



**DIFC**

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# Companies Regulations

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The Board of Directors of the DIFCA, in the exercise of the powers conferred on them by Article 140 of the Companies Law, hereby make these Regulations.

## 1. INTRODUCTION

### 1.1. Application and interpretation

1.1.1 These Regulations (COR) apply to:

- (a) Companies incorporated under the Law and incorporators applying for a certificate of incorporation under the Law;
- (b) officers and employees of companies incorporated under the Law;
- (c) auditors and applicants for registration as an auditor under the Law;
- (d) Foreign Companies and Recognised Companies;
- (e) the Registrar; and
- (f) any other Person to whom the Law applies.

1.1.2 In these Regulations a reference to the Law is a reference to the Companies Law 2009.

1.1.3 Defined terms are identified throughout these Regulations by the capitalisation of the initial letter of a word or phrase. Where capitalisation of the initial letter is not used, an expression has its natural meaning.

1.1.4 (1) The following defined terms have the meaning given below:

Defined Term	Definition
Ancillary Service	Has the meaning given in the Ancillary Service Providers Module of the DFSA Rulebook.
Ancillary Service Provider	A person who is registered by the DFSA in



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	relation to the carrying on of one or more Ancillary Services.
Authorised Firm	A Person other than an Authorised Market Institution who holds a licence under the Authorisation Module of the DFSA Rulebook.
Authorised Market Institution	A person who is licenced by the DFSA in relation to the carrying on of either or both of the Financial Services prescribed in Rule 2.17.1 and 2.18.1 of the General Module of the DFSA Rulebook.
Captive Insurer	Has the meaning given in the Glossary Module of The DFSA Rulebook.
DFSA Disclosure Consent	Consent that is provided by an applicant, as indicated in all application forms submitted to the Registrar that the DFSA shall be authorised to provide the DIFCA with information regarding the progress of DFSA licence applications.
Financial Service	A financial activity prescribed in the General Module of the DFSA Rulebook under Rule 2.2.2.
Fund	Has the meaning given in Article 2 of Schedule 1 of the Collective Investment Law 2010.
Recognised Body	A Person who holds a Recognition Notice issued to it pursuant to Article 61 of the Regulatory Law 2004, recognising it as a Recognised Body.
Recognised Member	A Person who holds a Recognition Notice, issued to that Person pursuant to Article 61 of the Regulatory Law 2004, recognising it as a Recognised Member.
Recognition Notice	A notice issued by the DFSA pursuant to Article 61 of the Regulatory Law 2004.

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Reporting Entity	Shall have the meaning assigned to that term in DIFC Markets Law No. 12 of 2004.
Representative Offices	Has the meaning given in the Glossary Module of The DFSA Rulebook.
The Law	Means the Companies Law 2009, being DIFC Law No. 2 of 2009 issued by the Ruler.

- (2) All other defined terms have the same meaning they have under the Law.

## 1.2. References to writing

- 1.2.1** (1) If a provision in these Regulations refers to a communication, notice, agreement of other document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
- (2) This does not affect any other legal requirements which may apply in relation to the form or manner of executing a document or agreement.

## 2. INCORPORATION

### 2.1 Application for certificate of incorporation

- 2.1.1** Any one or more Persons applying for the incorporation of a Company shall use the forms prescribed by the Registrar and shall include the following particulars:
- (a) the full name and address, the date and place of birth and all former given or family names of the proposed directors or managers;
  - (b) where the proposed Company secretary is an individual, the full name and address, date and place of birth and any former given or family names;
  - (c) where the proposed Company secretary is a body corporate, its full corporate or firm name and address of its registered or principal office;



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- (d) if a Company Limited by Shares, the number and class of shares to be allotted to each incorporator;
- (e) if a Limited Liability Company, the number and class of membership interests; and
- (f) every other matter that the Registrar considers appropriate.

**2.1.2** Where the proposed Company secretary is:

- (a) a body corporate, that body corporate shall be incorporated, established or registered in the DIFC; or
- (b) a partnership, that partnership shall be established in the DIFC.

**2.1.3** Where an incorporator is a body corporate, the application for a certificate of incorporation shall be accompanied by a copy of the incorporator's current certificate of incorporation or registration in its place of origin, or a document of similar effect, certified by the relevant authority in the jurisdiction in which it is incorporated or otherwise to the satisfaction of the Registrar.

**2.1.4** Once a Company's application has been approved by the Registrar, within thirty (30) days of such approval, the Company must take substantive steps to establish its operations in the DIFC, subject to any applicable legal exemptions as to physical presence in the DIFC, otherwise, the application shall be considered inactive for a further thirty (30) day period, during which the Registrar shall take no further steps. Following the aforementioned sixty (60) day period, if the Company has still not taken substantive steps to establish its operations in the DIFC, the application shall be considered cancelled.

## **2.2 DFSA regulated entities**

**2.2.1** Any Company that is in the process of seeking a licence from the DFSA must submit an application for incorporation with the Registrar no later than sixty (60) days after the day the applicant receives its licence from the DFSA.

**2.2.2** Failure to comply with Regulation 2.2.1 shall result in the imposition of a penalty of US\$1,000 for each day the deadline is exceeded, up to a maximum penalty of US\$60,000.





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## 2.3 Company names

**2.3.1** (1) A Person may apply to the Registrar for the reservation of a name for a Company using the form prescribed by the Registrar.

(2) The Registrar shall reserve such name for a period of thirty (90) days if the name is acceptable to the Registrar.

**2.3.2** A Person shall ensure before submitting to the Registrar a name or a new name for registration or reservation that it:

(a) is written using the English alphabet, numerals or such other characters acceptable to the Registrar;

(b) ends with the word 'Limited' if Company Limited by Shares or the words "Limited Liability Company" if a Limited Liability Company;

(c) does not so nearly resemble the name of:

(i) a company currently incorporated or registered in the DIFC or any other relevant jurisdiction;

(ii) a limited liability partnership currently registered in the DIFC or any other relevant jurisdiction; or

(iii) a partnership currently registered in the DIFC or any other relevant jurisdiction;

as to be likely to mislead;

(d) does not contain words that may suggest a relationship with the DIFCA, DFSA or any other governmental authority in the DIFC, Dubai or the United Arab Emirates, unless the relevant body has consented in writing to the use of the name;

(e) does not contain:

(i) the word 'bank', 'insurance' or 'trust';

(ii) words which suggest that it is a bank, an insurance company or trust company; or

(iii) words which suggest in some other way that it is authorised to carry on a Financial Service within the DIFC;



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unless the DFSA consents in writing to the use of such words; and

- (f) does not contain words that may suggest a connection with, or the patronage of, any prominent person or organisation, unless that prominent person or organisation consents in writing.

**2.3.3** Where a Company uses a trading name that is different from its registered Company name, the Company shall ensure that the trading name satisfies the criteria set out in Regulation 2.3.2 (a), (c), (d), (e), (f) and (g), or does not so nearly resemble the trading name of:

- (a) a company currently incorporated or registered in the DIFC or any other relevant jurisdiction;
- (b) a limited liability partnership currently registered in the DIFC or any other relevant jurisdiction; or
- (c) a partnership currently registered in the DIFC or established in any other relevant jurisdiction;

as to be likely to mislead.

**2.3.4** When a Company changes its name, it shall file a notice of change of name with the Registrar, using the form prescribed by the Registrar and submitting all relevant documentation required by the Registrar.

**2.3.5** If the proposed name or new name of the Company is in the opinion of the Registrar likely to offend the public or is likely to mislead or is for any other reason undesirable he shall inform the Company in writing that the name is not acceptable.

- 2.3.6**
- (1) If in the opinion of the Registrar, the trading name of a Company is misleading or otherwise undesirable, he may direct the Company to cease using it.
  - (2) A direction given under (1) shall be complied with immediately or within such other period as the Registrar may allow.

## **2.4 Articles of association**

**2.4.1** A Company may adopt the articles of association set out in App2 'the Standard Articles'.



**2.4.2** Should the Company adopt the Standard Articles with modification, the application for incorporation shall set out in what respect the Standard Articles have been modified.

**2.4.3** If the Standard Articles are not adopted, then the articles filed by the Company with the application for a certificate of incorporation shall, at least, provide for:

- (a) the purpose for which the Company is being formed;
- (b) the creation of classes of shares or membership interests, where the Company considers that it may seek to create classes of shares or of membership interests;
- (c) alteration of share capital;
- (d) the rights attaching to shares or membership interests or classes of shares or of membership interests;
- (e) the transfer of shares or of membership interests;
- (f) an annual general meeting;
- (g) the requisition, by shareholders or members, of general meetings;
- (h) the proceedings including voting at general meetings;
- (i) accounts and other information to be provided to shareholders or members before every annual general meeting;
- (j) the maximum number of directors or managers;
- (k) the appointment, retirement, disqualification and removal of directors or managers and other officers;
- (l) the remuneration of directors or managers;
- (m) the powers of directors or managers;
- (n) proceedings of directors or managers;
- (n) appointment of the secretary; and
- (o) the keeping of minutes.



**2.4.4** A board resolution must be submitted to the Registrar along with all application forms stating that the Articles of Association have been duly adopted by shareholders or members of the Company.

## **2.5 Certificate of incorporation**

**2.5.1** The certificate of incorporation (in the form attached in App4) issued by the Registrar upon incorporation of a Company or upon registration of a change of name of the Company shall set out:

- (a) the name of the Company;
- (b) the Company's registered number;
- (c) a statement that the Company is incorporated;
- (d) the type of Company; and
- (e) the date of incorporation and, if applicable, the date on which the new name of the Company was registered.

**2.5.2** For the purposes of Articles 40 and 43 of the Law, title to securities may be evidenced in accordance with the following requirements:

- (a) when the details of a shareholder are added to, removed from or amended in the Register of shareholders, the Company will provide written notice to the relevant shareholder of such change being made;
- (b) where share certificates have previously been issued by the Company, the Company may require the return of share certificates which shall be cancelled; and
- (c) the Company will not recognise the rights of third parties in respect of issued shares.

**2.5.3** Where a Company evidences title to securities without a written instrument:

- (a) an entry in the Register of Shareholders in accordance with Article 39 of the Law is evidence of:
  - (i) the person being a shareholder of the Company;
  - (ii) the number of shares held by that person;



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- (iii) the class of shares held by that person; and
- (iv) the date on which that person became a shareholder; and
- (b) a transfer of shares:
  - (i) in the case of a Company whose shares are admitted to a Register of Listed Securities, must take place in accordance with the rules of the relevant exchange and clearing house; and
  - (ii) in the case of all other Companies, must take place in accordance with the Articles.

## **2.6 Allotment of shares**

- 2.6.1** Immediately upon the initial allotment of shares or upon any subsequent allotment of shares, the Company shall file with the Registrar a notice of allotment of shares using the applicable form prescribed by the Registrar.

## **2.7 Minimum Capitalization**

- 2.7.1** Entities not regulated by the DFSA shall have share capital authorised by the Company and share capital paid upon incorporation in the amount at least equal to US\$50,000.



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### **3 REGISTERED OFFICE**

#### **3.1 Registered office**

**3.1.1** Should a Company change its registered office, it shall file with the Registrar, at the time of the change, a notice of change of registered office using the applicable form prescribed by the Registrar.

**3.1.2** The address of the registered office of a Company as set out in the application for a certificate of incorporation or notice of change of registered office shall include where applicable:

- (a) the floor or level on which; and
- (b) the name of the building in which;

the registered office is situated or is to be situated.

**3.1.3** The address of the registered office of the Company shall consist of a location and a postal address.



## **4 DIRECTORS AND SECRETARY**

### **4.1 Register of directors or managers and secretary**

**4.1.1** The register of directors or managers and secretary of every Company shall set out, in respect of each director or manager and secretary, the director's, manager's or secretary's:

- (a) full name;
- (b) any former names;
- (c) date and place of birth;
- (d) address;
- (e) any former addresses within the last five years;
- (f) date of appointment; and
- (g) date of cessation (if relevant).

### **4.2 Change of officeholders**

**4.2.1** Whenever:

- (a) a director, manager or secretary is appointed to a Company after initial incorporation/registration of the Company; or
- (b) a director, manager or secretary retires, is removed or for any other reason ceases to act;

the Company shall file a notice of change of directors, manager or secretary with the Registrar within 14 days of the change of director, manager or secretary using the applicable form prescribed by the Registrar.

**4.2.2** Whenever there is any change in the name or address of a director, manager or secretary of a Company, the Company shall file with the Registrar a notice of change of name or address using the form prescribed by the Registrar.



## **5 COMPANY REGISTRY AND FORMS**

### **5.1 Forms**

**5.1.1** The forms prescribed by the Registrar shall be completed in accordance with any directions, instructions or requirements contained in the form itself.

**5.1.2** An annexure to a form shall be endorsed with the words:

This is the annexure to the *(insert description of form)* relating to *(insert name of Company)* dated *(insert date of form)*.

**5.1.3** Any form, annexure or other document filed with the Registrar shall:

- (a) be on white paper of international A4 size;
- (b) be clearly printed or written in black in a manner that is permanent and is able to be reproduced or copied by photographic or electronic means;
- (c) contain, where applicable, original signatures of the person or persons indicated on the form and the date on which they signed;
- (d) set out the name and registered number (where applicable) of the Company to which the form relates; and
- (e) be completed in the English language.

### **5.2 Time for filing notices**

**5.2.1** Where the Law requires a notice to be filed with the Registrar, the notice shall be filed, in the absence of a time limit being stated in the Law or these Regulations, within 14 days of the date of the happening of the event to which the notice relates.

### **5.3 Fees**

**5.3.1** For the purposes of Article 148 (3) and (4) of the Law, the fees in respect of matters set out in App1 shall be paid to the Registrar by the relevant person.





## 5.4 Public Register

**5.4.1** The Registrar shall maintain the register of Companies and Recognised Companies by recording the following details, insofar as they may be relevant, in respect of each Company and Recognised Company that is, or has been, incorporated or registered in the DIFC:

- (a) current name;
- (b) registered number;
- (c) date of registration;
- (d) type of company;
- (e) former names;
- (f) date of registration of every change of name;
- (g) current registered office;
- (h) former registered offices;
- (i) date of registration of former registered offices;
- (j) current directors or managers;
- (k) date of registration of current directors or managers;
- (l) former directors or managers;
- (m) dates of registration and cessation of former directors or managers;
- (n) current secretary;
- (o) date of registration of current secretary;
- (p) former secretaries;
- (q) dates of registration and cessation of former secretaries;
- (r) number and class of issued shares or membership interests, nominal value of shares, if any, and amount of paid up share capital;



- (s) names of shareholders or members of the company or, in the event of a company whose shares are listed on an exchange for trading, the twenty members holding the most number of shares;
- (t) in the case of a Recognised Company, the country in which the Recognised Company is incorporated;
- (u) the company's financial year end;
- (v) date of commencement and cessation of schemes of arrangement, receiverships, or liquidations;
- (w) name and address and date of appointment and date of cessation or vacation of office of:
  - (i) each nominee or supervisor of a voluntary arrangement, within the meaning of the Insolvency Law 2009; and
  - (ii) each office-holder within the meaning of the Insolvency Law 2009; and
- (x) date of dissolution of the company, if any.

**5.4.2** The Registrar shall make the register available for viewing during normal business hours at the offices of the Registrar, and otherwise at all times on the website of the DIFC.

**5.4.3** (1) The Registrar shall, upon application and payment of the prescribed fee, produce an extract of the information maintained in the register in relation to any particular company.

(2) An extract of information produced pursuant to 5.4.3 (1) is prima facie evidence of the matters stated in it.

**5.4.4** (1) The Registrar shall, upon application and payment of the prescribed fee, produce a certified copy of a certificate of incorporation of a Company or a copy of a certificate of registration of a Recognised Company, or any document filed with the Registrar.

(2) A certified copy of a certificate of incorporation or certificate of registration produced pursuant to 5.4.4 (1) is conclusive evidence of the incorporation of the Company or registration of the Recognised Company.



## **6 ACCOUNTS**

### **6.1 Application**

**6.1.1** This chapter does not apply to an Authorised Firm, Authorised Market Institution, Recognised Body or Recognised Member.

### **6.2 Accounting standards**

**6.2.1** Subject to Regulations 6.2.2 and 6.2.3, accounts and financial statements prepared by a Company shall be prepared in accordance with and comply with the International Financial Reporting Standards.

**6.2.2** Should a Company consider that it is necessary to deviate from the standard it has adopted so as to be able to present a true and fair set of financial statements, the Registrar may, on application of the Company, consent to the deviation, subject to any conditions that he may impose.

**6.2.3** Where a Company is a member of a corporate group that prepares its accounts and financial statements in accordance with another accounting standard, the Company may prepare its accounts and financial statements in accordance with that other standard with the written consent of the Registrar and subject to any conditions that he may impose.

**6.2.4** Company's that are members of the same corporate group may prepare consolidated financial statements in accordance with the International Financial Reporting Standards or such other standards applicable upon the parent company or one of the affiliate entities.

### **6.3 Auditor registration and qualification**

**6.3.1** An auditor applying for registration must use the applicable form prescribed by the Registrar, supported by such additional material as may be required by the Registrar.

**6.3.2** Before the Registrar grants registration as an auditor, an applicant must satisfy the Registrar that it:

- (a) is fit and proper to be registered as an auditor taking into account the applicant's:



- (i) background and history;
  - (ii) ownership and group; and
  - (iii) resources;
- (b) has adequate professional indemnity insurance which provides cover in respect of work undertaken in the DIFC; and
- (c) meets any other requirements prescribed by the Registrar.

**6.3.3** (1) An auditor must file with the Registrar:

- (a) at the time of filing an application for registration; or
- (b) by such later time that the Registrar may direct,

an assessment completed within the preceding three months by an independent body and addressing such matters relating to the auditor as are prescribed by the Registrar.

- (2) Such assessment shall be updated with an annual assessment being submitted by the auditor within thirty (30) days after each anniversary of the initial filing of the assessment,
- (3) Subject to 6.3.3 (4), if upon receiving an annual assessment the Registrar forms the view that the auditor is no longer fit and proper to be on the register of auditors, the Registrar may cancel the registration of the auditor.
- (4) The existence of a concurrent DFSA auditor's registration shall be conclusive evidence of the auditor's fitness

**6.3.4** If, at any time after registration, an auditor no longer meets the requirements for registration as an auditor, the auditor shall immediately inform the Registrar in writing.

## **6.4 Auditor conduct**

**6.4.1** An auditor shall, when determining whether to accept an audit appointment and in conducting an audit of a Company, comply with the requirements of the relevant standards published from time to time by the International Auditing and Assurance Standards Board.



## **6.5 Appointment of auditor**

- 6.5.1** A Company shall file a Notice of Appointment of Auditor with the Registrar immediately upon appointment of an auditor.
- 6.5.2** A Company shall file a Notice of Cessation of Auditor with the Registrar immediately upon the resignation or removal of an auditor.
- 6.5.3** A Company filing a Notice of Appointment of an Auditor or Notice of Cessation of an Auditor shall use the applicable form prescribed by the Registrar.

## **6.6 Register of auditors**

- 6.6.1** The Registrar shall maintain the register of auditors by recording the following information in respect of current and former registered auditors:
- (a) full name;
  - (b) address;
  - (c) date of registration as auditor in the DIFC; and
  - (d) date of cessation of registration as auditor in the DIFC.

## **6.7 Exemption**

- 6.7.1** Unless the Registrar otherwise directs, a Company which is not:
- (a) a Reporting Entity; or
  - (b) an Ancillary Service Provider;

is exempt from the requirements contained in Part 9 of the Law to have its accounts audited and to file accounts with the Registrar.

- 6.7.2** Regulation 6.7.1 does not apply to a Company that is referenced in Regulation 12.21.1.



## **7 RECOGNISED COMPANIES**

### **7.1 Application for certificate of registration**

**7.1.1** A Foreign Company applying for registration as a Recognised Company shall apply using the applicable form prescribed by the Registrar and shall therein set out:

- (a) the name and address of its place of business in the DIFC (the name shall be the same as for the head office);
- (b) the nature of the business to be conducted in the DIFC;
- (c) a list of its directors or managers including the following personal details:
  - (i) their given and family names;
  - (ii) any former given or family names;
  - (iii) their date and place of birth; and
  - (iv) their address;
- (d) its registered office in its place of origin or, in the event there is no registered office required under the laws of the place of origin, its principal place of business in its place of origin; and
- (e) any other matters the Registrar considers appropriate.

**7.1.2** An application pursuant to Regulation 7.1.1 shall be accompanied by:

- (a) a copy of the current certificate of the Foreign Company's incorporation or registration in its place of origin, or a document of similar effect, certified by the relevant authority in the jurisdiction in which it is incorporated or otherwise to the satisfaction of the Registrar;
  - (b) a copy of the Foreign Company's constitution certified as a true copy by a secretary, director or manager of the Foreign Company; and
  - (c) a copy of the Foreign Company's most recent accounts filed, if applicable, with the relevant authority in the jurisdiction in which it is incorporated or otherwise to the satisfaction of the Registrar.
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**7.1.3** If any of the documents are not in the English language, the documents shall be accompanied by a translation certified to the satisfaction of the Registrar.

**7.1.4** Once a Foreign Company's application has been approved by the Registrar, within thirty (30) days of such approval, the Foreign Company must take substantive steps to establish its operations in DIFC, subject to any applicable legal exemptions as to physical presence within the DIFC, otherwise, the application shall be considered inactive for a further thirty (30) day period, during which the Registrar shall take no further steps. Following the aforementioned sixty (60) day period, if the Foreign Company has still not taken substantive steps to establish its operations in the DIFC, the application shall be considered cancelled.

## **7.2 DFSA regulated entities**

**7.2.1** Any Foreign Company that is in the process of obtaining a licence from the DFSA must submit an application for registration with the Registrar no later than sixty (60) days after the day the applicant receives its licence from the DFSA.

**7.2.2** Failure to comply with Regulation 7.2.1 shall result in the imposition of a penalty of US\$1,000 for each day the deadline is exceeded, up to a maximum penalty of US\$60,000.

## **7.3 Company names**

**7.3.1** (1) A Person may apply to the Registrar for the reservation of a name for a Foreign Company using the form prescribed by the Registrar.

(2) The Registrar shall reserve such name for a period of thirty (90) days if the name is acceptable to the Registrar.

**7.3.2** A Person shall ensure before submitting to the Registrar a name or a new name for registration or reservation that it:

a) is written using the English alphabet, numerals or such other characters acceptable to the Registrar;

b) does not so nearly resemble the name of:

(i) a company currently incorporated or registered in the DIFC or any other relevant jurisdiction;



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- (ii) a limited liability partnership currently registered in the DIFC or any other relevant jurisdiction; or
- (iii) a partnership currently registered in the DIFC or any other relevant jurisdiction;

as to be likely to mislead;

- c) does not contain words that may suggest a relationship with the DIFCA, DFSA or any other governmental authority in the DIFC, Dubai or the United Arab Emirates, unless the relevant body has consented in writing to the use of the name;
- d) does not contain:
  - (i) the word 'bank', 'insurance' or 'trust';
  - (ii) words which suggest that it is a bank, an insurance company or trust company; or
  - (iii) words which suggest in some other way that it is authorised to carry on a Financial Service within the DIFC;

unless the DFSA consents in writing to the use of such words; and

- e) does not contain words that may suggest a connection with, or the patronage of, any prominent person or organisation, unless that prominent person or organisation consents in writing; and
- f) notwithstanding Regulation 7.3.2, the name of the Foreign Company shall be the same as for the head office.

**7.3.3** Where a Recognised Company uses a trading name that is different from its registered Recognised Company name, the Recognised Company shall ensure that the trading name satisfies the criteria set out in Regulation 7.3.2 (a), (c), (d), (e), (f) and (g), or does not so nearly resemble the trading name of:

- (a) a company currently incorporated or registered in the DIFC or any other relevant jurisdiction;
- (b) a limited liability partnership currently registered in the DIFC or any other relevant jurisdiction; or
- (c) a partnership currently registered in the DIFC or established in any other relevant jurisdiction;





as to be likely to mislead.

**7.3.4** When a Recognised Company changes its name, it shall file a notice of change of name with the Registrar, using the form prescribed by the Registrar.

**7.3.5** If the proposed name or new name of the Recognised Company is in the opinion of the Registrar likely to offend the public or is likely to mislead or is for any other reason undesirable he shall inform the Recognised Company in writing that the name is not acceptable.

**7.3.6** (1) If in the opinion of the Registrar, the trading name of a Recognised Company is misleading or otherwise undesirable, he may direct the Recognised Company to cease using it.

(2) A direction given under 7.3.6 (1) shall be complied with immediately or within such other period as the Registrar may allow.

## **7.4 Certificate of Registration**

**7.4.1** On the registration of the Foreign Company, the Registrar shall issue a certificate of registration (in the form attached in form 2, App4) as a Recognised Company which shall set out:

- (a) the name of the company;
- (b) the company's registered number;
- (c) a statement that the company is registered as a Recognised Company; and
- (d) the date of registration.

## **7.5 Requirements of a Recognised Company**

**7.5.1** For the purposes of Part 12 of the Law, 'carrying on business' includes:

- (a) establishing or maintaining a place of business;
  - (b) administering, leasing to others, or managing property situated in the DIFC as principal or agent;
  - (c) operating as a Reporting Entity; or
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(d) employing persons;

but shall not include merely:

(e) being a party to a proceeding, claim or dispute;

(f) holding meetings of its shareholders or directors;

(g) creating a charge on property;

(h) collecting its debts or enforcing its rights with regard to any security;

(i) conducting an isolated transaction; or

(j) being a customer of an Authorised Firm or an Ancillary Service Provider.

**7.5.2** A Recognised Company shall, using the applicable form prescribed by the Registrar:

(a) file with the Registrar a notice of appointment of a person authorised to accept service of any document or notice and any changes in the details of such person whenever a new person is appointed or the details of the existing person change; and

(b) file with the Registrar a notice of change of its place of business, whenever the Recognised Company changes its place of business in the DIFC.

**7.5.3** A person referred to in Article 116(1)(a) of the Law and in respect of whom a notice is filed under Regulation 7.5.2(a) shall be:

(a) in the case of a natural person, a person who is ordinarily resident in the United Arab Emirates; or

(b) in the case of any other person, a company or limited liability partnership incorporated in the DIFC or in the Emirate of Dubai.



## **8 TRANSFER OF INCORPORATION**

### **8.1 Transfer of incorporation to DIFC**

**8.1.1** A Foreign Company, applying to transfer its incorporation to the DIFC and be continued as a Company, shall apply using the applicable form prescribed by the Registrar which shall include:

- (a) the Company's name;
- (b) the Company's address of its place of business in the DIFC;
- (c) the nature of the Company's business;
- (d) the names and addresses of the Company's directors or managers; and
- (e) any declaration, certification, information, document or confirmation as the Registrar may require.

**8.1.2** An application pursuant to Regulation 8.1.1 shall be accompanied by:

- (a) the articles of continuation as required in Article 117(2)(b) of the law, together with:
    - (i) a copy of the current certificate of its incorporation or document of similar effect and any amendments thereto, certified by the relevant authority in the jurisdiction in which the Foreign Company is incorporated or otherwise to the satisfaction of the Registrar; and
    - (ii) a copy of the articles of association or other constitutional document of similar effect and any amendments thereto, certified by the relevant authorities in the jurisdiction in which the Foreign Company is incorporated or otherwise to the satisfaction of the Registrar;
  - (b) evidence satisfactory to the Registrar that the Foreign Company is permitted by the laws of the jurisdiction in which it is incorporated to be continued under the laws of another jurisdiction and that it has complied with all the relevant requirements;
  - (c) evidence satisfactory to the Registrar that all necessary consents in the original jurisdiction of incorporation have been obtained and certified by the relevant authorities;
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- (d) a copy of the Foreign Company's most recent audited accounts filed with the relevant authority in the jurisdiction in which it is incorporated or otherwise to the satisfaction of the Registrar;
- (e) any declaration, certification, information, document or confirmation as the Registrar may require; and
- (f) the relevant fee prescribed in App1.

**8.1.3** If any documents submitted to the Registrar are not in the English language, the documents shall be accompanied by a certified English translation.

**8.1.4** (1) A Foreign Company shall not apply to the Registrar under Regulation 8.1.1 unless the directors or managers have filed with the Registrar a declaration that:

- (a) the Foreign Company is solvent;
- (b) at the time of the application, there is no reasonable prospect of the Foreign Company becoming insolvent; and
- (c) there are no applications made to any court:
  - (i) to put the Foreign Company into liquidation;
  - (ii) to wind up the Foreign Company;
  - (iii) to have the Foreign Company declared insolvent; or
  - (iv) for the appointment of a receiver in relation to any property of the Foreign Company.

(2) In 8.1.4 (1) 'insolvent' has the meaning given under the Insolvency Law 2009.

**8.1.5** (1) A Foreign Company which is an Authorised Firm, Authorised Market Institution or Ancillary Service Provider and which wishes to transfer its incorporation to the DIFC and be continued as a Company under Regulation 8.1.1 must obtain the prior written consent of the DFSA.

(2) A Foreign Company which is a Fund and which wishes to transfer its incorporation to the DIFC and to be continued as a Company under Regulation 8.1.1 must be able to show that it complies with the requirements prescribed in Chapter 13 of these Regulations as if it were a Company and must obtain the prior written consent of the DFSA.



## 8.2 Certificate of continuation

**8.2.1** The certificate of continuation issued by the Registrar upon approval of the application shall set out:

- (a) the name of the Company;
- (b) the Company's registered number;
- (c) a statement that the Foreign Company is continued as a Company; and
- (d) the date of continuation.

**8.2.2** A certificate of continuation is conclusive evidence that the Foreign Company is a duly registered Company from the date of continuation stated in the certificate.

**8.2.3** Where a Foreign Company is continued as a Company, the Company must file with the Registrar any certificate or document issued under the laws of the jurisdiction of the Foreign Company evidencing the fact the Foreign Company has ceased to be incorporated under the laws of that jurisdiction.

## 8.3 Transfer of incorporation from the DIFC

**8.3.1** A Company, applying to the Registrar for authorisation to transfer its incorporation and be continued as a Foreign Company, shall apply using the applicable form prescribed by the Registrar and shall be accompanied by:

- (a) a certified copy of the Special Resolution approving that the Company transfer its incorporation and be continued as a Foreign Company;
- (b) evidence acceptable to the Registrar that:
  - (i) the Company is able to transfer its incorporation and be continued under the laws of another jurisdiction; and
  - (ii) the laws of the other jurisdiction satisfy the requirements set out in Article 122 (2) of the Law;
- (c) the DFSA's written consent if the Company is an Investment Company, Authorised Firm, Authorised Market Institution or Ancillary Service Provider;



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- (d) any declaration, certification, information, document or confirmation as the Registrar may require; and
- (e) the relevant fee prescribed in App1.

- 8.3.2** (1) A Company shall not apply to the Registrar under Regulation 8.3.1 unless the directors have filed with the Registrar a declaration that:
- (a) the Company is solvent;
  - (b) at the time of the application, there is no reasonable prospect of the Company becoming insolvent; and
  - (c) there are no applications made to any court:
    - (i) to put the Company into liquidation;
    - (ii) to wind up the Company;
    - (iii) to have the Company declared insolvent; or
    - (iv) for the appointment of a receiver in relation to any property of the Company.
- (2) In 8.3.2 (1) 'insolvent; has the meaning given under the Insolvency Law 2009.

- 8.3.3** A Company making an application under Regulation 8.3.1 shall place a legible and comprehensible notice sixty (60) days prior to making such an application in one or more newspapers or other publication best suited to bring the proposed transfer of incorporation to the attention of any persons who may be affected by such transfer.



## **9 MISCELLANEOUS**

### **9.1 Registers and records**

**9.1.1** Subject to any specific requirement of the Law, any register or record that a Company is required to keep or maintain by operation of the Law or these Regulations, shall be kept at the registered office of the Company or at such other place determined by the directors.

**9.1.2** A decision of the directors to keep any register or record referred to in Regulation 9.1.1 at a place other than the registered office of the Company shall only be made by the directors at a directors' meeting and minutes shall be kept of the decision, including the decision as to the place at which the registers or records shall be maintained.

### **9.2 Appointed newspaper**

**9.2.1** (1) For the purposes of Article 47(2)(a) of the Law, an appointed newspaper is a publication best suited to bring the reduction of share capital to the attention of any persons who may be affected by such reduction.

(2) The notice in the publication of 9.2.1 (1) must be legible and clearly state the necessary details of the reduction.

### **9.3 Client Handbook**

**9.3.1** The Registrar shall make available a client handbook containing operational guidelines applicable to Companies and other Persons operating in the DIFC.



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## **10 ANNUAL RETURNS**

### **10.1 Information for annual return**

**10.1.1** An annual return of a Company must contain the following information:

- (a) the name of the Company;
- (b) the Company's registered number;
- (c) the registered office address of the Company;
- (d) the principal business activities of the Company;
- (e) the name, address and date of birth of the company secretary;
- (f) the name, address and date of birth of the Company's directors or managers;
- (g) the total number, value and class of allotted shares or membership interests; and

every other matter indicated on the annual return form prescribed by the Registrar.





## **11 IMPOSITION OF FINES**

### **11.1 Notice of administrative fines**

**11.1.1** Where the Registrar considers that a person has committed a contravention of any provision referred to in Schedule 2 of the Law in relation to which a fine is stipulated in that Schedule, and decides to impose a fine pursuant to Article 132 of the Law, the Registrar will give the person a written notice in accordance with form 1 in App3:

- (a) alleging that the person has committed the contravention and giving particulars of the facts alleged by the Registrar to constitute a contravention;
- (b) setting out the fine imposed by the Registrar in respect of the contravention;
- (c) specifying the period during which the fine may be paid; and
- (d) providing an address for filing a Notice of Objection.

**11.1.2** Where a fine is imposed under Article 132 of the Law on a person and the person pays the fine within the period specified, no proceedings may be commenced by the Registrar in respect of the relevant contravention, but the Registrar may take action in relation to any continuing obligation that remains outstanding.

**11.1.3** Where a fine is imposed under Article 132 of the Law and the person files a Notice of Objection with the Registrar within the period specified, the Registrar may not recover the fine as a debt due, but may commence proceedings in the Court for payment of the fine.

**11.1.4** A Notice of Objection must be in accordance with form 2 of App3 and must set out every matter which the person believes ought to be taken into account by the Registrar in determining whether to commence proceedings in Court for payment of the fine.

**11.1.5** If at the end of the period for payment specified in the notice imposing the fine, the person has not paid the full amount of the fine and has not filed a Notice of Objection, the Registrar may apply to the Court for payment of the fine, or so much of the fine as is not paid, and any further orders the Court sees fit for recovery of the fine.

**11.1.6** The Registrar may withdraw a notice imposing a fine whenever he considers it appropriate.



## 12. PROTECTED CELL COMPANIES

### 12.1 Application and Interpretation

**12.1.1** The Regulations in this chapter may be referred to as the Company (PCC) Regulations.

- 12.1.2** (1) In these Company (PCC) Regulations, the following terms have, subject to (2), the following meanings:
- (a) 'administrative receiver' has the meaning given in the Insolvency Law 2009;
  - (b) a 'cell' is a cell created by a Protected Cell Company for the purpose of segregating and protecting cellular assets in the manner provided by these Company (PCC) Regulations;
  - (c) 'cell share capital' comprises the proceeds of the issue of cell shares;
  - (d) 'cell shares' are shares created and issued by a Protected Cell Company in respect of one of its cells pursuant to the provisions of Regulation 12.9 the proceeds of the issue of which, the "cell share capital", shall be comprised in the cellular assets attributable to that cell;
  - (e) a 'cell transfer order' is an order within the meaning given in Regulation 12.20.
  - (f) 'cellular assets' comprise the assets of the Protected Cell Company attributable to the Company's cells pursuant to Regulation 12.11.2;
  - (g) a 'cellular dividend' is a dividend payable by a Protected Cell Company in respect of cell shares pursuant to the provisions of Regulation 12.9.4;
  - (h) a 'Closed Ended Protected Cell Company' has the meaning given in Regulation 12.2.1(2)(b);
  - (i) a 'Fund' and a "Fund Manager" have the respective meanings given in the Collective Investment Law 2010;
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- (j) 'Insolvency (PCC) Regulations' means the Regulations contained in chapter 8 of the Insolvency Regulations;
  - (k) 'Insurance Business' has the meaning given in the business rules made under the Regulatory Law 2004;
  - (l) 'liquidator' has the meaning given in the Insolvency Law 2009;
  - (m) 'Managing a Collective Investment Fund' has the meaning given in the GEN module of the DFSA Rulebook;
  - (n) a reference to a 'shareholder' is, as the context requires, a reference to a holder of a share or of a cell share;
  - (o) 'non-cellular assets' are assets of a Protected Cell Company which are not cellular assets, pursuant to Regulation 12.11.4;
  - (p) an 'Open Ended Protected Cell Company' has the meaning given in Regulation 12.2.1(2)(a);
  - (q) 'Protected Cell Company' is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of these Company (PCC) Regulations; and
  - (r) 'receiver' has the meaning given in the Insolvency Law 2009.
- (2) Where an Umbrella Fund is formed as a Protected Cell Company for the purposes of the Collective Investment Law 2010, any references to the following terms in the Regulations must be read in relation to such a Fund as meaning, unless otherwise provided, as follows:
- (a) a reference to a "cell" as a reference to a Sub-Fund;
  - (b) a reference to "cell share capital" as a reference to the proceeds of the issue of Units of a Sub-Fund;
  - (c) a reference to "cell shares" as a reference to the Units issued by a Sub-Fund;
  - (d) a reference to "cellular assets" as a reference to the Fund Property of a Sub-Fund;
  - (e) a reference to a "cellular dividend" as a reference to a dividend payable by a Sub-Fund;
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- (f) a reference to a Director of the Company as a reference to a Director of the Fund Manager of the Umbrella Fund;
  - (g) a reference to “non-cellular” assets, as a reference to the assets of the Protected Cell Company which are not cellular assets of any particular Sub-Fund;
  - (h) a reference to a Protected Cell Company as a reference to an Umbrella Fund; and
  - (i) a reference to a “shareholder”, unless the context requires otherwise, as a reference to a Unitholder of a Sub-Fund.
- (3) In reference to an Umbrella Fund referred to in (2), any references to the terms Fund Manager, Governing Body, Unitholder or any other capitalised term has the meaning given to that term in the Collective Investment Law 2010 or any rules made for the purposes of that law.

**12.1.3** In accordance with Article 114 of the Law, and subject only to Regulation 12.1.4, to the extent that these Company (PCC) Regulations are inconsistent with any provision of the Law or with any other provision of the Company Regulations, these Company (PCC) Regulations shall prevail and shall be taken to exclude, waive or modify the Law or Regulations to the extent of any such inconsistency.

**12.1.4** The provisions of the Collective Investment Law 2010, the Regulatory Law 2004 and any rules made for the purposes of those laws continue to apply to an Umbrella Fund and its Fund Manager and any other Person carrying on any function or service in relation to the Fund unless otherwise provided in these Regulations.

**12.1.5** In accordance with Article 114(2)(b) of the Law, the application of Article 51(1) and (2) of the Law is modified in relation to its application to a Protected Cell Company formed solely for the purpose of conducting business of a Fund so as to permit such a Company to be managed by one director, which may be a body corporate.

## **12.2 Protected Cell Companies as a type of company**

- 12.2.1** (1) Subject to the provisions of these Company (PCC) Regulations and of the Law, a person may, pursuant to Article 114 of the Law:
- (a) incorporate a type of Company which shall be a Protected Cell Company either as an Open Ended Protected Cell Company or a Closed Ended Protected Cell Company; or



- (b) convert, if so authorised by its articles and by a Special Resolution, an existing Company into an Open Ended Protected Cell Company or a Closed Ended Protected Cell Company,

subject to, and for the purposes of, the requirements in Regulation 12.4.1.

- (2) For the purposes of these Company (PCC) Regulations:

- (a) an Open Ended Protected Cell company is a Company whose Articles comply with Regulation 12.3.3, provided that such a Company is incorporated as, or converted into, an Open Ended Protected Cell Company in accordance with the provisions of these Regulations; and
- (b) a Closed Ended Protected Cell Company means a Protected Cell Company other than an Open Ended Protected Cell Company.

**12.2.2** A Protected Cell Company may create one or more cells for the purpose of segregating and protecting cellular assets in the manner provided by these Company (PCC) Regulations.

**12.2.3** A Protected Cell Company is a single legal person and the creation by a Protected Cell Company of a cell does not create, in respect of that cell, a legal person separate from the Company.



## 12.3 Name and articles of Protected Cell Company

**12.3.1** The name of a Protected Cell Company shall, without prejudice to the application of Article 32 of the Law, include the expressions as provided below:

- (a) in the case of a Closed Ended Protected Cell Company, the expression 'Protected Cell' or 'PCC'; and
- (b) in the case of an Open Ended Protected Cell Company, the expression 'Open Ended' immediately preceding the expression 'Protected Cell Company' or 'PCC' referred to in (a).

**12.3.2** Each cell of a Protected Cell Company shall have its own distinct name or designation.

**12.3.3** (1) The articles of a Protected Cell Company shall state that it is an Open Ended Protected Cell Company with a variable share capital.

- (2) The Articles of an Open Ended Protected Cell company shall contain a provision to the effect that shareholders are entitled to have their shares redeemed by the Fund Manager upon request at a price based on the net asset value of the property of the relevant cell in the manner provided in section 8.6 of the CIR module of the DFSA Rulebook.

**12.3.4** A Company may, in order to comply with Regulation 12.3.3, alter its articles by Special Resolution.

## 12.4 Permissible uses and DFSA consent

**12.4.1** (1) A Company shall not be incorporated as, or operate as, a Protected Cell Company, and an existing Company shall not be converted into, or operate as, a Protected Cell Company, unless:

- (a) the Company is formed, and will operate, for the sole purpose of conducting Insurance Business or the business of a Fund; and
- (b) the DFSA has given its prior written consent.

(2) A Protected Cell Company formed for the sole purpose of conducting Insurance Business shall be formed as a Closed Ended Protected Cell Company.

(3) A Protected Cell Company formed for the sole purpose of conducting the

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business of a Fund shall be formed as an Open Ended Protected Cell Company.

**12.4.2** Where under Regulation 12.4.1(1) the DFSA grants consent following any representations from an applicant as to the proposed activities or objectives of the Protected Cell Company, including any such representations in a business plan, the Protected Cell Company must not carry out any activity or pursue any objective contrary to the effect of those representations without obtaining the further prior written consent of the DFSA.

**12.4.3** An application for consent under Regulation 12.4.1(1) or 12.4.2 shall be made in such manner as the DFSA may direct.

**12.4.4** The DFSA may, in its absolute discretion, refuse to grant its consent under Regulation 12.4.1(1) or 12.4.2.

**12.4.5** Without limiting any requirement to which a Protected Cell Company may be subject under other legislation applicable in the DIFC, a Protected Cell Company must provide written notice to the DFSA of any proposed alteration to the Company's articles.

- (a) any proposed reconstruction or amalgamation involving the Company;
- (b) any proposal to appoint a cell receiver, or to appoint a receiver or administrative receiver, or to wind up the affairs of the Company;
- (c) any proposal to replace a director of the Company, to appoint any additional director or to decrease the number of directors; and
- (d) any event or circumstance which may materially adversely affect the fitness and propriety of a director to act as such.

**12.4.6** Effect must not be given to any proposal in Regulation 12.4.5 unless the DFSA has given written approval to the proposal.

**12.4.7** Upon refusing to grant:

- (a) consent under Regulation 12.4.1(1) or 12.4.2; or
- (b) approval under Regulation 12.4.6;

the DFSA will without undue delay inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal.

**12.4.8** In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory



Appeals Committee has jurisdiction to hear and determine any appeal where:

- (a) an applicant appeals against a decision of the DFSA in relation to an application for consent under Regulation 12.4.1(1) or 12.4.2;
- (b) a person appeals against a decision of the DFSA under Regulation 12.4.4;  
or
- (c) an applicant appeals against a decision of the DFSA in relation to an application for approval under Regulation 12.4.6.

## **12.5 Incorporation of, or conversion into, a Protected Cell Company**

**12.5.1** An application for the incorporation of a Company as a Protected Cell Company shall be made by:

- (a) the filing of an application to the Registrar in accordance with Article 11 of the Law and applicable Regulations or otherwise in such form and manner, and accompanied by such documents and information, verified in such manner, as the Registrar may require; and
- (b) the submission to the Registrar of a copy of any consent of the DFSA given under Regulation 12.4.1(1).

**12.5.2** An application for the conversion of an existing Company into a Protected Cell Company shall be made by:

- (a) the filing of an application to the Registrar in such form and manner, and accompanied by such documents and information, verified in such manner, as the Registrar may require;
- (b) the submission to the Registrar of the Company's articles with such amendments as may be necessary to facilitate the conversion of the Company into a Protected Cell Company;
- (c) the submission of a copy of the Company's Special Resolution approving any such change to its articles and the conversion of status of the Company to a Protected Cell Company; and
- (d) the submission of a copy of any consent of the DFSA given under Regulation 12.4.1(1).

**12.5.3** An application made under Regulation 12.5.1 or 12.5.2 shall be accompanied by the appropriate fee prescribed in App1.





## 12.6 Withdrawal of DFSA consent

**12.6.1** The DFSA may revoke its consent to operate a Protected Cell Company if it appears to it that:

- (a) any requirement for the continuation of the consent is no longer satisfied;
- (b) the Company or any director of the Company:
  - (i) has contravened any requirement imposed by or under the Law or these Regulations;
  - (ii) has failed to comply with a condition or restriction in relation to the grant of consent; or
  - (iii) has, in purported compliance with any such requirement or any such condition or restriction, knowingly or recklessly given the DFSA or to the Registrar information which is false or misleading in a material particular;
- (c) no activity relevant to the grant of the consent has been carried on in relation to the Company for the previous 12 months; or
- (d) it is in the interests of the DIFC to revoke the consent in order to protect the interests of members or creditors, or potential members or creditors, of the Company.

**12.6.2** For the purposes of Regulation 12.6.1 (d), the DFSA may take into account any matter relating to or affecting:

- (a) the Company;
  - (b) any person employed by or associated with the Company;
  - (c) any director of the Company;
  - (d) any person exercising influence over any director of the Company;
  - (e) any body corporate in the same group as any director of the Company;
  - (f) any director of any such body corporate;
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- (g) any person exercising influence over any such body corporate; or
- (h) the interests of a shareholder or creditor.

**12.6.3** Before revoking any consent, the DFSA will consider whether any necessary and appropriate steps have been taken to secure one or more of the following under the Insolvency (PCC) Regulations:

- (a) a cell receivership order in relation to one or more cells;
- (b) appointment of a receiver or administrative receiver to the Company; or
- (c) the winding up of the Company.

**12.6.4** Upon deciding to revoke its consent, the DFSA will without undue delay inform the Company in writing of such revocation and, where requested by the Company, the reasons for such refusal.

**12.6.5** In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where a Protected Cell Company appeals against a decision of the DFSA to revoke its consent under this section.

## **12.7 Directions by the DFSA**

**12.7.1** The DFSA may give a direction to a Protected Cell Company or any of its directors under this section 12.7 if it appears to the DFSA that:

- (a) any requirement for the continuation of the DFSA's consent is no longer satisfied;
- (b) the Company or any of its directors:
  - (i) has contravened any requirement imposed by or under the Law or the Regulations;
  - (ii) has failed to comply with a condition or restriction in relation to the grant of consent; or
  - (iii) has, in purported compliance with any such requirement or any such condition or restriction, knowingly or recklessly given the DFSA or the Registrar information which is false or misleading in a material particular; or



- (c) it is desirable and in the interest of the DIFC to revoke the consent.

**12.7.2** Without limiting the generality of Regulation 12.7.1, a direction under this section 12.7 may:

- (a) require the Company to cease the issue or redemption, or both the issue and redemption, of cell shares or any class of cell shares; or
- (b) require the Company or any director of the Company to present a petition to the Court to:
  - (i) make a cell receivership order in relation to one or more cells;
  - (ii) make an order or orders for the appointment of a receiver or administrative receiver to the Company; or
  - (iii) make an order or orders for the winding up of the Company;

under the Insolvency (PCC) Regulations.

**12.7.3** Subject to Regulation 12.7.4, if the consent is revoked, the revocation does not affect the operation of any direction under this section 12.7 which is then in force; and a direction under this section may be given in relation to a Company, in the case of which a consent has been revoked, if a direction under this section was already in force at the time of revocation.

**12.7.4** If a cell receivership order, an order appointing a receiver or administrative receiver, or a winding up order has been made by the Court, no direction under this section is to take effect in relation to the Company concerned.

**12.7.5** The DFSA may, on its own initiative, or on the application of the Company, revoke or vary a direction given under this section if it appears to the DFSA:

- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or to continue in force; or
- (b) in the case of variation, that the direction should take effect or continue in force in a different form.

**12.7.6** A direction takes effect:

- (a) immediately, if the notice states that that is the case; or
  - (b) on such date as may be specified in the notice.
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**12.7.7** If the DFSA proposes to give a direction under this section, or gives such a direction with immediate effect, it will give written notice to the Company.

**12.7.8** The notice will:

- (a) give details of the direction;
- (b) inform the person to whom it is given as to when the direction takes effect;
- (c) state the DFSA's reasons for giving the direction and for its determination as to when the direction takes effect; and
- (d) inform the person to whom it is given that he may make representations to the DFSA within such period as may be specified in the notice.

**12.7.9** If, having considered any representations made by a person to whom the notice was given, the DFSA decides:

- (a) to give, or not to give, the direction in the way proposed;
- (b) to give the direction in a way other than proposed; or
- (c) if the direction has been given, to revoke, or not to revoke, the direction;

it will give written notice to the Company and, where requested by the Company, the reasons for such decision.

**12.7.10** In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where a Protected Cell Company or director appeals against a decision of the DFSA made under this section in relation to a direction.

## **12.8 Applications to the Court**

**12.8.1** This section 12.8 applies if the DFSA could give under Regulation 12.7.1, or has given, a direction in relation to a Protected Cell Company.

**12.8.2** The Court may, on application of the DFSA under this section 12.8, make one or more of the following orders:

- (a) an order removing any director of the Company and replacing any such person with a person or persons nominated by the DFSA or as the Court may consider appropriate;



- (b) a cell receivership order, an order appointing a receiver or administrative receiver, or an order for the winding up of the Company, pursuant to the Insolvency (PCC) Regulations; or
- (c) any other order as the Court thinks fit.

**12.8.3** The DFSA will:

- (a) give written notice of the making of an application under this section to:
  - (i) the Company; and
  - (ii) where the application seeks the removal of any director of the Company, that director; and
- (b) take such steps as it considers appropriate for bringing the application to the attention of the shareholders of the Company.

**12.8.4** The Court may, on application of a person who is subject to a direction under section 12.7, make any orders it thinks fit in relation to the making of the direction, including, but not limited to, orders:

- (a) revoking the direction;
- (b) varying the direction;
- (c) requiring the direction to be complied with in a manner that the Court considers appropriate; or
- (d) requiring the DFSA to do any act or thing.

## **12.9 Cell shares and share capital**

**12.9.1** Unless the context requires otherwise, for the purposes of application of the Law and Regulations to a Protected Cell Company, a reference to a share is taken to include a reference to a cell share.

**12.9.2** A Protected Cell Company may, in respect of any of its cells, create and issue cell shares. The cell share capital shall be comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

**12.9.3** The proceeds of the issue of shares other than cell shares created and issued by a



Protected Cell Company shall be comprised in the Company's non-cellular assets.

**12.9.4** A Protected Cell Company may pay cellular dividends in respect of cell shares.

**12.9.5** Cellular dividends may be paid in respect of cell shares by reference only to the cellular assets and liabilities, or the profits and losses, attributable to the cell in respect of which the cell shares were issued; and accordingly, in determining for the purposes of Article 42 of the Law, whether or not profits are available for the purpose of paying a cellular distribution, no account need be taken of:

- (a) the profits and losses, or the assets and liabilities, attributable to any other cell of the Company; or
- (b) non-cellular profits and losses, or assets and liabilities.

**12.9.6** Except as provided in Regulation 12.9.9, a Protected Cell Company must prepare documentary evidence of title to cell shares (in this section referred to as a 'certificate') as follows:

- (a) in respect of any new cell shares issued by it;
- (b) where a shareholder has transferred part only of his holding back to the Company, in respect of the remainder of that holding;
- (c) where a Company has registered a transfer of cell shares made to a person other than the Company;
  - (i) in respect of the cell shares transferred to the transferee; and
  - (ii) in respect of any cell shares retained by the transferor which were evidenced by any certificates sent to the Company for the purposes of registering the transfer; and
- (d) in respect of any cell shares for which the certificate has already been issued but where it appears to the Company that the certificate needs to be replaced as a result of being lost, stolen or destroyed, or having become damaged or worn out.

**12.9.7** Certificates need only be prepared in the circumstances referred to in Regulation 12.9.6 (d) if the Company has received:

- (a) a request for a new certificate;
  - (b) the old certificate, if there is one;
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- (c) such indemnity as the Company may require; and
- (d) such reasonable sum as the Company may require in respect of the expenses incurred by it in complying with the request.

**12.9.8** Each certificate must state:

- (a) the cell to which the cell shares relate;
- (b) the number of cell shares, the title to which is evidenced by the certificate;
- (c) where the Company has more than one class of cell shares, the class of cell shares, the title to which is evidenced by the certificate; and
- (d) the name of the holder.

**12.9.9** Nothing in these Company (PCC) Regulations require a Company to prepare certificates in the following circumstances:

- (a) where the articles of the Company state that certificates will not be issued and contain provision as to other procedures for evidencing an entitlement to cell shares;
- (b) where a shareholder has indicated to the Company in writing that he does not wish to receive a certificate; or
- (c) where legislation applicable in the DIFC provides otherwise for evidencing an entitlement to shares.

**12.9.10** A Closed Ended Protected Cell Company may reduce the share capital of a cell if authorised by a Special Resolution and its articles. Article 40 of the Law shall apply to a reduction in the share capital of a cell as if a cell were a Company and the cell shares the shares of a Company for the purpose of that Article.

**12.9.11** An Open Ended Protected Cell Company shall redeem shares of a cell at a price based on the net asset value of the property of the cell in accordance with its Articles and the provisions in section 8.6 of the CIR module of the DFSA Rulebook and, where it does so, chapters 4 and 5 of Part 7 of the Law shall not apply to such redemption of shares.

## **12.10 Register of shareholders**

**12.10.1** No notice of any trust, express, implied or constructive, is to be entered on the

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Company's register of shareholders maintained under chapter 2 of Part 6 of the Law or be receivable by the Company.

**12.10.2** Every Protected Cell Company must keep an index of the names of its shareholders, which index must:

- (a) contain, in relation to each shareholder, a sufficient indication to enable the account of that shareholder in the register to be readily found;
- (b) specify the particular cell or cells to which an account or accounts of that shareholder relate;
- (c) be readily searchable by reference to the account of the shareholder or by reference to a cell;
- (d) be kept at all times at the same place as the register of shareholders; and
- (e) be altered where necessary within fourteen days after the date of any alteration made to the register of shareholders.

**12.10.3** The provisions of Article 32 of the Law relating to inspection of the register of shareholders shall be taken to apply also in respect of the index kept under Regulation 12.10.2, with such adaptation as necessary to achieve that purpose.

## **12.11 Cellular and non-cellular assets**

**12.11.1** The assets of a Protected Cell Company shall be either cellular assets or non-cellular assets.

**12.11.2** The cellular assets of a Protected Cell Company comprise the assets of the Company attributable to the cells of the Company.

**12.11.3** The assets attributable to a cell of a Protected Cell Company comprise:

- (a) assets represented by the proceeds of cell share capital and reserves, including retained earnings, capital reserves and share premiums, attributable to the cell; and
- (b) all other assets attributable to the cell.

**12.11.4** The non-cellular assets of a Protected Cell Company comprise the assets of the Company which are not cellular assets.





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**12.11.5** Income, receipts and other property or rights of, or acquired by, a Protected Cell Company not otherwise attributable to any cell shall be applied to, and comprised in, the Company's non-cellular assets.

## **12.12 Prohibition on dealings or transactions between cells**

**12.12.1** A Protected Cell Company shall not:

- (a) transfer a cellular asset attributable to a cell of the Company to another cell of the Company; or
- (b) amalgamate or consolidate a cell of the Company with, or into, one or more other cells of the Company;

except under the authority of, and in accordance with the terms and conditions of, an order of the Court.

**12.12.2** In considering whether or not to make an order referred to in Regulation 12.12.1, the Court may:

- (a) require the applicant to establish to the satisfaction of the Court:
  - (i) that the creditors of the Company entitled to have recourse to the cellular assets attributable to the relevant cells consent to the transfer, amalgamation or consolidation as the case may be or otherwise would not be unfairly prejudiced; and
  - (ii) that the shareholders of the Company and of each relevant cell consent to the transfer, amalgamation or consolidation as the case may be or otherwise would not be unfairly prejudiced; and
- (b) hear the representations, if any, of the DFSA.

**12.12.3** The Court, on hearing an application for an order under this section 12.12, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.



## **12.13 Separation of assets**

**12.13.1** In this section 12.13, 'officer' means:

- (a) an officer as defined in the Law;
- (b) a cell receiver as defined in the Insolvency (PCC) Regulations;
- (c) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of a Protected Cell Company; or
- (d) a person in accordance with whose instructions or wishes the directors of a Protected Cell Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the Protected Cell Company).

**12.13.2** Directors and officers of a Protected Cell Company shall:

- (a) keep cellular assets separate and separately identifiable from non-cellular assets; and
- (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

**12.13.3** The duty imposed by Regulation 12.13.2 is not breached by reason only that:

- (a) the directors and officers of a Protected Cell Company cause or permit cellular assets and non-cellular assets to be held:
  - (i) by or through a nominee; or
  - (ii) by a company the shares and capital interests of which may be cellular assets or non-cellular assets, or a combination of both; or
- (b) the directors and officers of a Protected Cell Company cause or permit cellular assets or non-cellular assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable.

**12.13.4** In the event of a contravention of Regulation 12.13.2:

- (a) each director or officer in contravention, as the case may be, shall incur
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personal liability for any loss or damage as a consequence of the contravention; and

- (b) each such director or officer shall severally have a right of indemnity against the non-cellular assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

**12.13.5** Regulation 12.13.4 is subject to Regulation 12.15.1.

## **12.14 Disclosure of dealings with Protected Cell Company**

**12.14.1** A Protected Cell Company shall:

- (a) inform any person with whom it transacts that it is a Protected Cell Company;
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell; and
- (c) where the transaction is in respect of a particular cell, inform the person that the cellular assets of that cell, and only those assets, are available to pay the obligations and liabilities of that cell.

**12.14.2** If, in contravention of Regulation 12.14.1, a Protected Cell Company:

- (a) fails to inform a person that he is transacting with a Protected Cell Company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a Protected Cell Company;
- (b) fails to identify or specify the cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell he is transacting with; or
- (c) fails to inform a person that the cellular assets of that cell, and only those assets, are available to pay the obligations and liabilities of that cell;

then, in any such case:

- (d) the directors shall incur personal liability to that person in respect of the transaction; and
  - (e) each director shall severally have a right of indemnity against the non-
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cellular assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

**12.14.3** Regulation 12.14.2 is subject to Regulation 12.15.1.

## **12.15 Further provisions concerning personal liability**

**12.15.1** Notwithstanding Regulations 12.13.4 and 12.14.2, the Court may relieve a director or officer, as the case may be, of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because:

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as such a director or officer, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

**12.15.2** Where, pursuant to Regulation 12.15.1, the Court relieves a director or officer of all or part of his personal liability under Regulation 12.13.4 or 12.14.2, the Court may order that the liability in question shall instead be met from such of the:

- (a) assets of the relevant cell in respect of which the person was dealing or transacting; or
- (b) non-cellular assets of the Protected Cell Company;

as may be specified in the order.

**12.15.3** Any provision in the articles of a Protected Cell Company, or any other contractual provision under which the Company may be liable, which purports to:

- (a) avoid the incurring of personal liability upon a director or officer in the circumstances described in Regulation 12.13.4 or 12.14.2; or
- (b) indemnify directors or officers in respect of conduct which would otherwise disentitle them to an indemnity against non-cellular assets by virtue of Regulation 12.13.4 or 12.14.2;

shall be void.

## **12.16 Rights of creditors and implied terms**

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**12.16.1** The rights of creditors of a Protected Cell Company shall correspond with the liabilities provided for in section 12.18.

**12.16.2** No such creditor shall have any rights other than the rights referred to in this section 12.16 and in sections 12.17 and 12.18.

**12.16.3** The following terms shall be implied in every transaction entered into by a Protected Cell Company:

- (a) that no party shall seek, whether in any proceedings or by any other means, to use or apply any cellular assets attributable to any cell of the Company to satisfy a liability not attributable to that cell;
- (b) that if any party shall succeed by any means in using or applying any cellular assets attributable to any cell of the Company to satisfy a liability not attributable to that cell, that party shall be liable to the Company to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party shall succeed in seizing or attaching or otherwise levying execution against any cellular assets attributable to any cell of the Company to satisfy a liability not attributable to that cell, that party shall hold those assets or their proceeds in a fiduciary capacity for the Company and shall keep those assets or proceeds separate and identifiable for that purpose.



- 12.16.4** All sums recovered by a Protected Cell Company as a result of any such obligation as is described in Regulation 12.16.3 (c) shall be credited against any concurrent liability imposed under the implied term set out in Regulation 12.16.3 (b).
- 12.16.5** Any asset or sum recovered by a Protected Cell Company pursuant to the implied term set out in Regulations 12.16.3 (b) or (c) or by any other means in the events referred to in those Regulations shall, after the deduction or payment of any costs of recovery, be applied by the Company so as to compensate the cell affected.
- 12.16.6** In the event of any cellular assets attributable to a cell of a Protected Cell Company being seized, attached, levied or otherwise taken in execution in respect of a liability not attributable to that cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected, the Company shall:
- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the cell affected; and
  - (b) transfer or pay to the cell affected, from the cellular or non-cellular assets to which the liability was attributable, assets or sums sufficient to restore to the cell affected the value of the assets lost.
- 12.16.7** Where under Regulation 12.16.6 (b) a Protected Cell Company is obliged to make a transfer or payment from cellular assets attributable to a cell of the Company, and those assets are insufficient, the Company shall so far as possible make up the deficiency from its non-cellular assets.

## **12.17 Availability of cellular assets to creditors**

- 12.17.1** Without prejudice to the provisions of sections 12.16 and 12.18:
- (a) cellular assets attributable to a particular cell of a Protected Cell Company:
    - (i) are available only to the creditors of the Company who are creditors in respect of that cell and who are thereby entitled to have recourse to the cellular assets attributable to that cell; and
    - (ii) shall be absolutely protected from the shareholders of the Company and from the creditors of the Company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell; and
  - (b) cellular assets not attributable to a particular cell of a Protected Cell
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Company shall not be used to satisfy any liability attributable to that cell.



## **12.18 Satisfaction of liabilities attributable to cells**

**12.18.1** Where any liability arises which is attributable to a particular cell of a Protected Cell Company:

- (a) the cellular assets attributable to that cell shall be used to satisfy the liability; and
- (b) a creditor in respect of that cell shall not be entitled to have recourse against the cellular assets of any other cell or the non-cellular assets of the Company.

**12.18.2** Where any liability arises which is not attributable to a particular cell of a Protected Cell Company:

- (a) the liability shall be satisfied solely from the Company's non-cellular assets; and
- (b) a creditor in respect of that liability shall not be entitled to have recourse to the cellular assets of any cell of the Company.

## **12.19 Disputes as to liabilities attributable to cells**

**12.19.1** In the event of any dispute as to:

- (a) whether any right is or is not in respect of a particular cell;
- (b) whether any creditor is or is not a creditor in respect of a particular cell;
- (c) whether any liability is or is not attributable to a particular cell; or
- (d) the amount to which any liability is limited;

the Court, on the application of the Protected Cell Company or of the creditor in dispute with the Company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

## **12.20 Transfer of cellular assets from Protected Cell Company**

**12.20.1** In this section 12.20, a 'cell transfer order' is an order of the Court authorising the

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transfer of cellular assets attributable to any cell of a Protected Cell Company, but not the non-cellular assets of a Protected Cell Company, to another person, wherever resident or incorporated, and whether or not a Protected Cell Company.

- 12.20.2** Subject to Regulation 12.20.3, no transfer of cellular assets attributable to a cell of a Protected Cell Company may be made except under the authority of, and in accordance with the terms and conditions of, a cell transfer order.
- 12.20.3** Nothing in this section 12.20 requires a Protected Cell Company to obtain a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the Company's business.
- 12.20.4** In considering whether or not to make a cell transfer order in relation to a cell of a Protected Cell Company, the Court may:
- (a) require the applicant to establish to the satisfaction of the Court:
    - (i) that the creditors of the Company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer; or
    - (ii) that those creditors would not be unfairly prejudiced by the transfer; and
  - (b) hear the representations, if any, of the DFSA thereon.
- 12.20.5** The Court, on hearing an application for a cell transfer order, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.
- 12.20.6** The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.
- 12.20.7** The Court may make a cell transfer order in relation to a cell of a Protected Cell Company notwithstanding that:
- (a) a receiver, administrative receiver, or liquidator has been appointed to act in respect of the Company; or
  - (b) a cell receiver has been appointed in respect of the cell or any other cell of the Company.
- 12.20.8** A transfer under a cell transfer order of cellular assets attributable to a cell of a Protected Cell Company shall not of itself entitle creditors of that Company to have



recourse to the assets of the person to whom the cellular assets were transferred.

**12.20.9** The provisions of this section 12.20 are without prejudice to any power of a Protected Cell Company lawfully to make payments or transfers from the cellular assets attributable to any cell of the Company to a person entitled, in conformity with the provisions of these Company (PCC) Regulations.

## **12.21 Accounts and Audit**

**12.21.1** Regulation 6.7.1 does not apply to a Protected Cell Company and accordingly:

- (a) if it is a Protected Cell Company formed other than for the sole purpose of conducting a business of a Fund, it must comply with the requirements of Part 9 of the Law to have its accounts audited and to file accounts with the Registrar.
- (b) if it is a Protected Cell Company formed for the sole purpose of conducting the business of a Fund, it must comply with the accounting, audit and reporting requirements in chapter 9 of the CIR module of the DFSA Rulebook

**12.21.2** Where:

- (a) the Board of the DFSA makes Rules under the Regulatory Law 2004 or rules or regulations under any other applicable DIFC law; or
- (b) the DFSA imposes or varies a condition or restriction in relation to a consent, licence or authorisation under the Regulatory Law 2004 or under any other DIFC law, including in relation to a consent under these Company (PCC) Regulations;

which, in whole or in part, is, are or may be inconsistent with any of the provisions of chapters 2 and 3 of Part 9 of the Law in their application to, or to any class or category of, a Protected Cell Company, or to a class or category of, cells within a Protected Cell Company, such rule or regulation or condition or restriction shall prevail over the provisions of chapters 2 and 3 of Part 9 of the Law to the extent of the inconsistency.



## **13. INVESTMENT COMPANIES**

### **13.1 Application and Interpretation**

**13.1.1** The Regulations in this chapter may be referred to as the Companies (IC) Regulations.

**13.1.2** In these Companies (IC) Regulations, the following terms have the following meanings:

- (a) “administrative receiver” has the meaning given in the Insolvency Law 2009;
- (b) “Closed Ended Investment Company” means an Investment Company which is not an Open Ended Investment Company;
- (c) “Fund” has the meaning given in the Collective Investment Law 2010;
- (d) “Fund Manager” has the meaning given in the Collective Investment Law 2010;
- (e) “exchange facility” is a facility for the transfer of shares in an Open Ended Investment Company administered by an Authorised Market Institution pursuant to the provisions of the Regulatory Law 2004;
- (f) “Investment Company” has the meaning given in the Collective Investment Law 2010;
- (g) “Open Ended Investment Company” means a Company whose Articles comply with Regulations 13.3.4 and 13.3.5, provided that such Company is incorporated as, or converted into, an Open Ended Investment Company in accordance with the provisions of these Regulations; and
- (h) “receiver” has the meaning given in the Insolvency Law 2009.

### **13.2 Rules, regulations, general powers of the DFSA**

**13.2.1** In accordance with Article 114(2)(b) of the Law, the application of Article 51(1) and (2) of the Law is modified in relation to its application to Investment Companies so as to permit an Investment Company to be managed by one director, which may be a body corporate.



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**13.2.2** Subject to Regulation 13.2.1, these Regulations are additional to any other legislation which may apply to the incorporation of, or conversion to, an Investment Company, or which may apply to the operations and affairs and winding up of an Investment Company, including the Law, the Collective Investment Law 2010 and the Insolvency Law 2009 and any Rules or Regulations under such laws.

**13.2.3** Without limiting the generality of powers of the DFSA under Article 23 of the Regulatory Law 2004 and Article 8 of the Collective Investment Law 2010, the DFSA shall have authority from time to time to make, issue, amend and rescind such Rules as are necessary or appropriate in the interests of the DIFC.

### **13.3 Incorporation of, or conversion into, an Investment Company**

**13.3.1** Subject to the provisions of these Regulations, a person may:

- (a) incorporate an Open Ended Investment Company or a Closed Ended Investment Company; or
- (b) convert, if so authorised by its Articles and by a Special Resolution, an existing Company into an Open Ended Investment Company or a Closed Ended Investment Company;

for the sole purpose of carrying on the business of a Fund, provided the DFSA has given its consent to such incorporation or conversion respectively.

**13.3.2** An application for the incorporation of a Company as an Investment Company or for the conversion of an existing Company into an Investment Company shall not be made without submission to the Registrar of a copy of any consent of the DFSA given under Regulation 13.3.1.

**13.3.3** Without prejudice to the application of Article 32 of the Law:

- (a) the name of an Open Ended Investment Company shall include the expression "Open Ended Investment Company" or "OEIC"; and
- (b) the name of a Closed Ended Investment Company shall include the expression "Closed Ended Investment Company" or "CEIC".

**13.3.4** The Articles of an Open Ended Investment Company shall state that it is an Open Ended Investment Company with variable share capital.



**13.3.5** The Articles of an Open Ended Investment Company must contain a provision to the effect that shareholders are entitled to have their shares redeemed by the Fund Manager upon request at a price based on the net asset value of the property of the Fund and determined in accordance with the Articles, section 8.6 of the CIR module of the DFSA Rulebook any other requirements that may from time to time be prescribed by the DFSA in legislation made under the Collective Investment Law 2010.

**13.3.6** In addition to any other requirements under the Regulations, the Articles of an Investment Company must contain provision as to the following matters:

- (a) the objects of the Investment Company, including:
  - (i) detail as to the kind of property in which the Investment Company is to invest; and
  - (ii) a statement that the object of the Investment Company is to invest in property of that kind with the aim of spreading investment risk or with the aim of investing in a single property, as the case may be, and of giving its shareholders the benefit of the results of the management of that property; and
- (b) any other requirements that may from time to time be imposed by the DFSA in legislation made under the Collective Investment Law 2010.

**13.3.7** The Articles of an Investment Company must comply with the requirements imposed under the Companies (IC) Regulations in this Chapter and the Collective Investment Law 2010 and any legislation made thereunder.

**13.3.8** An Investment Company may alter its Articles by Special Resolution in order to comply with the requirements of these Companies (IC) Regulations and the Collective Investment Law 2010.

## **13.4 Permissible uses and DFSA consent**

**13.4.1** An application for consent shall be made to the DFSA by the Company and the Operator and each such application shall be in such form, contain such information and be accompanied by such other particulars, as required from time to time by the DFSA.

**13.4.2** The DFSA may in its absolute discretion grant its consent, refuse to grant its consent or withdraw its consent under Regulation 13.3.1 as the DFSA deems it necessary or appropriate in the interests of the DIFC.



- 13.4.3** (1) The DFSA shall inform the Investment Company of its decision under Regulation 13.4.2 without undue delay, in writing and, where requested by the Investment Company, state the reasons for such decision.
- (2) In accordance with Article 27(2)(j) of the Regulatory Law, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where an applicant appeals against a decision of the DFSA in relation to an application for consent under Regulation 13.4.1.

### **13.5 Withdrawal of consent of the DFSA**

**13.5.1** Before revoking any consent, the DFSA shall consider whether any necessary and appropriate steps have been taken to secure one or more of the following under the Insolvency Law 2009 and Insolvency Regulations:

- (a) appointment of a receiver or administrative receiver to the Investment Company; or
- (b) the winding up of the Investment Company.

**13.5.2** (1) On withdrawal of a DFSA consent the Investment Company and the Fund Manager shall forthwith notify that fact to:

- (a) each regulatory authority in every country or territory to which the consent related prior to its withdrawal; and
- (b) each shareholder of the Investment Company in question.
- (2) The notice required of each of the persons respectively referred to in this Regulation may be given by them jointly.

### **13.6 Directions by the DFSA**

**13.6.1** The DFSA may, in the interests of the DIFC, give any direction to an Investment Company or to any of its directors.

**13.6.2** Without limiting the generality of Regulation 13.6.1, the DFSA may:

- (a) require the Investment Company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the



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Investment Company;

- (b) require the Investment Company or any director of the Investment Company to present a petition to the Court to:
  - (i) make an order or orders for the appointment of a receiver or administrative receiver to the Company; or
  - (ii) make an order or orders for the winding up of the Investment Company under the Insolvency Regulations.
- (c) require any director of the Investment Company to present a petition to the Court to wind up the Investment Company; or
- (d) require that the affairs of the Investment Company be wound up otherwise than by the Court.

**13.6.3** Subject to Regulation 13.6.4:

- (a) if the consent is revoked by the DFSA, such revocation does not affect the operation of any direction given by the DFSA which is then in force; and
- (b) a direction may be given by the DFSA in relation to an Investment Company in the case of which a consent has been revoked, if a direction was already in force at the time of revocation.

**13.6.4** Where a winding up order has been made by the Court, no direction given by the DFSA is to have effect in relation to the Investment Company concerned.



**13.6.5** The DFSA may, on its own initiative, or on the application of the Investment Company or its Fund Manager, revoke or vary a direction given under this Section if it appears to the DFSA that it would be necessary or appropriate in the interests of the DIFC.

**13.6.6** In accordance with Article 27(2)(j) of the Regulatory Law 2004, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal where an Investment Company or director appeals against a decision of the DFSA made under this section in relation to a direction.

### **13.7 Applications to the Court**

**13.7.1** The Court may, on application of the DFSA, make one or more of the following orders:

- (a) an order removing any director of the Company and replacing any such person with a person or persons nominated by the DFSA or as the Court may consider appropriate;
- (b) an order appointing a receiver or administrative receiver, or an order for the winding up of the Company pursuant to the Insolvency Regulations; or
- (c) any other order as the Court thinks fit.

**13.7.2** The DFSA shall:

- (a) give written notice of the making of an application under Regulation 0 to:
  - (i) the Investment Company; and
  - (ii) where the application seeks the removal of any director of the Investment Company, that director; and
- (b) take such steps as it considers appropriate for bringing the application to the attention of the shareholders of the Investment Company.

**13.7.3** The Court may, on application of a person who is subject to an order, make any other orders it thinks fit including, but not limited to, orders:

- (a) revoking the order;





- (b) varying the order;
- (c) requiring the order to be complied with in a manner that the Court considers appropriate; or
- (d) requiring the Investment Company or the DFSA or both to do any act or thing.

## **13.8 Shares, Register of shareholders**

**13.8.1** An Investment Company may, if so authorised by its Articles, issue fractions of shares.

**13.8.2** (1) The DFSA may prescribe in Rules made under the Collective Investment Law 2010 the form and contents of share certificates and the manner in which such share certificates may be delivered by an Investment Company.

(2) Nothing in Paragraph (1) shall prevent an Investment Company issuing share certification in a dematerialised (electronic) form.

**13.8.3** Subject to any requirements as may be made by the DFSA, an Investment Company may, on giving notice by a press release, direct by communicating with the shareholders, posting on its website and, if listed, filing such notice with the relevant exchange if the Fund is a Listed Fund on that exchange, close the register of shareholders for any time or times not exceeding, in the whole, 30 days in each year.

**13.8.4** If:

(a) such evidence is furnished to the Fund Manager as the Fund Manager may require to show that default has been made by a shareholder in making any payment in money or transfer of property due to the Fund Manager under the provisions of these Regulations or the Articles of the Investment Company in respect of the creation and sale or resale of shares to that shareholder; and

(b) any share certificate in respect of those shares is received by the Fund Manager, the Fund Manager or the Registrar shall cancel or make any necessary amendments to that certificate and make any necessary deletion or alteration in the register and thereafter the Fund Manager shall be entitled to the shares in respect of which the defaulting shareholder's name has been removed from the register until the same be cancelled or resold by the Fund Manager and the name of the purchaser entered in the



register.

**13.8.5** The Fund Manager of an Open Ended Investment Company shall be deemed to hold each share during such times as neither the Fund Manager nor any other person is entered in the register as the holder thereof.

### **13.9 Share transfers and redemptions**

**13.9.1** The Articles of an Investment Company may contain provision as to share transfers in respect of any matter for which provision is not made in the Law or Regulations.

**13.9.2** Where any shares of an Investment Company are transferred to the Investment Company, the Investment Company must cancel those shares.

**13.9.3** For the purposes of Article 40 (5) of the Law, an Investment Company may refuse to register a transfer of shares if:

- (a) there exists a minimum requirement as to the number or value of shares that must be held by any shareholder of the Investment Company and the transfer would result in either the transferor or transferee holding less than the required minimum; or
- (b) the transfer would result in a contravention of any provision of the Investment Company's Articles or would produce a result inconsistent with any provision of the Investment Company's prospectus.

**13.9.4** An Open Ended Investment Company shall redeem its shares at a price based on the net asset value of the property of the Company in accordance with its Articles and the provisions in section 8.6 of the CIR module of the DFSA Rulebook and, where it does so, chapters 4 and 5 of Part 7 of the Law shall not apply to such redemptions of shares.

**13.9.5** No Closed Ended Investment Company shall purchase any shares of any class of which it is the issuer except on an exchange facility or such other open market as the DFSA may prescribe by Rules or Regulations.

### **13.10 Records, accounts and audit**

**13.10.1** Every Investment Company shall maintain and preserve such records for such period as the DFSA, by Rules or Regulations, may prescribe

**13.10.2** Regulation 6.7.1 shall not apply to an Investment Company.

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**App1 FEES****A1.1 Table of fees****Retail Fees**

Upon receipt by the Registrar of:	
Application for reserving a name	\$340
Application for incorporation of a Company	\$3,400
Application for registration of a Recognised Company	\$3,400
Application for registering a change of name	\$340
Notice of change of registered address of Company	Nil
Notice of change of director or secretary	Nil
Notice of change in details of director or secretary	Nil
Notice of allotment of shares	Nil
Notice of appointment of auditor	Nil
Notice of cessation of auditor	Nil
Application for registration of auditor	\$500
Notice of change in details of person authorised to accept service of any document or notice	Nil
Notice of change of principal place of business	Nil
Fee for filing annual return	\$340
Upon performing the following functions:	
Providing an extract of information from the register of Companies	\$100
Providing a certified copy of any document	\$100

**Non-Retail Fees**

Upon receipt by the Registrar of:	
Application for reserving a name	\$800
Application for reserving a name (for Captive Insurers, Protected Cell Company and Open/Closed Ended Investment Companies)	\$200
Application for incorporation of a Company	\$8,000
Application for incorporation of a Protected Cell Company or for conversion to a Protected Cell Company, Open/Close Ended Investment Company or Captive Insurer	\$1,000
Application for registration of a Representative Office	\$2,000
Application for registration of a Recognised Company	\$8,000
Application for registering a change of name	\$800



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Application for registering a change of name for a Captive Insurer, Protected Cell Company or Open/Closed Ended Investment Companies	\$200
Application to transfer incorporation to the DIFC	\$20,000
Application to transfer incorporation from the DIFC	\$20,000
Notice of change of director or secretary	Nil
Notice of change of director or secretary of a Captive Insurer, Protected Cell Company or Open/Closed Ended Investment Companies	Nil
Notice of change of director or secretary of Protected Cell Company, Open/Close Ended Investment Company, Captive Insurer	Nil
Notice of change in details of director or secretary	Nil
Notice of change in details of director or secretary of a Captive Insurer, Protected Cell Company or Fund	Nil
Notice of allotment of core shares of a Protected Cell Company	Nil
Notice of allotment of shares	Nil
Notice of appointment of auditor of Protected Cell Company, Open/Close Ended Investment Company, Captive Insurer	Nil
Notice of appointment of auditor	Nil
Notice of cessation of auditor	Nil
Application for registration of auditor	\$500
Notice of change in details of person authorised to accept service of any document or notice	Nil
Notice of change of principal place of business	Nil
Fee for filing annual return for Captive Insurer, Protected Cell Company, Open/Close Ended Investment Company	\$800
Fee for filing annual return	\$800
Upon performing the following functions:	
Providing an extract of information from the register of Companies	\$100
Providing a certified copy of any document	\$100
Providing an extract of information from the register of Companies of Protected Cell Company, Open/Close Ended Investment Company, Captive Insurer	\$100
Providing a certified copy of any document for Protected Cell Company, Open/Close Ended Investment Company, Captive Insurer	\$100



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## App2 STANDARD ARTICLES

### A2.1 Standard articles for a Company Limited by Shares

**[insert name] LIMITED**  
**A Company Limited by Shares**

#### 1. INTERPRETATION

In these articles;

- A) the following terms shall have the meanings set opposite, if not consistent with the subject or context;

<b>'Articles'</b>	means these Articles of incorporation of the Company.
<b>'Board'</b>	means the board of Directors of the Company.
<b>'Directors'</b>	means the directors for the time being of the Company or, as the case may be, those directors assembled as a board or as a committee of the board.
<b>'Office'</b>	means the registered office of the Company.
<b>'the holder'</b>	means in relation to shares means the Shareholder whose name is entered in the register of Shareholders as the holder of the shares.
<b>'Ordinary Resolution'</b>	means a resolution of a duly constituted general meeting of the Company's Shareholders passed by a simple majority of the votes cast on behalf of the shares entitled to vote through or on behalf of the Shareholders present in person or by proxy and voting at the meeting. It includes any unanimous written resolution of the holders of shares entitled to vote, expressed to be an ordinary resolution.



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<b>'Register of Directors'</b>	means the register or the Directors of the Company.
<b>'Shareholder'</b>	has the same meaning as in the Law.
<b>'Special Resolution'</b>	means a resolution in respect of which notice of intention to propose the resolution has been given, and that has been passed by the positive vote of Shareholders holding at least 75% of the shares entitled to vote on the resolution.
<b>'the Law'</b>	means the Dubai International Financial Centre Companies Law No. 3 of 2006 including any statutory modification or re-enactment thereof for the time being in force.
<b>'the seal'</b>	means the common seal of the Company, including every duplicate seal.
<b>'Secretary'</b>	means the Secretary of the Company or any other person appointed to perform the duties of the Secretary of the Company, including a joint, assistant or deputy Secretary.

- B) unless the context otherwise requires, words or expressions defined in the Law, shall have the same meanings herein but excluding any statutory modification thereof not in force when these Articles become binding on the Company;
- C) unless the context otherwise requires:
- words in the singular shall include the plural and vice-versa;
  - words in the masculine shall include the feminine; and
  - words relating to natural persons shall include companies, entities, associations or bodies of persons whether incorporated or not.
- D) the word “may” shall be construed as permissive and the word “shall” as imperative.
- E) the headings herein are for convenience only and shall not affect the construction of these Articles;
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- F) reference to a “Dollar” or “Dollars” (or “US\$”) are references to Dollars, legal currency of the United States of America;
- G) references to statutes are, unless otherwise specified, references to the laws, regulations and other statutes of the Dubai International Financial Centre and, subject to paragraph (B) above, include any modification or re-enactment thereof for the time being in force; and
- H) where an Ordinary Resolution is expressed to be required for any purpose, a Special Resolution is also effective for that purpose.

## **2. COMPANY NAME**

The Company’s name is ‘[insert company name] Limited’.

## **3. COMPANY REGISTERED OFFICE**

The Registered office of the Company will be situated in the Dubai International Financial Centre.

## **4. COMPANY OBJECTIVES**

The principle business activities of the Company are:

- A. [insert company’s objectives];
- B. [insert company’s objectives]; and
- C. In general to engage in any lawful act or activity for which companies may be organised under the Law.

## **5. SHARE CAPITAL**

- A. The authorized share capital of the Company is [Insert authorized share capital] Dollars (US\$ \_\_\_\_\_).00).



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- B. The initial registered paid up capital of the Company is Fifty Thousand Dollars (US\$ \_\_\_\_\_.00) represented by [Insert number of shares] (\_\_\_) shares, with no par value.
- C. The initial registered paid up capital is divided amongst the incorporators in the following manner:
- (i) [Insert name of Incorporator] a company incorporated and existing under the laws of [Insert Nationality] addressed at [Insert address] hereby subscribes for [Insert number of subscribed shares] (\_\_\_) shares at a price of [Insert price of subscription] Dollars (US\$\_\_\_\_\_.00).
  - (ii) [Insert name of Incorporator] a [Insert Nationality] national addressed at [Insert address] hereby subscribes for [Insert number of subscribed shares] (\_\_\_) shares at a price of [Insert price of subscription] Dollars (US\$\_\_\_\_\_.00).
  - (iii) [Insert name of Incorporator] a company incorporated and existing under the laws of [Insert Nationality] addressed at [Insert address] hereby subscribes for [Insert number of subscribed shares] (\_\_\_) shares at a price of [Insert price of subscription] Dollars (US\$\_\_\_\_\_.00).
- D. The capital of the Company shall be divided into shares with no par value.

## **6. COMPANY'S SHARES**

- A. Subject to the provisions of the Law and without prejudice to any rights, entitlements or restrictions attached to any existing shares, any share may be issued with such rights, entitlements or restrictions as the Company may by Ordinary Resolution determine.
- B. Subject to the Law, the Company may issue, or convert existing non-redeemable shares, whether allotted or not, into redeemable shares at the discretion of the Board.
- C. No person shall be recognised by the Company as holding any share upon trust and (except as otherwise provided by these Articles and by the Law)
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the Company shall not be bound by or recognise any interest in any share except an absolute right of ownership.

## **7. SHARE CERTIFICATES**

- A. Unless the conditions of allotment of shares provide otherwise, every Shareholder, upon becoming the holder of any shares, shall be entitled, free of charge, to:
- (i) one share certificate for all the shares of each class held by him;
  - (ii) one share certificate for any additional shares of each class transferred to him; and
  - (iii) upon transferring a part of his shares of any class, to a certificate for the balance of such holding.
- B. Every Shareholder shall be entitled to additional certificates, each for one or more of his shares, upon payment for every certificate after the first, at such a reasonable sum as the Directors of the Company may determine.
- C. Every certificate shall specify the number, class and distinguishing numbers (if any) of the shares, to which it relates, and the amount or respective amounts paid up thereon.
- D. The Company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- E. If a share certificate is lost or destroyed, it may be replaced on such terms (if any) as to evidence the shareholding right after receiving the proper indemnity and payment of the expenses reasonably incurred by the Company in investigating evidence as the Directors may determine and a reasonable sum for the replacement certificate as the Directors of the Company may determine.
- F. In the case of defacement or wearing-out of a share certificate, the Company may replace it on delivery of the old certificate and a reasonable sum for the replacement certificate as the Directors of the Company may determine.
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## **9. TRANSFER OF SHARES**

- A. The instrument of transfer of a share may be in any form which the Directors may approve and shall be executed by or on behalf of the transferor.
- B. The Directors may only refuse to register the transfer of a share if the instrument of transfer, the share certificate and any other evidence that the directors may reasonably require, are not duly filed at the registered office or the office of the agent that maintains the register of Shareholders.
- C. If the Directors refuse to register a transfer of a share, they shall within fourteen (14) days notify the transferee and transferor accordingly.
- D. The Directors may suspend the registration of transfers of shares at such times and for such periods (not exceeding thirty days in any year), as determined by them, acting reasonably.
- E. The Company may charge a reasonable fee for the registration of any instrument of transfer.
- F. The Company shall retain any instrument of transfer which is registered.

## **10. TRANSMISSION OF SHARES**

- A. If a Shareholder dies his personal representative or, where he was a joint holder, the survivor or survivors shall be the only persons recognised by the Company as having title to the shares.
- B. A person becoming entitled to a share in consequence of the death or bankruptcy of a Shareholder shall be registered as a Shareholder upon giving notice to the Company and upon registration he shall have the same rights as the holders of the same class of shares.

## **11. ALTERATION OF SHARE CAPITAL**

- A. The Company may through a Special Resolution:
  - (i) increase its share capital by creating new shares;



- (ii) consolidate and divide all or any of its shares (whether issued or not) into shares of larger amount than its existing shares;
  - (iii) sub-divide its shares, or any of them, into shares of smaller amount; and
  - (iv) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of the Company's share capital by the amount of the shares so cancelled.
- B. Any fractions of shares resulting from a consolidation of shares may be sold by the Directors on behalf of the Shareholders and the net proceeds distributed proportionately amongst those Shareholders.
- C. The Company may, in accordance with the Law, reduce its share capital in any way and on such terms as it may decide.

## **12. PURCHASE OF OWN SHARES**

Subject to the provisions of the Law, the Company may purchase its own shares.

## **13. GENERAL MEETINGS**

- A. All general meetings of Shareholders other than annual general meetings shall be called extraordinary general meetings.
- B. The Directors may call, and on the requisition of Shareholders in accordance with the Law, shall call ordinary and extraordinary general meetings.

## **14. REQUISITION AND NOTICE OF GENERAL MEETINGS**

- A. Subject to the Law, an annual general meeting and any extraordinary general meeting shall be called by at least 21 days' notice to all the Shareholders, the Directors and auditors.
- B. Such notice of general meeting shall specify the time and place of the meeting and the general nature of the matters to be considered. A notice of



meeting in respect of an annual general meeting shall in addition specify that it is in respect of an annual general meeting.

- C. 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.

## **15. PROCEEDINGS AT GENERAL MEETINGS**

- A. Except in the case of the Company having a single Shareholder, in which case resolutions will be adopted in writing by the single Shareholder, no meeting shall take place unless a quorum is present. Two persons entitled to vote shall constitute a quorum.
  - B. If a quorum is not present within half an hour from the time stated for the meeting, the meeting shall be adjourned to a place and time determined by the directors. If during the meeting a quorum ceases to be present the meeting shall be adjourned to a place and time determined by the directors.
  - C. The chairman of the board of Directors shall chair the meeting. If the chairman of the board of Directors 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 Director elected by the Directors present shall chair the meeting. If no Directors are present or willing to chair the meeting, then the Shareholders shall elect one of their number to chair the meeting.
  - D. Regardless of whether he is a Shareholder, a Director is entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the Company.
  - E. The chairman may adjourn the meeting with the consent of the majority of the votes at the meeting. No matters shall 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 shall be given specifying the time and place of the adjourned meeting and the general nature of the matters to be considered.
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- F. Unless a poll is demanded, a resolution put to the vote shall be decided on a show of hands. A poll may be demanded before or on the declaration of the result of a vote by show of hands:
- (i) by the chairman;
  - (ii) by at least two Shareholders having the right to vote at the meeting;  
or
  - (iii) by a Shareholder representing not less than 5% of the total voting rights of all the Shareholders having the right to vote.
- G. Unless a poll is demanded the chairman may declare that a resolution has been carried or lost by a particular majority. The entry in the minutes of the meeting of that declaration shall be conclusive evidence of the result of the resolution.
- H. The chairman may consent to the withdrawal of the demand for a poll.
- I. A poll shall be taken in the manner the chairman directs and the result shall be the resolution of the meeting at which the poll was demanded.
- J. A poll demanded on the election of a chairman or on an adjournment shall be taken immediately. A poll demanded on any other question shall be taken as the chairman directs but not more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll is demanded.
- K. Seven days notice shall be given specifying the time and place at which a poll shall be taken unless the time and place is announced at the meeting at which the poll is demanded.
- L. A resolution may be passed in writing in accordance with the Law.

## **16. VOTES OF SHAREHOLDERS**

- A. On a show of hands, every Shareholder present, including the representative of a body corporate Shareholder, shall have one vote. On a poll, every Shareholder shall have one vote for every share held. This Article is subject to any rights or restrictions attached to any shares.
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- B. Joint Shareholders may only exercise one vote or one vote per share as the case may be. If more than one vote is cast by joint Shareholders, only the vote of the joint Shareholder whose name appears first on the register of Shareholders shall be taken into account.
- C. Where a Shareholder has had a personal representative appointed because of some physical or mental disability, that personal representative may exercise the voting rights of the Shareholder if the personal representative has given notice to the directors in writing in the form of proxy used by the Company and within the time limit for filing proxies prior to any meeting being held or vote being taken.
- D. No objection may be raised to the right of any voter except at the meeting at which the voter is to vote. The decision of the chairman in respect of any objection or the right of any voter shall be final.
- E. A Shareholder may vote on a poll by proxy.
- F. An instrument appointing a proxy shall be in writing in a form approved by the Company and distributed with the notice of a meeting. The form approved and distributed by the Company must include a section allowing the Shareholder to direct the proxy on how the proxy shall act.
- G. The instrument appointing a proxy must be deposited at the registered office of the Company at least 48 hours before the time at which the meeting at which the proxy is to be exercised is to be held. In the case of a poll not being taken immediately but some time after it is demanded, the instrument appointing a proxy may be deposited at the poll with the chairman, secretary or any Director or at any time before the poll at the registered office of the Company.
- H. A vote given or poll demanded by proxy is valid notwithstanding the determination of the Shareholder who appointed the proxy unless the Company receives notice from the Shareholder in writing prior to the vote being taken or the poll being demanded.



## **17. NUMBER OF DIRECTORS**

The Company shall have at least two directors.

## **18. ALTERNATE DIRECTORS**

- A. Any Director may appoint any other Director or any other person approved by the Directors to act as his alternate and may remove the alternate Director so appointed. The alternate Director shall perform all the functions of his appointer as a director but is not entitled to remuneration for his services.
- B. An alternate Director shall be given notice of all meetings of which his appointor is entitled to receive notice and is entitled to attend and vote at such meetings.
- C. An alternate Director holds office for as long as his appointor holds office unless he is removed by written instrument by his appointor.
- D. Any appointment or removal of an alternate Director shall be given to the secretary of the Company.
- E. Unless otherwise provided, an alternate Director shall not be regarded as the agent of his appointor but shall be responsible for his acts or omissions.

## **19. POWERS OF DIRECTORS**

- A. Subject to the Law and these Articles the business of the Company shall be managed by the Directors. No subsequent amendment to these Articles shall invalidate any act of a Director or the Directors.
- B. The Directors may appoint a person to be the agent of the Company.

## **20. DELEGATION OF DIRECTORS' POWERS**

The board of Directors may delegate any of its powers to a managing Director, executive Director or a committee of Directors.



## **21. APPOINTMENT AND RETIREMENT OF DIRECTORS**

- A. At the first annual general meeting of the Company, all Directors shall retire from office. At every subsequent annual general meeting at least one third or number nearest to one third of the Directors who are subject to retirement by rotation shall retire.
- B. The Directors subject to retirement by rotation are those that have been longest in office since their last appointment. In respect of those Directors appointed on the same day, those that are to retire shall be determined by whose name appears first on the register of Directors.
- C. A Director shall remain in office, if so willing, if the Company at the meeting at which he retires by rotation, resolves not to fill the vacancy.
- D. A person (other than a Director retiring by rotation) shall not be appointed a Director at a general meeting unless he has been recommended by the Directors or a Shareholder and details of the proposed Director have been included in the notice of meeting at which the appointment shall be considered. The details shall include at least the information that would be included in the register of Directors if the person was appointed.
- E. Subject to the preceding articles, additional Directors may be appointed by the Company by resolution as long as the total number of Directors does not exceed any maximum number of Directors stipulated by the Law, Regulations or these articles.
- F. A Director appointed pursuant to the preceding article shall hold office only until the next annual general meeting at which time the Director shall retire but may, in accordance with the articles, be re-appointed.

## **22. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

A Director's office is automatically vacated if he:

- (i) is prohibited by the Law or Regulations from being a Director;
  - (ii) becomes bankrupt;
  - (iii) is, by virtue of any mental or physical disability, incapable of acting;
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- (iv) without permission, does not attend three successive meetings of the board of Directors;
- (v) resigns his office by notice to the Company; or
- (vi) is removed by resolution of the Company.

### **23. REMUNERATION AND EXPENSES OF DIRECTORS**

The directors shall receive such remuneration as the Company determines by resolution and shall receive payment of all expenses incurred in association with the carrying out of their duties as directors.

### **24. DIRECTORS' APPOINTMENTS AND INTERESTS**

Subject to the Law and Regulations, the Directors may appoint one or more of their number to the office of managing Director or to any other executive office under the Company. Such appointment, agreement or arrangement may be made upon such terms as the Directors determine. Any appointment of a Director to an executive office shall terminate if he ceases to be a Director. A managing Director and a Director holding any other executive office shall not be subject to retirement by rotation.

### **25. DIRECTORS' GRATUITIES AND PENSIONS**

The Directors may provide benefits, including gratuities and pensions, of any kind for any present or past Director and for any Shareholder or his family.

### **26. PROCEEDINGS OF DIRECTORS**

- A. Subject to the provisions of these articles, the Directors may regulate their proceedings as they think fit. A Director may, and the secretary at the request of a Director shall, call a meeting of the board of Directors. Any matters arising at a meeting shall be decided by a majority of votes with the chairman having a second or casting vote in the case of equality of votes.
  - B. The quorum for the transaction of the business of the board of Directors shall be two or any other number fixed by the Directors.
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- C. If the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of filling vacancies or of calling a general Shareholders' meeting.
- D. The Directors shall appoint one of their number to be the chairman of the board of Directors who shall preside at all meetings and may at any time remove him from that office. If there is no Director holding that office, or if the Director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Directors present may appoint one of their number to be chairman of the meeting.
- E. All acts done by a meeting of Directors, or of a committee of Directors, or by a person acting as a Director shall 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.
- F. A resolution in writing signed by all the Directors entitled to receive notice of the meeting shall be as valid and effectual as if it had been passed at a meeting of the board of Directors. The resolution may consist of several documents in the like form each signed by one or more Directors.
- G. A Director shall not vote at a meeting of Directors on any resolution concerning a matter in which he has a direct or indirect conflict of interest.
- H. For the purposes of this article, an interest of a Director includes an interest of any person who is connected to the Director.
- I. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
- J. The Company may by resolution suspend or relax any provision of these articles prohibiting a director from voting at a meeting.
- k. The chairman of the meeting shall rule on any question arising at a meeting on the right of a director, other than himself, to vote and his ruling shall be final and conclusive.



## **27. SECRETARY**

Subject to the Law, the secretary shall be appointed and removed by the directors who shall decide on the terms, remuneration and conditions of appointment.

## **28. MINUTES**

The directors shall cause minutes to be kept for recording:

- A. all appointments of officers made by the directors; and
- B. all proceedings at general meetings of the Company's Shareholders; of the holders of any class of shares in the Company; and of the directors, and of committees of directors, including the names of the directors present at each such meeting.

## **29. DIVIDENDS**

- A. Subject to the provisions of the Law, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the Shareholders, but no dividend shall exceed the amount recommended by the directors.
  - B. Subject to the provisions of the Law, the directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear. Provided the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.
  - C. The directors may recommend and a general meeting declare that a dividend may be satisfied wholly or partly by the distribution of assets. Where any difficulty arises in regard to the distribution, the directors may determine the method of settlement.
  - D. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled. If two
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or more persons are the holders of the share or are jointly entitled to it, to the registered address of that person who is first named in the register of Shareholders or to such person and to such address as the person or persons entitled may in writing direct. Every cheque shall be made payable to the order of the person or persons entitled, or to such other person as the person or persons entitled may in writing direct, and payment of the cheque shall be a good discharge to the Company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share.

- E. No dividend or other moneys payable in respect of a share shall bear interest unless otherwise provided by the rights attached to the share.
- F. Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company.

### **30 ACCOUNTS**

No Shareholder shall have any right of inspecting any accounting records or other book or document of the Company except as conferred by law or authorised by the directors or by the Company.

### **31. CAPITALISATION OF PROFITS**

The directors may with the authority of the Company:

- A. subject as hereinafter provided, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of the Company's share premium account or capital redemption reserve;
- B. appropriate the sum resolved to be capitalised to the Shareholders who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf in allotting any shares or debentures not issued as fully paid up, shares or debentures of the Company of a nominal amount equal to that sum. The share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this regulation, only be applied in allotting shares not issued to Shareholders as fully paid;



- C. make by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this regulation in fractions; and
- D. authorise any person to enter into a binding agreement with the Company on behalf of all the Shareholders concerned providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon such capitalisation.

## **32. NOTICES**

- A. Any notice required to be given under these Articles shall be in writing.
- B. The Company may give any notice to a Shareholder either personally or by sending it by post in a prepaid envelope addressed to the Shareholder at his registered address or by leaving it at that address. In the case of joint holders of a share, all notices shall be given to the joint holder whose name stands first in the register of Shareholders in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders.
- C. A person present, either in person or by proxy, at any meeting shall be deemed to have received notice of the meeting.
- D. Every person who becomes entitled to a share shall be bound by any notice in respect of that share.
- E. Proof that an envelope containing a notice was properly addressed, prepaid and posted is conclusive evidence that the notice was given 48 hours after it was posted. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.
- F. A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a Shareholder by sending or delivering it, at the address, supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.



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### **33. INDEMNITY**

The Company shall indemnify every director or other officer or auditor of the Company in respect of any liability incurred in defending any proceedings to the extent allowed by the Law.

### **34. AMENDMENT OF THESE ARTICLES**

These Articles may only be amended through a Special Resolution adopted in an extraordinary Shareholders' meeting.



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## App3 FORMS

### FORM 1

#### REGISTRAR OF COMPANIES

#### NOTICE OF ADMINISTRATIVE FINE PURSUANT TO ARTICLE 132 OF THE COMPANIES LAW

To: *Full name and address of Person receiving Notice*

1. The DIFC Registrar of Companies considers that you have contravened *{provisions alleged to have been contravened}*.
2. The particulars of the facts giving rise to this contravention/these contraventions are as follows:  
*{statement of the facts constituting the contravention}*.
3. The main purposes of the imposition of an administrative fine is to minimise or offset any benefit a person may obtain from non-compliance with the Companies Law, and to promote high standards of conduct and a culture of compliance by deterring Persons from committing contraventions. Taking into account these purposes, the facts set out in paragraph 2 of this Notice and the general circumstances of this matter, the following fine is imposed:  
*{statement of each contravention and fine imposed}*.
4. This fine may be paid at any time before 5pm on *{date}* by forwarding payment to *{address}*.
5. Should you pay this fine prior to 5pm on *{date}*, then no proceedings will be commenced by the DIFC Registrar of Companies against you in respect of the contraventions the subject of this notice. However, should you continue to be in contravention of the Law, the DIFC Registrar of Companies may take action in respect of any obligation to do or refrain from doing any act or thing.
6. If you object to the imposition of this fine, you may file a Notice of Objection by sending or delivering such a Notice in the form attached, to the following address:  
*{address}*
7. The Notice of Objection must contain every matter you wish the DIFC Registrar of Companies to take into account in determining whether to commence proceedings in the Court. The Notice of Objection must be received by the Registrar of Companies before 5pm on *{date}*. Should you file a Notice of Objection, the Registrar of Companies will take steps with a view to immediately determining whether to commence proceedings against you for payment of the fine.



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8. Should you neither pay the full amount of the fine, nor file a Notice of Objection before 5pm on *{date}*, then the Registrar of Companies must apply to the Court for payment of so much of the fine as remains unpaid, together with costs.
  
  9. Should no Notice of Objection be filed in respect of the imposition of this fine, then the Registrar of Companies may publish details of the matter to which this Notice of Administrative Fine relates.

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Name: *{Registrar of Companies officer}*

Date

Delegate of the DIFC Registrar of Companies





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**FORM 2**

**NOTICE OF OBJECTION**

To: DIFC Registrar of Companies  
PO Box 74777  
Dubai  
United Arab Emirates

1. I refer to the Notice of Administrative Fine, the details of which are as follows:  
*{Date of Notice of Administrative Fine}*  
*{Person to whom such Notice was addressed}*  
*{Date for lodgement of Notice of Objection as stated in Notice of Administration Fine}*
2. I object to the imposition of the fine or so much of the fine that relates to *{the details of aspects disputed}*.
3. *{If the Person to whom the Notice of Administrative Fine is addressed is not a natural Person: I hold the position of {position} within {Person to whom Notice of Administrative Fine is addressed} and I am authorised on its behalf to file this Notice of Objection}*.
4. In determining whether to *{commence proceedings in the Court}* I believe that the Registrar of Companies ought to take into account the following matters:  
*{detailed statement of relevant matters}*

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Name:

Date



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## **App4 CERTIFICATE OF INCORPORATION AND CERTIFICATE OF REGISTRATION**

### **A4.1 Certificate of Incorporation**



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## A4.2 Certificate of Registration