Objects of Foundations

A Foundation's objects:

- (a) must be certain, reasonable and possible; and
- (b) must not be violating the Acting Law of the AIFC or contrary to public policy in the AIFC.



9. Nature of objects of a Foundation

- (1) A Foundation may be established for:
 - (a) objects which are exclusively charitable; and/or
 - (b) one or more of the following:
 - (i) objects which are not exclusively charitable; or
 - (ii) objects to benefit Persons by name, category or class.
- (2) It is sufficient, for purposes of subsection (1)(b)(i), for the Charter to provide that a Foundation is to hold property that has been selected in accordance with its By-laws.
- (3) It is sufficient, for purposes of subsection (1)(b)(ii), for the Charter to provide that a Person or class of Persons to receive benefits may be determined in accordance with the By-laws.
- (4) A Foundation may not carry out any commercial activities, except those necessary for, and ancillary or incidental to, its objects.
- (5) The objects of a Foundation may only be amended:
 - (a) where there is an express power to do so in the Charter; or
 - (b) by order of the Court.
- (6) If there is no express power to amend the objects in a Foundation's Charter then, subject to subsections (1) and (2), an object may be amended by order of the Court on an application made by or on behalf of a Founder, the Foundation or a Guardian where:
 - (a) the object has been, as far as may be, fulfilled;
 - (b) the object cannot be carried out or cannot be carried out in accordance with the original intention or spirit in which the Foundation was established;
 - (c) the object provides a use for only part of the property of the Foundation;
 - (d) the object was laid down by reference to a class of Persons or to a matter which has for any reason since ceased to be:
 - (i) suitable; or
 - (ii) practicable in administering the Foundation;
 - (e) in the case of a charitable object, the object has ceased to be charitable (by being useless or harmful to the community or otherwise); or
 - (f) the object has ceased in any other way to provide a suitable and effective method of using the property of the Foundation,

and, in these cases, the property, or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable object as the Court may order to be consistent with the original intention of the Founder(s), or the spirit in which the



Foundation was established.

(7) An application to the Court pursuant to subsection (6) may be brought by any one of:

- (a) the AFSA;
- (b) the Council of the Foundation; or
- (c) any other Person with Sufficient Interest,

upon notice to the Founder(s) (if still alive), the Guardian (if any), the Council and (if applicable) any other Person with Sufficient Interest.

10. Matters determined by the Acting Law of the AIFC

(1) Subject to subsection (2), all matters arising in regard to a Foundation or in regard to any disposition of property to or by a Foundation, including questions as to:

- (a) the capacity of a Founder or Contributor;
- (b) any aspect of the validity of the disposition or the interpretation or effect thereof;
- (c) the administration of the Foundation (whether the administration is conducted in the AIFC or elsewhere), including questions as to the powers, obligations, liabilities and rights of the members of the Council of the Foundation and their appointment and removal; or
- (d) the existence and extent of powers, conferred or retained, including powers of variation of the Charter or By-laws or dissolution of the Foundation, and the validity of any exercise thereof,

shall be determined in accordance with the Acting Law of the AIFC without reference to the laws of any other jurisdictions with which the Foundation or disposition may be connected.

(2) Subject to sections 11 (Limitations in Foreign Law), 12 (Heirship Rights) and 13 (Foreign Judgments), subsection (1) shall:

- (a) not validate any disposition of property which is neither owned by a Founder or Contributor, nor is the subject of a power vested in a Founder or Contributor;
- (b) not validate any trust or disposition of immovable property situated in a jurisdiction other than the AIFC in which such trust or disposition is invalid according to the laws of such jurisdiction;
- (c) not validate any testamentary trust or disposition which is invalid according to the laws of the testator's last domicile;
- (d) not affect the recognition of Foreign Laws in determining whether a Founder or Contributor is or was the owner of any property transferred to the Foundation or is or was the holder of a power to dispose of such property;
- (e) not affect the recognition of the laws of its place of incorporation in relation to the capacity of a corporation; or



- (f) not affect the recognition of Foreign Laws prescribing generally, without reference to the existence or the establishment of the Foundation, the formalities for the disposition of property within the jurisdiction of those Foreign Laws.

11. Limitations in Foreign Law

- (1) Without limiting the generality of subsection 10(1) (Matters determined by the Acting Law of the AIFC), no disposition of property to a Foundation that is valid under the Acting Law of the AIFC is void, voidable, liable to be set aside or defective in any manner by reference to a Foreign Law; nor is the capacity of any Founder in relation to the Foundation or disposition to be questioned nor is the Foundation or any other Person to be subjected to any liability or deprived of any power or right, by reason that:
 - (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a foundation;
 - (b) the disposition voids or defeats any rights, claims or interests conferred by Foreign Law upon any Person by reason of a Personal Relationship to a founder or any other Person related to the foundation or by way of Heirship Rights or Contravenes any rule of Foreign Law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests; or
 - (c) the Foreign Law or foreign judicial or administrative order or arbitration award imposes any obligation or liability on a founder, foundation or any other party in relation to the foundation or the property of the foundation.
- (2) Subject to subsection (3), a transfer of property to a Foundation shall not be void, voidable or liable to be set aside by reason of a Founder or a Contributor's bankruptcy, the liquidation of a Founder or Contributor, or any action or claims made against a Founder or Contributor by any creditor, notwithstanding any foreign statute providing otherwise.
- (3) Notwithstanding subsection (2), where the Court determines that, at the time when the property was transferred to a Foundation, a Founder or Contributor, as applicable, was insolvent or intended to defraud any creditor of a Founder or Contributor, as applicable, it may declare that the transfer of property was void to the extent of the creditor's claim.
- (4) In making claims to set aside transfers of property to a Foundation under subsection (3), the burden of proof shall rest with the creditor.

12. Heirship Rights

An Heirship Right conferred by Foreign Law in relation to the property of a living Person shall not be recognised as:

- (1) affecting the ownership of immovable property in the AIFC and movable property wherever it is situated for the purposes of subsections 10(2)(a) and (b) (Matters determined by the Acting Law of the AIFC) or for any other purpose; or
- (2) constituting an obligation or liability for any purpose.

13. Foreign judgments

A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with sections 11 (Limitations in Foreign Law) and 12 (Heirship Rights).



PART 3: ESTABLISHMENT OF AN AIFC FOUNDATION

14. Creation

- (1) The Founder(s) may apply for the establishment of a Foundation by signing and filing with the Registrar an application for its establishment in the manner prescribed by the Registrar.
- (2) The application filed with the Registrar under subsection (1) shall be signed by each Founder and shall include:
 - (a) the name of the proposed Foundation;
 - (b) the address of the proposed Foundation's registered office in the AIFC;
 - (c) the full name, nationality and address of each Founder;
 - (d) the full name, nationality and address of each of the proposed members of the Council of the proposed Foundation;
 - (e) the Charter of the proposed Foundation (subject to subsections 16(7) and 16(7-1) (Charter);
 - (f) the By-laws of the proposed Foundation (subject to subsections 17(5) and 17(5-1) (By-laws);
 - (g) the particulars required by Part 16 (Ultimate Beneficial Owners) of the *AIFC Companies Regulations*; and
 - (h) such other particulars as the Registrar may require.
- (3) The provisions of section 21 (Prohibition against use of misleading, deceptive or conflicting Company names) of the *AIFC Companies Regulations* shall apply to a Foundation in respect of the use of misleading, deceptive or conflicting names.
- (4) Upon lodgement of the application and payment of the prescribed fee, the Registrar shall either:
 - (a) register the Foundation;
 - (b) seek further information in respect of the proposed Foundation; or
 - (c) refuse the application.
- (5) On the registration of a Foundation, the Registrar shall:
 - (a) issue a certificate that the Foundation is established and such certificate shall expressly set out its status as a Foundation;
 - (b) assign to the Foundation a number, which shall be the Foundation's registered number; and
 - (c) **[intentionally omitted]**



- (6) The provisions of section 8 (Certificates) of the *AIFC Companies Regulations* apply to a certificate issued to a Foundation.
- (7) A Person must not conduct business in or from the AIFC as a Foundation unless the Person is incorporated or registered under these Regulations as a Foundation.
- (8) Contravention of this section is punishable by a fine.

15. Constitution

- (1) The constitution of a Foundation comprises:
 - (a) its Charter; and
 - (b) subject to subsection 17(4) (By-Laws), its By-laws.

16. Charter

- (1) A Foundation must have a Charter which shall be in the English language.
- (2) The Charter must contain the following:
 - (a) its name;
 - (b) the object(s);
 - (c) a description of the initial property;
 - (d) the duration of the Foundation (if it is to subsist for a limited period only); and
 - (e) a declaration by each Founder requesting the Council to comply with the terms of the Charter.
- (3) The Charter may contain any matter:
 - (a) that is otherwise required or permitted to be in the By-laws in accordance with section 17 (By-Laws); or
 - (b) that the Founder(s) think fit,

provided that there is no provision which is contrary to or inconsistent with these Regulations.
- (4) The Charter may be amended only if:
 - (a) the Charter so provides; or
 - (b) the Court so orders under section 40 (Power of the Court to order amendment of Charter or By-Laws).
- (5) Where a Charter specifies an exclusively charitable object, it may not provide for the amendment of the Charter so as to specify a non-charitable object in place of the charitable object.
- (6) Each Founder must subscribe to the Charter, if a Founder is:



- (a) an individual, by signing the Charter in his own name; or
 - (b) a body corporate, by an authorised signatory signing the Charter.
- (7) A Foundation may adopt, as its Charter, the whole or any part of the Standard Charter as is applicable to the Foundation.
- (7-1) If the Standard Charter is not adopted by a Foundation in its entirety, the Foundation must submit to the Registrar of Companies, before the charter is adopted by the Foundation, a statement by the Founder(s) that the Charter proposed to be adopted by the Foundation complies with the requirements of these Regulations and all other applicable AIFC Regulations and AIFC Rules.
- (7-2) If any change to these Regulations or any other applicable AIFC Regulations or AIFC Rules results in an inconsistency between the provisions of a Foundation's Charter and the provisions of these Regulations or any other applicable AIFC Regulations or AIFC Rules:
 - (a) the provisions of these Regulations and any other applicable AIFC Regulations and AIFC Rules prevail; and
 - (b) the Foundation is not required to amend its Charter, unless these Regulations or any other applicable AIFC Regulations expressly require it to do so.
- (8) If a Foundation proposes to amend its Charter, it must after completing its internal processes necessary to amend the Charter, lodge the amended Charter with the Registrar within a period of thirty (30) days after such amendment.
- (9) The amended Charter shall come into force upon it being registered by the Registrar, and, if the change involves a change of name, upon the issue of a certificate by the Registrar pursuant to subsection 30(1) (Change of name).
- (10) The Charter may provide that if at any time the property of the Foundation includes any property which by reason of the law of the Republic of Kazakhstan or any other jurisdiction may be held only by a national of that country, the only Persons who may be members of the Council of the Foundation or Qualified Recipients under the Foundation are nationals of that jurisdiction at that time, and may further provide that such provision may not be amended or revoked.
- (11) If the Charter contains an irrevocable provision of the type referred to in subsection (10) then notwithstanding any other provision of these Regulations, that provision may not be amended or revoked.

17. By-laws

- (1) The By-laws must:
 - (a) prescribe the functions of the Council;
 - (b) detail the procedures for the appointment, resignation and removal of members of the Council and any Guardian;
 - (c) if the members of the Council or any Guardian are to be remunerated, the details in respect thereof;



- (d) set out how the decisions of the Council are to be made and, if any decision requires the approval of any other Person, specify the decisions and that Person;
 - (e) if the functions of the Council must or may be delegated or exercised in conjunction with any other Person, the extent to which this must or may be done; and
 - (f) specify what is to happen to any property of the Foundation that remain should the Foundation be wound up and dissolved.
- (2) The By-laws may:
- (a) prescribe the manner in which the property of the Foundation may be distributed, accumulated or applied;
 - (b) detail whether, and if so how, further property may be endowed upon the Foundation;
 - (c) provide for the addition or removal of a Person or class of Persons as recipients or for the exclusion from the category of recipient of a Person or class of Persons, either revocably or irrevocably;
 - (d) detail any Person's powers in relation to the Foundation (including, but not limited to, the power to appoint or remove any member of the Council, to take investment decisions or to approve the use of property);
 - (e) impose obligations upon recipients as a condition of receipt of any amount from the Foundation;
 - (f) make the potential right of a recipient in relation to a receipt of any amount from the Foundation:
 - (i) liable to termination;
 - (ii) subject to a restriction on alienation or dealing; or
 - (iii) subject to diminution or termination in the event of the recipient becoming bankrupt;
 - (g) detail the name and address of a default recipient, failing which the default recipient shall be an AIFC Body or its organisation to be prescribed by AIFC Acts; and
 - (h) contain any other matter that the Founder(s) deem fit.
- (3) The By-laws may be amended only if:
- (a) the Charter so provides, or
 - (b) the Court so orders under section 40 (Power of the Court to order amendment of Charter or By-Laws).
- (4) To the extent to which matters required or authorised to be in the By-laws under subsection (1) are contained within the Charter, such matters need not also be in the By-



laws, and if all of the matters in subsections (1) and (2) are contained in the Charter, a Foundation need not have any By-laws.

- (5) A Foundation may adopt, as its By-laws, the whole or any part of the Standard By-laws as are applicable to the Foundation.
- (5-1) If the Standard By-laws are not adopted by a Foundation in its entirety, the Foundation must submit to the Registrar of Companies, before the By-laws are adopted by the Foundation, a statement by the Founder(s) that the By-laws proposed to be adopted by the Foundation comply with the requirements of these Regulations and all other applicable AIFC Regulations and AIFC Rules.
- (5-2) If any change to these Regulations or any other applicable AIFC Regulations or AIFC Rules results in an inconsistency between the provisions of a Foundation's By-laws and the provisions of these Regulations or any other applicable AIFC Regulations or AIFC Rules:
 - (a) the provisions of these Regulations and any other applicable AIFC Regulations and AIFC Rules prevail; and
 - (b) the Foundation is not required to amend its By-laws, unless these Regulations or any other applicable AIFC Regulations expressly require it to do so.
- (6) The Registrar shall be notified of any change to the By-laws and a copy of the amended By-laws shall be filed with the Registrar within thirty (30) days of such change. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3 (Fines and Fees).

18. Default recipient

- (1) The Charter or By-laws may identify a default recipient to whom all property of a Foundation for which provision has not otherwise been made shall pass in the event of the termination thereof.
- (2) Unless otherwise provided in the Charter or By-laws, a default recipient is not entitled to information about the Foundation, and has no rights in respect of it.
- (3) If:
 - (a) no default recipient is named in the Charter or By-laws; or
 - (b) any such default recipient no longer exists,

any property of a Foundation existing at its termination shall, unless the Charter or By-laws provide otherwise, become property of an AIFC Body or its organisation as designated by the AIFC.

19. Council

- (1) A Foundation must have a Council to administer its property and to carry out its objects.
- (2) The Council shall comprise at least two (2) members.
- (3) A Founder or a body corporate may be appointed as a member of the Council.



- (4) A member of the Council:
 - (a) must be so named in the Register;
 - (b) must ensure that the Council keeps accurate Accounting Records for the Foundation; and
 - (c) must comply with the provisions of these Regulations, the Charter and By-laws.
- (5) A Person must not be appointed as a member of a Council, or be so referred to in the Register, unless he has consented in writing to being a member of the Council.
- (6) The appointment of a Person as a member of a Council is void and will have no effect if that Person is also a Guardian of the Foundation.
- (7) The members of a Council must conduct the Foundation's affairs in accordance with its Charter and By-laws, these Regulations and any other applicable law.
- (8) A Council member must:
 - (a) act honestly and in good faith with a view to the best interests of the Foundation;
 - (b) exercise the care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances; and
 - (c) declare any interest in a transaction of the Foundation at any Council meeting at which such transaction is considered.
- (9) The duty under subsection (8)(a) is fiduciary in nature.
- (10) An act of a member of the Council is valid despite any defect that may afterwards be found in:
 - (a) the appointment of the member; or
 - (b) the member's qualifications.
- (11) The Registrar must be notified of the details of any change in the membership of a Foundation's Council within thirty (30) days of the occurrence of the change. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3 (Fines and Fees).

20. Guardian

- (1) If a Foundation has a charitable object, or a specified non-charitable object, the Foundation must have a Guardian in relation to that object.
- (2) A Foundation may, but need not, have a Guardian:
 - (a) in respect of an object to provide some or all of its property to a Person or class of Persons:
 - (i) whether or not immediately ascertainable; or
 - (ii) ascertained by reference to a Personal Relationship; or



- (b) if its Charter provides, pursuant to subsection 9(2) (Nature of objects of a Foundation), that the Foundation is to hold property that has been selected in accordance with its By-laws.
- (3) A Founder or a body corporate may be appointed as Guardian of a Foundation.
- (4) A Guardian:
 - (a) must be so named in the Register;
 - (b) must keep and retain accurate accounts and records of his guardianship for so long as his guardianship subsists and for a period of six (6) years thereafter; and
 - (c) must comply with the provisions of these Regulations, the Charter and the By-laws.
- (5) A Person must not be appointed as a Guardian, or be so referred to in the Register, unless he has consented in writing to being the Guardian of the Foundation.
- (6) The appointment of a Person as Guardian is void and shall have no effect if the Person is also a member of the Council of the Foundation.
- (7) In the event that there is no surviving Founder, a Guardian shall be appointed by any Person empowered to do so in the Charter or By-laws or otherwise in writing, and if there is no such Person, a Council member shall make application to the Court for the appointment of a Person to be the Guardian and the Court shall duly appoint a consenting Person to act as a Guardian.
- (8) The Guardian must take reasonable steps to ensure that the Council of the Foundation carries out its functions.
- (9) Accordingly, the Guardian may require the Council to account to the Guardian for the way in which it has:
 - (a) administered the Foundation's property; and
 - (b) acted to further the Foundation's objects.
- (10) The By-laws may give a Guardian the power to approve or disapprove any specified actions of the Council.
- (11) Except to the extent that the By-laws provide otherwise, a Guardian may sanction or authorise any action taken or to be taken by the Council that would not otherwise be permitted by the By-laws if the Guardian considers that it is appropriate to do so.
- (12) However, the Guardian must not sanction or authorise any action taken or to be taken by the Council unless he is satisfied:
 - (a) that it is in the best interests of the Foundation; and
 - (b) that the Council has acted, or will be acting, in good faith.
- (13) If a Guardian sanctions or authorises any action of the Council under subsection 20(11), the Council, in taking that action, may be presumed by third parties to have acted in good faith.



- (14) Nothing in subsection (11) is to be construed as permitting a Guardian to sanction or to authorise any action taken or to be taken by the Council that would be inconsistent with these Regulations or any other applicable law.

21. Liability of Council members and others

- (1) This section applies to a Person appointed under the Charter or By-laws of a Foundation when acting or purporting to be acting in the course of that appointment.
- (2) Nothing:
- (a) in the Charter or By-laws; or
 - (b) in a contract between the Foundation and a Person to whom this section applies, relieves, releases or excuses that Person from any liability for fraud, wilful misconduct or gross negligence.
- (3) Any insurance purchased and maintained by the Foundation in respect of a Person to whom this section applies must not include insurance in respect of:
- (a) any liability the Person may incur:
 - (i) to the Foundation;
 - (ii) to pay a fine in respect of a Contravention of these Regulations; or
 - (b) any costs the Person may incur:
 - (i) in defending criminal proceedings in which the Person is convicted; or
 - (ii) in defending civil proceedings brought by the Foundation in which judgment is given against the Person.

22. Reservation to Founder of powers to amend, revoke, vary or terminate

- (1) Subject to subsection (2), a Founder may not reserve to himself any powers to amend, revoke or vary the Charter or By-laws or to terminate the Foundation.
- (2) A Founder may reserve the following powers:
- (a) a power to amend, revoke or vary the terms of the Charter or By-laws, or both of them, in whole or in part;
 - (b) subject to subsection 9(1) (Nature of objects of a Foundation), a power to amend, revoke or vary the objects of the Foundation, in whole or in part; and
 - (c) a power to terminate the Foundation,
- provided that the power to amend, revoke, vary or terminate, as the case may be, is detailed in full in the Charter, and provided that these powers are only reserved:
- (a) for a period not exceeding the duration of a Founder's life, if he is a natural Person; or



- (b) for a period not exceeding fifty (50) years from the date of establishment of the Foundation, if the Founder is a legal Person,

and thereafter any such powers so reserved shall lapse, notwithstanding the terms of the Charter.

- (3) If, at any time in respect of a Foundation:

- (a) any power has been reserved or granted under subsection (1) to more than one Founder; and
- (b) more than one Founder is capable of exercising it at that time,

then such power must be exercised by those Founders unanimously unless the Charter provides otherwise.



PART 4: PROPERTY OF AN AIFC FOUNDATION

23. Property endowment

- (1) The initial property of a Foundation is the property endowed upon the Foundation in order that the Foundation may be established.
- (2) The initial property may comprise any movable or immovable property, and includes rights and interests, whether present or future and whether vested or contingent, and may be provided by way of gift or for valuable consideration.
- (3) Following the endowment of the initial property, further property may be endowed upon the Foundation by any Person if the Charter so permits.
- (4) A Founder does not have any interest in a Foundation by virtue only of endowing it with its initial property or further property or otherwise by virtue of being a Founder thereof.
- (5) No Person has any interest in a Foundation, or is a Founder of a Foundation, by virtue only of endowing it with further property in accordance with subsection (3).

24. Financial resources

The property of a Foundation shall consist of:

- (1) the initial property of the Foundation;
- (2) any further property endowed upon the Foundation and accepted by its Council;
- (3) any appreciation in the value of the property including any proceeds of investment of any capital held the Foundation; and/or
- (4) any other property acquired by its Council in accordance with these Regulations.

25. Qualified Recipients

- (1) A Foundation's By-laws may provide for the distribution of property of the Foundation to Qualified Recipients.
- (2) A Qualified Recipient shall be one or more of the following:
 - (a) a Person holding an entitlement specified in, or pursuant to, the By-laws to a fixed share of the property and income of the Foundation when the Foundation distributes it;
 - (b) a Person holding a Depository Receipt;
 - (c) a Person who is a prospective recipient of a fixed, or discretionary, share of the property of the Foundation upon the happening of a future event specified in the By-laws;
 - (d) a Person who is nominated pursuant to the By-laws to be a recipient of a fixed, or discretionary, share of the property and income of the Foundation at a time following the establishment of the Foundation;
 - (e) a charity; and/or



- (f) a default recipient.
- (3) A Qualified Recipient has no right to or interest in the property of the Foundation other than a right to payment of amounts which arises by virtue of the terms of the By-laws or pursuant to the By-laws, or a contract with the Foundation, including a contract in relation to a Depository Receipt.
- (4) If:
 - (a) a Qualified Recipient becomes entitled to receive an amount from a Foundation in accordance with the Charter or the By-laws; and
 - (b) the amount is not provided,the Qualified Recipient, or a Person acting on behalf of the Qualified Recipient, may seek an order of the Court ordering the Foundation to pay the amount.
- (5) Except as provided by subsection (6), a Qualified Recipient must seek an order pursuant to subsection (4) within the period of three (3) years from the time when the Qualified Recipient became aware of the entitlement to receive the amount.
- (6) If the Qualified Recipient has not attained the age of 18 years when he or she became aware of his or her entitlement to receive the amount, the period referred to in subsection (5) begins to run on the day on which the Qualified Recipient attains that age.

26. Depository Receipts

- (1) A Foundation may issue Depository Receipts representing specific rights to payment quantified by reference to specific parts of the property owned by the Foundation or relating to other rights or interests, whether present or future, to which the Foundation is or might be entitled.
- (2) Any such Depository Receipts issued by a Foundation may be subscribed for or issued in favour of any natural person or legal entity.
- (3) The Foundation retains full ownership of the properties and full entitlement to the rights or interest in any property in respect of which it issued Depository Receipts under subsection (1).
- (4) Any payments to holders of Depository Receipts issued pursuant to subsection (1) shall be made in accordance with the terms and conditions set forth in the By-laws, or agreed to by the Foundation in accordance with procedures contained in the By-laws.
- (5) In the case of Depository Receipts issued in connection with Shares or other Securities held by the Foundation, the Foundation shall retain any voting rights that may be attached to the Securities it owns, unless the terms and conditions of the Securities concerned expressly provide otherwise.

27. Limitation to the transferability of rights in respect of a Foundation

- (1) Unless otherwise provided in the By-laws, the right to receive payments from a Foundation is transferable.
- (2) The By-laws may limit the right to transfer a right to payment in one (1) or more of the following cases:



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- (a) the transferee is already a holder of Depository Receipts of the same kind, and issued by the same Foundation;
- (b) the transferee is a Founder;
- (c) the transferee is a Qualified Recipient of the Foundation; or
- (d) the transferee is a legal entity or a natural Person acting in the name or on behalf of one (1) of the Persons indicated under subsections (2)(a), (b) or (c).



PART 5: ADMINISTRATION OF AIFC FOUNDATIONS

28. Registered office and conduct of business

- (1) A Foundation shall at all times have a registered office in the AIFC to which all communications and notices may be delivered.
- (2) Subject to the provisions of subsection 9(4) (Nature of objects of a Foundation), a Foundation shall carry on its activities in the AIFC and elsewhere as permitted by the Acting Law of the AIFC.
- (3) A document may be served on a Foundation by leaving it at, or sending it by post to, the registered office of the Foundation or by other means agreed by the Foundation.

29. Particulars in correspondence and other communications

Subject to the Acting Law of the AIFC, the name of a Foundation and its registered number shall appear in legible characters on the common seal of the Foundation (if applicable), and on every business letter, statement of account, invoice, official notice, publication or any other instrument issued by the Foundation, including communications through electronic means.

30. Change of name

- (1) Where a Foundation changes its name under subsection 16(4) (Charter), the Registrar shall enter the new name on the Register in place of the former name, and shall issue a certificate of name change showing the previous name and the new name of the Foundation, provided that any such name change shall also be subject to subsection 14(3) (Creation).
- (2) The name change will take effect from the date on which the Registrar issues the certificate of name change.
- (3) A change of name by a Foundation under these Regulations does not affect any rights or obligations of the Foundation or render defective any legal proceedings by or against it and any legal proceedings that might have been continued or commenced by or against it under its former name may be continued or commenced under its new name.

31. Accounts and accounting records

- (1) Unless inconsistent with this section, sections 129 to 132 of the *AIFC Companies Regulations* shall apply to a Foundation, as if it were a private company and any reference to "Director(s)" or "Officer(s)" in relevant sections in the *AIFC Companies Regulations* shall be interpreted to refer to member(s) of the Council. A Foundation which fails to keep and maintain accounts or make them available as required under these Regulations is liable to a fine, as set out in Schedule 3 (Fines and Fees).
- (2) A Foundation's accounts shall be approved by the Council and signed on their behalf by at least two members of the Council. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3 (Fines and Fees).
- (3) A Foundation shall within thirty (30) days after the accounts have been approved by the Council file a copy of its annual accounts with the Registrar.
- (4) A Foundation which fails to comply with the requirements in subsection 31(3) is liable to a fine, as set out in Schedule 3 (Fines and Fees).



- (5) A Person who makes a statement that is false, misleading or deceptive in a material way to the Registrar in respect of accounts, is liable to a fine as set out in Schedule 3 (Fines and Fees).



PART 6: REGISTRAR

32. Exercise of functions of the Registrar

- (1) The Registrar shall administer these Regulations.
- (2) In the exercise of his functions under these Regulations, the Registrar has all the powers and duties conferred upon him by:
 - (a) Chapters 1 (Powers of Inspection and Investigation) and 2 (Other Powers of the Registrar) of Part 14 (Powers and Remedies) of the *AIFC Companies Regulations*;
 - (b) Part 2 (The Appointment and Role of Registrar) of the *AIFC Companies Regulations*; and
 - (c) Chapters 2 (The Registrar) and 3 (Miscellaneous) of Part 15 (General Provisions) of the *AIFC Companies Regulations*,including the power of delegation.
- (3) In exercising any powers and duties conferred upon the Registrar in subsection (2), any reference to a "Relevant Entity" shall be interpreted as applying to a Foundation, and any reference to "Relevant Person(s)", "Director(s)" or "Officer(s)" shall be interpreted as referring to member(s) of the Council.
- (4) A Foundation must comply with the provisions of the *AIFC Companies Regulations* specified in subsection (2) as if it were a "Relevant Entity" and any reference to "Relevant Person(s)", "Director(s)" or "Officer(s)" in relevant sections in the *AIFC Companies Regulations* shall be interpreted to refer to member(s) of the Council.

33. Register to be kept and made available for public inspection

- (1) The Registrar must keep a Register for the purposes of these Regulations.
- (2) The Register must include the information contained in subsections 14(2)(a) to (d) (Creation), inclusive of the details of any changes filed with the Registrar.
- (3) On payment of any prescribed fee, the Registrar must supply a Person with a certificate stating whether or not a named body is a Foundation and, if it is, the following details as they appear in the Register:
 - (a) the date of its establishment;
 - (b) its registration number;
 - (c) the registered office of the Foundation in the AIFC; and
 - (d) in respect of a Foundation established for objects which are exclusively charitable pursuant to subsection 9(1)(a):
 - (i) the full name and nationality of each Founder; and
 - (ii) the full name and nationality of each member of the Council of the Foundation.



- (4) On payment of any prescribed fee, the Registrar must supply a Person with Sufficient Interest with a certified copy of the Charter as filed with the Register.
- (5) The following documents are admissible in evidence in legal proceedings:
 - (a) a certificate supplied by the Registrar under subsection (3); or
 - (b) a certified copy of the Charter supplied under subsection (4).

34. Keeping of records by Registrar

- (1) A record delivered to the Registrar under these Regulations may be kept by the Registrar in any form:
 - (a) that is approved by the Board of Directors of the AFSA or by the Registrar; and
 - (b) that is capable of being reproduced in a legible form.
- (2) The Registrar is to be taken to have complied with an obligation to keep a record if he has complied with subsection (1) in respect of the record.
- (3) The Registrar may destroy a record kept by the Registrar if:
 - (a) it is an original record and it has been recorded and kept in accordance with subsection (1); or
 - (b) it relates solely to a Foundation that has been dissolved more than six (6) years previously.

35. Registrar may change registration number of Foundation

The Registrar may, for good cause, change the registration number of a Foundation, provided that he must inform the Foundation if he does so.

36. Foundation to make annual return

- (1) A Foundation must file an annual return with the Registrar.
- (2) The annual return must be filed in the form and manner prescribed by the Registrar and must contain the information required by the Registrar
- (3) The annual return must be made up to the Foundation's return date, or such other date the Registrar considers appropriate, and must be submitted to the Registrar within 6 months of the end of each financial year, or other date the Registrar considers appropriate.
- (4) A Foundation which fails to file an annual return by the date specified in subsection (3) is liable to a fine, as set out in Schedule 3 (Fines and Fees).
- (5) A Foundation must pay the prescribed application for registration fees to the Registrar as prescribed in Regulations.

37. Power of the Registrar to refuse documents

- (1) The Registrar may refuse to accept any document delivered under these Regulations if:



- (a) it does not comply with these Regulations;
 - (b) it has not been duly completed;
 - (c) it contains any material error;
 - (d) it is not legible; or
 - (e) is not accompanied by the prescribed fee.
- (2) If the Registrar refuses to accept a document, the Registrar must return it to the Person who submitted it together with a notice specifying the grounds upon which the document was refused.
- (3) Subject to subsection (5), a document refused by the Registrar is deemed not to have been delivered.
- (4) A Person who is aggrieved by the refusal of a document by the Registrar may appeal to the Court within thirty (30) days after the date of refusal or such further time as the Court may allow.
- (5) On hearing an appeal under subsection (4), the Court may confirm the refusal or make such determination in the matter as it sees fit.



PART 7: JUDICIAL AND NON-JUDICIAL PROCEEDINGS

38. Role of the Court in administration of Foundations

- (1) The Court may intervene in the administration of a Foundation to the extent its jurisdiction is invoked by a Person with Sufficient Interest or as provided by the Acting Law of the AIFC.
- (2) A Foundation is not subject to continuing judicial supervision unless so ordered by the Court.
- (3) Unless specifically stated otherwise, any Person with Sufficient Interest in respect of a Foundation may apply to the Court to make any order or take any action specified in this Part.
- (4) If the Court has to determine whether a Person is a Person with Sufficient Interest in respect of a Foundation, the reference in subsection (1) to a Person with Sufficient Interest, for the purpose of determining that question, shall include such a Person.

39. Power of the Court to order compliance

- (1) If the Court is satisfied that a person has failed to comply with:
 - (a) a requirement of these Regulations, the Charter or By-laws of a Foundation; or
 - (b) an obligation imposed on the person by these Regulations, the Charter or By-laws of a Foundation,the Court may order the person to comply with the requirement or obligation.
- (2) If the Court is satisfied that a Foundation, acting through its Council, has failed to carry out its objects or any of them, the Court may order the Foundation to do so.
- (3) An order under this section may specify the action, the person or Foundation is required to take.

40. Power of the Court to order amendment of Charter or By-laws

- (1) The Court may on an application made by or on behalf of a Founder, the Foundation or a Guardian order the amendment of the Charter or the By-laws of a Foundation, if the Court is satisfied:
 - (a) that the change will assist the Foundation to administer its property or to attain its objects; or
 - (b) that those objects are no longer attainable and that the change will assist the Foundation to attain objects as near as reasonably possible to those objects.
- (2) If the order is to amend a Foundation's Charter, the thirty (30) day period referred to subsection 16(8) (Charter) to file an amended Charter with the Registrar shall be calculated from the date of the Court order.
- (3) Without limiting subsection (1), the Court may make an order under section (1) in the event that a Foundation does not have By-laws, or that the relevant provisions of the By-laws cannot be readily ascertained or are otherwise incomplete.



- (4) The Court may, on an application made by or on behalf of a Founder, in its absolute discretion and on such terms and conditions as it thinks fit, by order authorise the rectification of any error, defect or omission in the Charter or the By-laws of a Foundation.

41. Power of the Court to give directions

- (1) This section applies if the Court is satisfied:
 - (a) that if it gives a direction it will assist a Foundation to administer its property or to carry out its objects; or
 - (b) that it is otherwise desirable for the Court to give a direction.
- (2) The Court may on an application made by or on behalf of a Founder, the Foundation or a Guardian give a direction as to:
 - (a) the meaning and effect of a provision or term in the Charter or By-laws of a Foundation;
 - (b) the manner in which the Council is required to carry out the administration of the Foundation's property or to carry out its objects;
 - (c) the functions of the Council or of any of its members;
 - (d) the functions of any other person appointed under the By-laws of a Foundation;
 - (e) whether a person is a Qualified Recipient of a Foundation;
 - (f) the rights of Qualified Recipients under a Foundation as between themselves or as between themselves and the Foundation; or
 - (g) such other matters as the Court considers relevant to the Foundation, its Charter, its By-laws, the administration of its property or the carrying out of its objects.
- (3) The Court may, in addition to giving a direction under subsection (2), make such an order as it thinks fit to give effect to the direction.

42. Power of the Court to protect interests under a Foundation

- (1) The Court may in any proceeding under this Part by order appoint a person to protect the interests of a person who the Court is satisfied is a Qualified Recipient under a Foundation, where the Court is satisfied that the person is unable to act on his, her or its own behalf and may by order determine the terms of such appointment, remove such person and give directions as to service of such person.
- (2) A person so appointed may represent the person whose interests he has been appointed to protect in any dealing with the Foundation or in any proceeding under this Part.
- (3) Where a representative has been appointed under subsection (1), no settlement affecting a person to whom subsection (1) applies shall be valid without the approval of the Court.

43. Power of the Court to take action on behalf of others

- (1) This section applies where the Court is satisfied that a person has failed to comply with:



- (a) a requirement of these Regulations, the Charter or By-laws of a Foundation; or
 - (b) an obligation imposed on the person by these Regulations, the Charter or By-laws of a Foundation.
- (2) The Court may, by order, require the Registrar comply with the requirement or obligation on behalf of the person who has failed to do so.
- (3) The Court must not do so unless it is satisfied:
- (a) that to do so will assist the Foundation in the administration of its property or the attainment of its objects; or
 - (b) that it is otherwise desirable that it should do so.
- (4) Where the Court does so, its order has the same effect as if it were an action taken by the person required to comply with the requirement or obligation.

44. General power of the Court in respect of orders

- (1) An order made by the Court under this Part in respect of a Foundation may, in particular, provide for the appointment or removal of a person appointed under its By-laws.
- (2) Any order made by the Court under this Part may be made on such terms, and may impose such conditions, as the Court thinks fit.

45. Power to set aside a transfer or disposition of property due to mistake

- (1) In this section:
 - (a) 'person exercising a power' means a person who exercises a power to transfer or make other disposition of property to a Foundation on behalf of a Founder and a person who exercises a power over a Foundation or property of a Foundation; and
 - (b) 'mistake' includes (but is not limited to):
 - (i) a mistake as to:
 - (A) the effect of;
 - (B) any consequences of; or
 - (C) any of the advantages to be gained by,a transfer or other disposition of property to a Foundation, or the exercise of a power over or in relation to a Foundation or property of a Foundation;
 - (ii) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a Foundation, or the exercise of a power over or in relation to a Foundation or property of a Foundation; or
 - (iii) a mistake of law including a law of a foreign jurisdiction; and
 - (c) references to a transfer or other disposition of property to a Foundation do not include a testamentary disposition.



- (2) The Court may on the application of any person specified in subsection 47(1), and in the circumstances set out in subsection (3), declare that a transfer or other disposition of property to a Foundation:
- (a) by a Founder or Contributor acting in person (whether alone or with any other Founder or Contributor); or
 - (b) through or by reason of a person exercising a power or the exercise of a power by a person over the Foundation or property of a Foundation is voidable and:
 - (i) has such effect as the Court may determine; or
 - (ii) is of no effect from the time of its exercise.
- (3) The circumstances are where a Founder, Contributor or person exercising a power:
- (a) made a mistake in relation to the transfer or other disposition of property to a Foundation; and
 - (b) would not have made that transfer or other disposition but for that mistake;
- and the mistake is of so serious a character as to render it just for the Court to make a declaration under this section.

46. Power to set aside a transfer or disposition of property exercised by fiduciary power

- (1) In this section, ‘person exercising a power’ means a person who exercises a power to transfer or make other disposition of property to a Foundation on behalf of a Founder and who owes a fiduciary duty to such Founder in relation to the exercise of his or her power.
- (2) The Court may on the application of any person specified in subsection (1), and in the circumstances set out in subsection (3), declare that a transfer or other disposition of property to a Foundation by a Founder or Contributor (whether alone or with any other Founder or Contributor) through a person exercising a power, is voidable and:
- (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances referred to in subsection (2) are where, in relation to the exercise of his or her power, the person exercising a power:
- (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for the failure to take into account relevant considerations or the taking into account of irrelevant considerations.
- (4) This section applies whether or not the circumstances set out in subsection (3) occurred as a result of any lack of care or other fault on the part of the person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.



47. Applications and orders under sections 45 and 46

- (1) An application under subsections 45(2) (Power to set aside a transfer or disposition of property due to a mistake) or 46(2) (Power to set aside a transfer or disposition of property exercised by fiduciary power) may be made by any Founder or Contributor or any of his or her personal representatives or successors in title, the Foundation or any person to whom property of a Foundation has been appointed.
- (2) The Court may, consequential upon a declaration made under either of sections 45 (Power to set aside a transfer or disposition of property due to a mistake) and 46 (Power to set aside a transfer or disposition of property exercised by fiduciary power), make such order as it thinks fit.
- (3) Nothing in sections 45 (Power to set aside a transfer or disposition of property due to a mistake) or 46 (Power to set aside a transfer or disposition of property exercised by fiduciary power) shall prejudice:
 - (a) any application for a declaration that a transfer or other disposition of property to a Foundation, or the exercise of any power over or in relation to a Foundation or property of a Foundation, is void or voidable on grounds other than those specified in those sections; or
 - (b) any personal remedy which may be available against any person.

48. Provisions for facilitating Foundation division or amalgamation

- (1) This section applies where the members of the Council of one or more Foundations unanimously resolve that the property of a Foundation should be divided amongst two (2) or more Foundations, or that two (2) or more Foundations should be combined into a single Foundation.
- (2) An application may be made to the Court under subsection (1) for the division of the Foundation, or the amalgamation of the Foundations, on notice to all persons with sufficient interest in any Foundation affected by the making of such an order.
- (3) On any application under subsection (1), the Court may make such orders as it considers appropriate to facilitate the division or amalgamation.
- (4) Each of the Foundations affected by any order of the Court shall give details of the change of status of the Foundations to the Registrar in such manner as he may require.
- (5) The Registrar shall make such entries in the Register as are required to give effect to the order of the Court and ensure any new or amalgamated Foundation is correctly registered.

49. Arbitration of Foundation disputes

- (1) Where the Charter or By-laws of a Foundation provide that any dispute or Administrative Question arising between any of the parties in relation to the Foundation shall be submitted to arbitration, that provision shall, for all purposes under the *AIFC Arbitration Regulations* have effect as between those parties as if were an arbitration agreement and as if those parties were parties to that agreement.
- (2) Where the Charter or By-laws of a Foundation do not provide that any dispute or Administrative Question arising in relation to the Foundation shall be submitted to arbitration but the parties to that dispute agree in writing to have it resolved by arbitration,



that agreement shall, for all purposes under the *AIFC Arbitration Regulations*, have effect as between those parties as if it were an arbitration agreement.

- (3) The *AIFC Arbitration Regulations* shall apply to an arbitration under these Regulations in accordance with the provisions of Schedule 2 (Application of the *AIFC Arbitration Regulations*).
- (4) The Court may make such orders in relation to an arbitration or possible arbitration which supplement or vary the application of Schedule 2 (Application of the *AIFC Arbitration Regulations*) as the Court deems appropriate in the circumstances.

50. Powers of the arbitral tribunal

- (1) This section shall apply except to the extent otherwise provided in the Charter or By-laws of a Foundation.
- (2) The arbitral tribunal may, in addition to all other powers of the tribunal, at any stage in an arbitration under these Regulations, exercise all the powers of the Court (whether arising by law, including these Regulations, under the inherent jurisdiction of the Court or otherwise) in relation to the administration of a Foundation or the rights of any party in relation to the Foundation.
- (3) The arbitral tribunal has the same powers to appoint a person to represent the interests of any person (including a minor, a person unborn or unascertained) or class of person in an arbitration concerning a Foundation as the Court has in relation to proceedings before the Court.

51. Provision of information by a Foundation

- (1) A Person with Sufficient Interest in a Foundation may make written requests to the Foundation for full and accurate information in respect of any of the following:
 - (a) the financial statements of the Foundation;
 - (b) the property of the Foundation;
 - (c) the manner in which the Foundation's property are being administered;
 - (d) the way in which the Foundation is carrying out its objects; and
 - (e) the administration of the Foundation,

and the Foundation shall comply as soon as practicable after receipt of such requests provided that any such requests shall be subject to subsection (2).

- (2) Subject to subsection (4), a Foundation is not required to provide any person with information about the Foundation where the provision of that information is prohibited under the Foundation's Charter or By-laws, unless the obligation to make such disclosure is imposed by an order of the Court.
- (3) If subsection (2) applies, the person making the request may apply to the Court under section 39 (Power of the Court to order compliance) for an order authorising or requiring the provision of the requested information, in which case it must be shown to the Court that the provision of the information is necessary or expedient to enable the determination as to whether or not:



- (a) the Foundation is carrying out its objects;
 - (b) the Council of the Foundation is carrying out its functions;
 - (c) the property of the Foundation is being properly administered; and
 - (d) the Foundation is being properly administered.
- (4) Subsection (2) does not affect any other obligation of a Foundation to supply information about the Foundation under these Regulations or the power of the AIFC Authority, the Registrar or the AFSA to obtain information under the Acting Law of the AIFC.



PART 8: DISSOLUTION OF FOUNDATIONS

52. Dissolution

- (1) A Foundation shall be dissolved where:
 - (a) the Foundation is established for a definite period and that period expires;
 - (b) the object(s) of the Foundation are fulfilled or become incapable of fulfilment, and the members of the Council, by unanimous decision, so resolve;
 - (c) any provision of the Charter or By-laws of the Foundation so requires;
 - (d) the Court orders that the Foundation be dissolved under section 53 (Court dissolution); or
 - (e) the Registrar strikes the Foundation off the Register in accordance with section 56 (Dissolution by the Registrar).
- (2) Where a Foundation is dissolved pursuant to the provisions of subsection 53(1) (Court dissolution), the members of the Council, or such other Person as may be authorized by the Charter or By-laws of the Foundation to supervise the dissolution of the Foundation, shall do all things that are necessary for orderly supervision of dissolution of the Foundation, and shall collect the property of the Foundation, and after discharging or making adequate provision for the discharge of the obligations of the Foundation shall distribute the remaining property in the manner provided in section 54 (Distribution of property).

53. Court dissolution

- (1) A Foundation may, upon application, by an order of the Court be dissolved if the Court is of the opinion that:
 - (a) the Foundation is insolvent;
 - (b) it is just and equitable that the Foundation be dissolved; or
 - (c) it is prejudicial to the interest of the AIFC for a Foundation to remain on the Register.
- (2) An application for the dissolution of a Foundation under subsections (1)(a) or (b) may be made by the Foundation, a member of the Council of the Foundation, a Guardian of the Foundation or by a creditor of the Foundation.
- (3) An application for the dissolution of a Foundation under subsection (1)(c) may be made by the AFSA.
- (4) Where the Court orders that a Foundation be dissolved under this section, the Court may appoint a person to supervise the dissolution of the Foundation and may, from time to time, direct the manner in which the dissolution is to be conducted.

54. Distribution of property

- (1) Subject to subsection (2), where a Foundation is dissolved and there remains some property after its dissolution such property shall be the property of the Person who,



according to the Charter or Bylaws, is entitled to receive any property remaining after the dissolution of the Foundation.

- (2) In the event that:
- (a) there is no Person entitled to receive the remaining property of the Foundation as provided in subsection (1); or
 - (b) the Person entitled to receive the remaining property refuses to accept the transfer of the property,

and there is no relevant provision in the Charter or By-laws of the Foundation, the remaining property shall vest in an AIFC Body or its organisation to be prescribed by AIFC Acts.

55. Application of insolvency rules in winding up

- (1) In the winding up of an insolvent Foundation the same rules concerning rights of creditors, proof of debts, valuation of liabilities and preferential payments as are in operation for the time being under the *AIFC Insolvency Regulations* and the *AIFC Insolvency Rules* with respect to the estates of insolvent companies apply and must be observed.

56. Dissolution by the Registrar

- (1) If the Registrar has reason to believe that:
- (a) a Foundation is acting in Contravention of these Regulations; or
 - (b) it is prejudicial to the interest of the AIFC for a Foundation to remain on the Register,

he may give notice to the Foundation that at the conclusion of three (3) months from the date of the notice, the Foundation shall be struck off the Register unless reason is shown to the contrary.

- (2) If by the end of the three (3) month period, the Registrar has not received from the Foundation an objection to the striking off of the Foundation from the Register or from any other party sufficient reason as to why the Foundation should not be struck off the Register, the Registrar may strike the name of the Foundation off the Register and the Foundation shall be dissolved.
- (3) When a Foundation has been struck off the Register under subsection (2), the Foundation or its liquidator may apply to have the name of the Foundation reinstated on the Register, provided such application is made prior to the sixth anniversary of its removal from the Register.
- (4) Where an application is made under subsection (3) and upon payment of all outstanding fees and penalties to the Registrar, the Registrar may reinstate the Foundation on the Register.
- (5) Where the Foundation is reinstated on the Register under subsection (4), the Foundation is deemed to have continued in existence as if it had not been dissolved or struck off the Register.



- (6) Upon dissolution of a Foundation under this section, its outstanding property shall become the property of an AIFC Body or its organisation to be prescribed by AIFC Acts, provided that if it is reinstated to the Register such property shall once again become the property of the Foundation.

57. Publication of dissolution

The Registrar shall publish the dissolution of a Foundation on the website of the AIFC.



PART 9: ULTIMATE BENEFICIAL OWNERS

58. Ultimate Beneficial Owners

The provisions of Part 14-1 (Ultimate Beneficial Owners) of the *AFC Companies Regulations* apply to Foundations as set out therein.



PART 10: WHISTLEBLOWING

59. Whistleblowing

The provisions of Part 14-2 (Whistleblowing) of the *AIFC Companies Regulations* apply to Foundations as set out therein.



PART 10-1: ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING OBLIGATIONS

59-1. Obligations in respect of payments and transactions

A Foundation must carry out its payments and transactions of the third parties through a banking and financial intermediary (a regulated financial institution) based in the AIFC jurisdiction, Republic of Kazakhstan, or in a jurisdiction that is a FATF member or an equivalent jurisdiction.

59-2. Notification obligations

- (1) A Foundation must immediately notify the AFSA when it becomes aware of:
 - (a) complex or unusually large transactions, or an unusual pattern of transactions;
 - (b) transactions which have no apparent economic or legal purpose; and
 - (c) other activity which the Foundation regards as particularly likely by its nature to be related to money laundering or terrorist financing.
- (2) A Foundation must inform the AFSA in writing as soon as possible if, in relation to its activities carried on as part of the AIFC or in relation to any of its branches or subsidiaries, it:
 - (a) receives a request for information from a regulator or agency responsible for anti-money laundering and counter-terrorism financing, or sanctions compliance in connection with potential money laundering, terrorist financing, or sanctions breaches;
 - (b) becomes aware, or has reasonable grounds to believe, that a money laundering event has occurred or may have occurred in or through its business;
 - (c) becomes aware of any money laundering or sanctions matter in relation to the Foundation or its branch or subsidiary which could result in adverse reputational consequences to the Foundation; or
 - (d) becomes aware of a significant breach of the AIFC AML regulation framework or a breach of the relevant Kazakhstan legislation by the Foundation or any of its employees.

59-3. Reporting and record keeping

- (1) A Foundation must report any information about customers, third parties, their transactions, identified risks of money laundering and terrorist financing and any suspicious activities on request of the AFSA and the FIU.
- (2) The information must be filed in the form and manner prescribed by the AFSA and the FIU and must contain the information required by the AFSA and the FIU.
- (3) A Foundation must maintain the following records:
 - (a) the supporting documents (consisting of the original documents or certified copies) in respect of the customer business relationship, including transactions;



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- (b) suspicious activities and any relevant supporting documents and information, including internal findings and analysis of money laundering and terrorist financing risks; any relevant communications with the FIU;
- (c) for at least six years from the date on which the notification or report was made, the business relationship ends or the transaction is completed, whichever occurs last.



PART 11: FINES AND FEES

60. Fines

- (1) A Foundation which Contravenes a requirement of these Regulations to provide information to the Registrar is liable to a fine, as set out in Schedule 3 (Fines and Fees).
- (2) A Foundation which in any document or other communication provided to the Registrar makes a statement which is false or intentionally misleading in any particular, is liable to a fine, as set out in Schedule 3 (Fines and Fees).
- (3) Part 1 (Fines) of Schedule 3 (Fines and Fees) to these Regulations contains a list of maximum fines applicable to any Contravention of these Regulations.
- (4) Sections 171 to 173 of the *AIFC Companies Regulations* apply in relation to proceedings by the Registrar in respect of Contraventions, or possible Contraventions, of these Regulations.
- (5) Section 170 (Involvement in Contraventions of these Regulations) of the *AIFC Companies Regulations* applies in respect of the involvement of Persons knowingly concerned in a Contravention of these Regulations.

61. Fees

Part 2 (Fees) of Schedule 3 (Fines and Fees) to these Regulations contains a list of fees payable to the Registrar in connection with these Regulations.



SCHEDULE 1

INTERPRETATION

In these Regulations:

Accounting Records means Records and underlying Documents comprising initial and other accounting entries and associated supporting Documents, including, for example, any of the following:

- (a) cheques;
- (b) Records of electronic funds transfers;
- (c) invoices;
- (d) contracts;
- (e) the general and subsidiary ledgers, journals entries and other adjustment to the financial statements that are not reflected in journal;
- (f) worksheets and spreadsheets supporting costs allocations, computations, reconciliations and disclosures.

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

Administration Question means any relief or question in respect of which an action, application or other reference to the Court could be brought or made under these Regulations.

AIFC Act has the meaning given by article 1 of the Constitutional Statute.

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 Arbitration Regulations means the *AIFC Arbitration Regulations 2017*.

AIFC Companies Regulations means the *AIFC Companies Regulations 2017*.

AIFC Insolvency Regulations means the *AIFC Insolvency Regulations 2017*.

Board of Directors of the AFSA means the Board of Directors of the Astana Financial Services Authority.

Body Corporate means any body corporate, including a limited liability partnership and a body corporate constituted under the law of a country or territory outside the AIFC.

By-laws includes any document, by whatever name called, which complies with the requirements of these Regulations relating to the by-laws of a Foundation.

Certificate means an instrument:

- (a) which confers on the holder contractual or property rights to or in respect of a Share, Debenture or Warrant held by a Person; and



- (b) the transfer of which may be effected by the holder without the consent of that other Person,

but excludes rights under an option.

Charter includes any document, by whatever name called, which complies with the requirements of these Regulations relating to the charter of a Foundation.

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

Contract of Insurance means any contract of insurance or contract of reinsurance.

Contribute in the context of a Contributor, to pass, or covenant to pass, the title in property absolutely, with or without consideration, to a Foundation so that the property is an asset of the Foundation (and “to pass”, for the objects of this definition, includes whatever act may be necessary in relation to that property to transfer title effectively) and “contribution” is to be construed accordingly.

Contributor means a Person, other than a Founder, who contributes property to a Foundation.

Council means the council of a Foundation established to administer a Foundation’s property and to carry out its objects under section 19 (Council).

Court means the Astana International Financial Centre Court.

Debenture means an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:

- (a) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker’s draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; and
- (d) a Contract of Insurance.

Depository Receipts has the meaning given by section 26(2) (Depository Receipts).

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

Enforce in relation to a Foundation means to require or compel members of the Council to execute, carry out and perform their duties under the Foundation’s Charter and By-laws in relation to its non-charitable objects and to bring and prosecute proceedings to enforce the terms of the Charter and By-laws.

FATF means the Financial Action Task Force, an inter-governmental body whose purpose is the development and promotion of international standards to combat money laundering and terrorist financing.

FIU means the Financial Intelligence Unit of the Republic of Kazakhstan, a state authority carrying



out financial monitoring and taking other measures on combating the legalisation (laundering) of proceeds from crime, the financing of terrorism, and the financing of proliferation of weapons of mass destruction in accordance with the Kazakhstan legislation. **Foreign Law** means any law other than the Acting Law of the AIFC.

Foundation means a foundation established in accordance with these Regulations.

Founder means a Person who contributes property to a Foundation in order to establish it in accordance with section 14(1) (Creation).

Guardian means the Person who is the guardian of a Foundation by virtue of section 20 (Guardian).

Heirship Right means any right, claim or interest in, against or to property of a Person arising, accruing or existing in consequence of, or in anticipation of, that Person's death, other than any such right, claim or interest created by will or other voluntary disposition by such Person or resulting from an express limitation in the disposition of the property of such Person.

Income includes rents and profits.

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.

Object includes a purpose.

Person includes any natural person, Body Corporate or body unincorporated, including a legal person, company, Partnership, unincorporated association, government or state.

Person with Sufficient Interest in respect of a Foundation, means:

- (a) the Foundation;
- (b) a Founder;
- (c) a Contributor;
- (d) if any rights a Founder had in respect of the Foundation have been assigned to some other Person, that other Person;
- (e) a member of the Council;
- (f) a Guardian;
- (g) a Person appointed under the By-laws;
- (h) a Qualified Recipient in respect of an application under subsection 25(4) (Qualified Recipients);
- (i) in respect of a specified object of the Foundation which is charitable, the AFSA or a Person



designated by it;

- (j) a Person who, in the view of the Court, can reasonably claim to speak on behalf of an object or object of the Foundation; or
- (k) a Person who the Court determines to be a Person with Sufficient Interest under subsection 38(4).

Personal Relationship includes every form of relationship by blood, adoption, marriage, or cohabitation, regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, including a former personal relationship which has in law or in fact terminated and in particular a personal relationship between two Persons exists if:

- (a) one is the child of the other, natural or adopted, whether or not the adoption is recognised by law, legitimate or illegitimate;
- (b) one is married to the other, whether or not the marriage is recognised by law;
- (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights;
- (d) obligations or responsibilities analogous to those of parents and child or husband and wife; or
- (e) personal relationships exist between each of them and a third Person,
but no change in circumstances shall cause a personal relationship once established to terminate.

Power includes a discretion as to the way in which an obligation is performed.

Property means any movable or immovable property, and includes rights and interests, whether present or future and whether vested or contingent and where it concerns the property of a Foundation, it shall include:

- (a) any property (including money, investments and other property) contributed to the Foundation;
- (b) any capitalised income added to the property so contributed; and
- (c) the money, investments and property from time to time representing those assets and capitalised income.

Qualified Recipient means in respect of a Foundation that has the provision of a benefit to a Person or to a class of Persons as one of its objects, means a Person (whether or not yet born or otherwise in existence) who is or who becomes a member of a class of Persons that is:

- (a) specified in the Charter; or
- (b) determined in accordance with:
 - (i) the By-laws; or
 - (ii) a direction of the Court, as prescribed by subsection 41(2).



Records means Documents, information and other records, in whatever form and however stored.

Register means the register to be kept by the Registrar pursuant to section 33 (Register to be kept and made available for public inspection).

Registrar means the Registrar of Companies appointed under section 9 (Appointment of the Registrar) of the *AIFC Companies Regulations*.

Schedule means a schedule to these Regulations.

Security means:

- (a) a Share;
- (b) a Debenture;
- (c) a Warrant;
- (d) a Certificate; or
- (e) a Structured Product.

Share means a share or stock in the share capital of any Body Corporate or any unincorporated body.

Standard By-laws means standard by-laws prescribed by these Regulations.

Standard Charter means a standard charter prescribed by these Regulations.

Structured Product means an instrument comprising rights under a contract where:

- (a) the gain or loss of each party to the contract is ultimately determined by reference to the fluctuations in the value or price of property of any description, an index, interest rate, exchange rate or a combination of any of these as specified for that purpose in the contract (“the underlying factor”) and is not leveraged upon such fluctuations;
- (b) the gain or loss of each party is wholly settled by cash or setoff between the parties;
- (c) each party is not exposed to any contingent liabilities to any other counterparty; and
- (d) there is readily available public information in relation to the underlying factor;

but excludes any rights under an instrument:

- (a) where one or more of the parties takes delivery of any property to which the contract relates;
- (b) which is a Debenture; or
- (c) which is a Contract of Insurance

Trust means the legal relationship created by a settler under which assets are placed under the control of a trustee for the benefit of a beneficiary or for a specific purpose.



Warrant means an instrument that confers on the holder a right entitling the holder to acquire an unissued Share or Debenture.



SCHEDULE 2

APPLICATION OF THE AIFC ARBITRATION REGULATIONS

1. The *AIFC Arbitration Regulations* shall apply and be construed with respect to a Foundation arbitration, as stated hereunder.
2. In the *AIFC Arbitration Regulations*, "dispute" includes an Administration Question.
3. Article 10(b) (General Principles) of the *AIFC Arbitration Regulations* shall apply as if it read:

"A Founder or Contributor of a Foundation shall be free to determine (by provision in the Charter or By-laws of the Foundation) how, in relation to a Foundation, disputes are resolved, subject only to such safeguards as are necessary in the public interest;"
4. Where in the Arbitration Regulations reference is made to a matter agreed between the parties to an arbitration agreement (including a matter which may be authorised, chosen, conferred, designated, nominated or vested by the parties) that matter shall (except where no effective provision is made) be determined as provided in the Foundation's Charter or By-laws.
5. Neither Article 15 (Definition and form of arbitration agreement) of the Arbitration Regulations nor any rule of law or construction treating an arbitration agreement separate to any agreement of which it is a part shall apply in relation to a Foundation arbitration.
6. The term "action" in Article 16 (Arbitration agreement and substantive claim before a court) of the *AIFC Arbitration Regulations* includes an application or other reference to the Court concerning an Administration Question which the Charter or By-laws of the Foundation requires to be submitted to arbitration and a stay of that application or other reference may be sought by any of the parties in relation to the Foundation, whether or not a party to that application or other reference.
7. In any application or other reference to the Court referred to in paragraph 6, the Court may stay the proceedings on its own volition unless all parties in relation to the Foundation affected by the application are before it or are represented by Persons before it.
8. For the objects of enforcing an arbitral award under Article 44(2)(a)(iii) (Application for setting aside as exclusive recourse against arbitral award) of the *AIFC Arbitration Regulations*, the term "dispute" includes an Administration Question.



SCHEDULE 3		
FINES AND FEES		
PART 1: FINES		
<i>Section</i>	<i>Contravention</i>	<i>Maximum Fine (US\$)</i>
6(6)	Person failing to provide a copy of assignment of rights	1,500
14(7)	Prohibition against conduct of business without incorporation or registration in the AIFC	10,000
17(6)	Foundation failing to notify Registrar of changes to By-laws	2,000
19(11)	Foundation failing to notify Registrar of changes to Council	2,000
31(1)	Foundation failing to keep accounts or Accounting Records, or to make them available	10,000
31(2)	Foundation failing to have its accounts approved by Council members	5,000
31(4)	Foundation failing to file accounts	10,000
31(5)	Person making a statement that is misleading, false or deceptive in a material way in respect of accounts	10,000
36(4)	Foundation failing to file an annual return	5,000
60(1)	Foundation failing to provide information to the Registrar	10,000
60(2)	Foundation making a false or misleading statement to the Registrar	10,000

**PART 2: FEES**

The following fees are payable in respect of applications and notifications made in accordance with the Regulations:

Application or notification	Fee Payable (US\$)
Application for registration of a Foundation	400
Notification of a change in registered office address	100
Notification of an appointment and cessation of a Council member	100
Notification of change of particulars of a Council member	100
Notification of an appointment and cessation of a Guardian	100
Notification of change of particulars of a Guardian	100
Notification of a change of name of a Foundation	100
Amendment of the Charter by the Founder(s) or in the event of Founder's death by Court Order	100
Request for information from the Registrar	100
Application to strike off	100
Reinstatement of a Foundation on the Register	Nil



SCHEDULE 4

STANDARD FOUNDATION CHARTER

1. INTERPRETATION

1.1. In this Charter:

'**By-laws**' means the By-laws of the Foundation;

'**Charter**' means this Charter of the Foundation;

'**Council**' means the governing body of the Foundation;

'**Default Recipient**' is [*as specified in the application*];

'**Founder**' is [*as specified in the application*] who has transferred the Initial Property to the Foundation at the time of its establishment and has signed this Charter;

'**Guardian**' is [*as specified in the application*];

'**Qualified Recipient**' is [*as specified in the application*];

'**Regulations**' means the AIFC Foundations Regulations, as amended from time to time.

1.2. In this Charter, unless the contrary intention appears:

(i) terms have the same meanings as they have in the Regulations but excluding any statutory modification thereof not in force when this Charter becomes binding on the Foundation;

(ii) words in the singular must include the plural and words in the plural include the singular;

(iii) words relating to natural persons must include companies, entities, associations or bodies of persons whether incorporated or not;

(iv) the word "may" must be construed as permissive and the word "must" as imperative; and

(v) the headings herein are for convenience only and must not affect the construction of this Charter.

2. FOUNDATION NAME

The name of the Foundation is [*as specified in the application*] Foundation ("the **Foundation**").

3. FOUNDATION OBJECTS

The objects of the Foundation are [*as specified in the application*].

4. INITIAL PROPERTY

The initial property of the Foundation is [*as specified in the application*], which has been agreed to be transferred to the Foundation by the Founder(s).

5. DURATION OF FOUNDATION

Subject to sections 52 and 53 of the Regulations, the Foundation must continue in existence [*as specified in the application*].



6. DEFAULT RECIPIENT

The Default Recipient must have the entitlements specified in section 18(1) of the Regulations.

7. AMENDMENT AND REVOCATION OF THIS CHARTER AND THE BY-LAWS

Subject to sections 16(11) and 22(2) of the Regulations, this Charter and the By-laws may be amended:

- (a) by the Founder (where the Founder is living or in existence) at any time by notice in writing to the Foundation containing the terms of the amendment to the Charter;
- (b) at any time when the Founder is not living or in existence, by the Council if its members have unanimously approved the amendment and with the consent of the Guardian; or
- (c) by the Court pursuant to section 40 of the Regulations.

8. DECLARATION

Each Founder by signing this Charter declares that it/he/she requests the Council to comply with the terms of this Charter.



SCHEDULE 5

STANDARD FOUNDATION BY-LAWS

1. INTERPRETATION

In these By-laws, unless the contrary intention appears the terms have the same meanings as they have in the Charter and Regulations but excluding any statutory modification thereof not in force when these By-Laws become binding on the Foundation.

2. THE COUNCIL

2.1 ESTABLISHMENT OF COUNCIL

The Foundation must have a Council consisting of the Chairman of the Council, and not less than one other member.

2.2 POWERS AND FUNCTIONS OF THE COUNCIL

- (a) Subject to the Regulations and the Charter, the Foundation must be managed by the Council. No subsequent amendment to the Charter must invalidate any act of a member of the Council or the Council.
- (b) The Council may delegate any of its functions or powers to an attorney-in-fact or to a committee of the Council, provided that the extent of such delegation must be clearly stated.
- (c) The Council must be in charge of the day-to-day administration of the Foundation and must have full powers to represent the Foundation in the pursuit of its objects. Such powers include but are not limited to the power to:
 - (i) negotiate, sign, execute all contracts, transactions, arrangements, and deals of whatever kind or nature with third parties, and any authority whatsoever, in the name of the Foundation with right to terminate and amend such contracts and agreements as required from time to time;
 - (ii) open, close and manage all bank accounts pertaining to the Foundation, to carry out all banking transaction on behalf of the Foundation including without any limitation the right to issue, sign, transfer, obtain loans with or without security, bank facilities and bank guarantees and to complete and sign all applications and documents necessary for the performance of the Foundation's corporate objectives;
 - (iii) employ all persons required for the Foundation's business, to define their salaries, benefits, remunerations and the rules and provisions related to their employment as well as the right to terminate their services;
 - (iv) sign memoranda of association in terms and conditions as it may deem fit;
 - (v) claim on behalf of the Foundation, to attach the properties of debtors, refer cases to arbitration, to appoint lawyers; and
 - (vi) take all legal proceedings for the protection of the Foundation's interests as plaintiff or defendant or as party to arbitration or otherwise.
- (d) Notwithstanding the preceding provisions of this section 2.2, the Council must not dispose of, mortgage or assign the property transferred to the Foundation by the Founder as its initial property.
- (e) The Council may accept further contributions to the Foundation from the Founder or any other



persons, and must hold such property on such terms as may be agreed between the Foundation and the Founder or other contributor which terms must, if different from those set out in section 4 of these By-laws, be specified in an amendment to these By-laws.

2.3 APPOINTMENT AND RETIREMENT OF MEMBERS OF THE COUNCIL

- (a) The Founder must appoint the first members of the Council and the Chairman at the time of the establishment of the Foundation, and if the number of members of the Council falls below two, must appoint replacement Councillors so that there are at least two Councillors.
- (b) Subject to the preceding clause, additional members of the Council may be appointed by the Council of the Foundation by an ordinary resolution passed by the majority of existing Council members with the consent in writing of each Founder during their lifetime or its existence or, if the Founder(s) is/are no longer alive or in existence, the Guardian.
- (c) Any vacancy in the position of Chairman must be filled by election conducted by the members of the Council in such manner as they must determine.

2.4 DISQUALIFICATION AND REMOVAL OF MEMBERS OF THE COUNCIL

The office of a member of the Council is automatically vacated if the member:

- (i) is prohibited by the Regulations from being a member of the Council;
- (ii) becomes bankrupt;
- (iii) is, by virtue of any disability, incapable of fulfilling the functions or duties required by the office;
- (iv) without permission, does not attend three successive meetings of the Council;
- (v) resigns his or her office by notice to the Foundation;
- (vi) is removed by the Founder(s); or
- (vii) is removed by the Court pursuant to section 44(1) of the Regulations.

2.5 REMUNERATION AND EXPENSES OF MEMBERS OF THE COUNCIL

The members of the Council must receive such remuneration as the Council with the approval in writing of the Founder or, if there is no Founder living or in existence, the Guardian (if any) determines by resolution and must receive payment of all expenses incurred in association with the carrying out of their duties as members of the Council.

2.6 MEETINGS OF THE COUNCIL

- (a) Any member of the Council may call a meeting of the Council.
- (b) Subject to the Regulations, a meeting of the Council must be called by at least 14 days' notice to all the Council members.
- (c) Such notice of meeting must specify the time and place of the meeting and the general nature of the matters to be considered.
- (d) The members of the Council may unanimously waive notice of any meeting.
- (e) The proceedings of a meeting are not invalid solely because of the inadvertent failure to give notice of the meeting to, or the failure to receive notice of a meeting by any person entitled to receive such notice.

2.7 PROCEEDINGS OF THE COUNCIL

- (a) Subject to the provisions of these By-laws, members of the Council may regulate their proceedings as they think fit.



- (b) No meeting must take place unless a quorum is present. The majority of persons entitled to vote must constitute a quorum.
- (c) If a quorum is not present, the meeting must be adjourned to a place and time determined by the Chairman. If during the meeting a quorum ceases to be present the meeting must be adjourned to a place and time determined by the members of the Council who are present.
- (d) The Chairman must chair the meeting. If the Chairman is not present or willing to act within fifteen minutes of the stated time for commencement of the meeting, and in the absence of a nominee, another member of the Council elected by the rest of the Council present must chair the meeting.
- (e) The Chairman may adjourn the meeting with the consent of the majority of the votes at the meeting. No matters must be considered at an adjourned meeting other than matters that might have been considered at the meeting had the adjournment not taken place. It is not necessary to give notice of the adjourned meeting unless the meeting was adjourned for fourteen days or more, in which case at least seven days' notice must be given specifying the time and place of the adjourned meeting and the general nature of the matters to be considered.
- (f) Any matters arising at a meeting must be decided by a majority of votes with the Chairman having a second or casting vote in the case of equality of votes.
- (g) The quorum for the transaction of the business of the Council must be two or any other number fixed by the Council.
- (h) All acts done by a meeting of the Council, or of a committee of Council, or by a person acting as a member of the Council must be valid, notwithstanding any defect in his appointment or his disqualification from holding office, or that he was not entitled to vote, being discovered afterwards.
- (i) A resolution in writing signed by all the Council entitled to receive notice of the meeting must be as valid and effectual as if it had been passed at a meeting of the Council. The resolution may consist of several documents in the like form each signed by one or more members of the Council.
- (j) A member of the Council must not vote at a meeting on any resolution concerning a matter in which he has a direct or indirect conflict of interest. For the purposes of this clause, an interest of a member of the Council includes an interest of any person who is connected to the member of the Council.
- (k) A member of the Council must not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
- (l) The Foundation may by resolution suspend or relax any provision of these By-laws prohibiting a member of the Council from voting at a meeting.
- (m) The chairman of the meeting must rule on any question arising at a meeting on the right of a member of the Council, other than himself, to vote and his ruling must be final and conclusive.
- (n) No objection may be raised to the right of any member of the Council to vote except at the meeting at which the voter is to vote.

2.8 MINUTES

The Council must cause minutes to be kept for recording:

- (i) all appointments of officers made by the Council; and
- (ii) all proceedings at meetings of the Council, and of committees of Council, including the names of the Council present at each such meeting.

3. FOUNDER AND OTHER OFFICERS AND PERSONNEL

3.1 THE FOUNDER



The Founder must have the following powers exercisable in accordance with section 22(2) of the Regulations (but subject to section 16(10) of the Regulations, if applicable):

- (a) power to amend, revoke or vary the terms of the Charter or these By-laws, or both of them, in whole or in part;
- (b) power to remove any member of the Council and appoint a replacement member of the Council in his/her place;
- (c) power to remove any Guardian and appoint a replacement Guardian in the place of the former Guardian; and
- (d) power to terminate the Foundation.

3.2 SECRETARY

Subject to the Regulations, the Council may (but need not) appoint and remove a secretary and must decide on the terms, remuneration and conditions of appointment.

3.3 THE GUARDIAN

- (a) The Guardian named in section 1 of the Charter must have the powers specified in section 20 of the Regulations. The following powers of the Council require the approval of the Guardian in accordance with section 20(10) of the Regulations if the Founder is not then living:
 - (i) the making of any application of property of the Foundation; and
 - (ii) the appointment of further members of the Council of the Foundation pursuant to section 2.3(b) of these By-laws.
- (b) The office of Guardian is automatically vacated if the Guardian:
 - (i) is prohibited by the Regulations from being the Guardian;
 - (ii) becomes bankrupt or insolvent;
 - (iii) resigns the office of Guardian by notice to the Foundation provided that a replacement Guardian will be appointed to take office as and from the date of such resignation;
 - (iv) is removed by the Founder; or
 - (v) is removed by the Court pursuant to section 44(1) of the Regulations.

4. FOUNDATION PROPERTY AND INCOME

4.1 The assets and property of the Foundation must be under the control of the Council. The Council may subject to the approval of the Founder (if living) or the Guardian (if the Founder is not living):

- (a) determine how the property of the Foundation is applied or distributed to or, in case of several, amongst the Qualified Recipient(s);
- (b) determine whether or not the net income of the Foundation in any year must be distributed to or, in case of several, amongst the Qualified Recipient(s);
- (c) subject to the Charter, add or remove a person or class of persons as Qualified Recipients or provide for the exclusion from the category of Qualified Recipient of a person or class of persons, either revocably or irrevocably.

4.2 In each year the Council of the Foundation must determine the net income of the Foundation after taking into account all the expenses of the Foundation for that year.

4.3 Upon the termination (winding up or dissolution) of the Foundation, the whole of the property then held by the Foundation must be applied, after discharge of any outstanding liabilities of the Foundation, [*as specified in the application*].



- 4.4 In the exercise of its powers and functions under this section, the Council:
- (a) may invite or call for applications from Qualified Recipient(s) in whatever manner it may prescribe;
 - (b) may act on its own motion in respect of any Qualified Recipient which has not submitted an application; and
 - (c) may rely upon assessments of applications by employees or others engaged by the Foundation.

5. AMENDMENT OF THESE BY-LAWS

Subject to section 6 of the Charter and sections 16(11) and 22(2) of the Regulations, these By-laws may be amended by:

- (a) the Founder (if living or in existence) at any time by notice in writing to the Foundation containing the terms of the amendment to the By-laws;
- (b) at any time when the Founder is not living or in existence, by the Council if its members are unanimous and have the consent of the Guardian; or
- (c) by the Court pursuant to section 40 of the Regulations.

6. DECLARATION

Each Founder by signing these By-laws declares that it/he/she requests the Council to comply with the terms of these By-laws.