



# RAK INTERNATIONAL CORPORATE CENTRE

GOVERNMENT OF RAS AL KHAIMAH

**RAS AL KHAIMAH INTERNATIONAL CORPORATE CENTRE**

**BUSINESS COMPANIES REGULATIONS 2016**

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**RAK INTERNATIONAL CORPORATE CENTRE  
GOVERNMENT OF RAS AL KHAIMAH**

**RAS AL KHAIMAH INTERNATIONAL CORPORATE CENTRE  
BUSINESS COMPANIES REGULATIONS 2016**

**PART I**

**PRELIMINARY PROVISIONS**

**1. Short title, commencement and authority**

- (1) These Regulations may be cited as the Ras Al Khaimah International Corporate Centre Business Companies Regulations 2016. The provisions of these Regulations come into force on the Commencement Date.
- (2) These Regulations are made by the board of directors of the International Corporate Centre of Ras Al Khaimah pursuant to Ras Al Khaimah Decree No. 4 of 2016 concerning the Establishment of the International Corporate Centre.
- (3) The provisions of Federal Law No. 2 of 2015 concerning Commercial Companies shall not apply to companies incorporated, re-registered or continued pursuant to these Regulations.

**2. Definitions**

In these Regulations, unless the context otherwise requires—

“AED” means UAE Dirhams, the lawful currency for the time being of the UAE;

“affiliate”, in relation to a company (the “first company”), means any other company that is—

- (a) a parent of the first company;
- (b) a subsidiary of the first company;
- (c) a subsidiary of a parent of the first company; or
- (d) a parent of a subsidiary of the first company;

“affiliated company”, in relation to a company (the “first company”), means any other company that is in the same Group as the first company and for the purposes of this definition, company includes a foreign company and any other body corporate;

“approved form” means a form approved by the Registrar in accordance with Regulation 274;

“articles” means the original, amended or restated articles of association of a company together with any resolution passed pursuant to Regulation 95 unless the articles shall have been amended to reflect any such resolution;

“asset” includes money, goods, personal rights over property which can only be claimed or enforced by action, and not by taking physical possession, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“board”, in relation to a company, means—

- (a) the board of directors, committee of management, council or other governing authority of the company; or
- (b) if the company has only one director, that director;

“class”, in relation to shares, means a class of shares each of which has the rights, privileges, limitations and conditions specified for that class in the memorandum;

“close family member”, in relation to a person, means—

- (a) the children and grandchildren (including by adoption) of each parent of that person; and
- (b) the person’s spouse and the spouses of the persons listed in (a);

“Commencement Date” means 20 January 2016;

“company” has the meaning specified in Regulation 4;

“company number” means the number allotted to the company by the Registrar—

- (a) on its incorporation under Regulation 7(1);
- (b) on its continuation under Regulation 188; or
- (c) on its re-registration in accordance with the Transitional Provisions;

“continued” means continued under Regulation 188 and “continuation” shall be construed accordingly;

“Court” means the court from time to time having jurisdiction to hear matters arising pursuant to these Regulations;

“director”, in relation to a company and any other body corporate, includes a person occupying or acting in the position of director by whatever name called;

“distribution” has the meaning specified in Regulation 68;

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) books and drawings; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

“file”, in relation to a document, means to file the document with the Registrar;

“foreign character name” means a foreign character name approved by the Registrar under Regulation 30;

“foreign company” means a company other than those contemplated by Regulation 4;

“Former Regulations” means—

- (a) the Ras Al Khaimah Free Trade Zone International Companies Regulations 2006 and Transfer of Domicile Regulations 2009; and
- (b) the Regulations on International Business Companies 2006 of the RAK Investment Authority;

“Former Regulations Company” means a company incorporated or existing under the Former Regulations;

“Group” means a company and its affiliates, and for the purposes of this definition, company includes a foreign company and any other body corporate;

“guarantee member” has the meaning specified in Regulation 79;

“instrument of transfer” means a document in the approved form transferring ownership of shares;

“limited company” means a company of a type specified in Regulation 5(a), (b) or (c);

“member”, in relation to a company, means a person who is—

- (a) a shareholder; or
- (b) a guarantee member;

“memorandum” means the original, amended or restated memorandum of association of a company;

“name”, in relation to a company, means the name of the company, but excludes any foreign character name;

“parent”, in relation to a company (the “first company”), means another company that, whether acting alone or under an agreement with one or more other persons—

- (a) holds, whether legally or beneficially, a majority of the issued shares of the first company other than by way of security only;
- (b) has the power, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the first company;
- (c) has the right to appoint or remove the majority of the directors of the first company;
- (d) has the right to exercise a dominant influence over the management and control of the first company pursuant to a provision in the constitutional documents of the first company; or
- (e) is a parent of a parent of the first company,



and for the purposes of this definition, company includes a foreign company and any other body corporate;

“permitted character” means a character, sign or symbol specified in Schedule 5, and includes a blank space between two other permitted characters;

“RAK ICC” means International Corporate Centre, a Government Authority of Ras Al Khaimah;

“RAK ICC Chairman” means the chairman of the board of directors of RAK ICC from time to time;

“Ras Al Khaimah” means the emirate of Ras Al Khaimah, UAE;

“register”, in relation to an act done by the Registrar, means to register in the Register of Companies, the relevant company’s register of members or the Register of Charges or any other register created pursuant to these Regulations or rules made pursuant to these Regulations;

“registered agent” means in relation to a company, the person licensed by RAK ICC as a registered agent and who is appointed as the company’s registered agent in accordance with Part V, Section 1;

“registered office” has the meaning specified in Regulation 91;

“Register of Charges” means the Register of Charges maintained by the Registrar in accordance with Regulation 261(1)(b);

“Register of Companies” means the Register of Companies maintained by the Registrar in accordance with Regulation 261(1)(a);

“Registrar” means the registrar appointed in accordance with Regulation 260, and “Deputy Registrar” and “Assistant Registrar” shall be construed accordingly;

“re-register” means re-registered under Schedule 6 to these Regulations and “re-registration” shall be construed accordingly;

“resolution”—

- (a) in relation to the members of a company, means a resolution passed in accordance with Regulation 82; and
- (b) in relation to the directors of a company, means a resolution passed in accordance with Regulation 134;

“restated articles” means a single document that incorporates the articles together with all amendments made to it including pursuant to Regulation 95;

“restated memorandum” means a single document that incorporates the memorandum together with all amendments made to it;

“securities” means shares and debt obligations of every kind, and includes options, warrants and rights to acquire shares or debt obligations;

“segregated portfolio company” means a company incorporated or registered as a segregated portfolio company under Part VII;

“series”, in relation to shares, means a division of a class of shares;

“shareholder” has the meaning specified in Regulation 79;

“solvency test” means the test specified in Regulation 68;

“subsidiary”, in relation to a company (the “first company”), means a company of which the first company is a parent and for the purposes of this definition, company includes a foreign company and any other body corporate;

“Transitional Provisions” means the provisions set out in Schedule 6 to these Regulations;

“treasury share”, in relation to a company, means shares issued by such company that have subsequently been purchased, redeemed or otherwise acquired by such company in accordance with these Regulations and not cancelled;

“UAE” means the United Arab Emirates;

“unlimited company” means a company of the type specified in Regulation 5(d);

“unlimited member” has the meaning specified in Regulation 79;

“voluntary liquidator” means a liquidator appointed under Regulation 205, and, unless the context otherwise requires, includes two or more joint voluntary liquidators but does not include a liquidator appointed under any insolvency laws applicable in RAK ICC, or laws having similar effect;

“Website” means the website of RAK ICC at [www.rakicc.com](http://www.rakicc.com); and

“Zone” means the area within the geographic limits of RAK ICC as specified from time to time by the Ruler of Ras Al Khaimah.

### 3. **General Interpretations**

(1) In these Regulations, a reference to—

- (a) a statutory or regulatory provision includes a reference to the statutory or regulatory provisions as amended or re-enacted from time to time;
- (b) a person includes any natural person, body corporate or body unincorporated, including a company, partnership, unincorporated association, government or state;
- (c) an obligation to publish or cause to be published a particular document or notice shall, unless expressly provided otherwise in the Regulations, include publishing or causing to be published in printed or electronic form;
- (d) a day shall mean a calendar day of the Gregorian calendar;
- (e) a calendar year shall mean a year of the Gregorian calendar;
- (f) a reference to any gender includes all other genders;
- (g) a paragraph or subsection identified by number only and without further identification is a reference to the paragraph or subsection of that number contained in the Regulation or other Section of these Regulations in which that reference occurs;

- (h) a Part, Section, Regulation or Schedule identified by number only and without further identification is a reference to the Part, Section, Regulation or Schedule of that number in these Regulations; and
  - (i) a body corporate includes a body corporate incorporated outside RAK ICC.
- (2) Headings in a Regulation shall not affect its interpretation.
- 4. **Meaning of “company”**

Unless these Regulations expressly provides otherwise, “company” means—

  - (a) a company incorporated in RAK ICC under Regulation 7;
  - (b) a company continued into RAK ICC under Regulation 188; or
  - (c) a Former Regulations Company re-registered with RAK ICC in accordance with the Transitional Provisions,

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside RAK ICC in accordance with Regulation 190.

## PART II

### INCORPORATION, CAPACITY AND POWERS

#### *Section 1 – Incorporation*

- 5. **Types of company**

A company may be incorporated, continued or re-registered under these Regulations as—

  - (a) a company limited by shares;
  - (b) a company limited by guarantee that is not authorised to issue shares;
  - (c) a company limited by guarantee that is authorised to issue shares; or
  - (d) an unlimited company that is authorised to issue shares.
- 6. **Application to incorporate a company**
  - (1) Application may be made to the Registrar for the incorporation of a company by filing—
    - (a) a memorandum complying with Regulation 9 (whether substantially in one of the forms set out in Schedules 1 to 3 or otherwise) that is signed by the proposed initial member(s) of the company;
    - (b) articles (whether substantially in one of the forms set out in Schedules 1 to 3 or otherwise) that are signed by the proposed initial member(s) of the company;
    - (c) a document in the approved form signed by the proposed registered agent signifying his consent to act as registered agent;
    - (d) if the company is to be incorporated as a segregated portfolio company, the written approval of the Registrar given under Regulation 140;

- (e) a document in the approved form containing the full name and address of each of the initial member(s);
  - (f) a document in the approved form containing the full name and address of each proposed director signed by the proposed director signifying his consent to act as a director; and
  - (g) such other documents as may be prescribed by the Registrar from time to time.
- (2) An application for the incorporation of a company may be filed only by the proposed registered agent and the Registrar shall not accept an application for the incorporation of a company filed by any other person.
- (3) For the purposes of this Regulation, the “proposed registered agent” means the person named in the memorandum as the first registered agent of the company.

## **7. Incorporation of a company**

- (1) If the Registrar is satisfied that the requirements of these Regulations in respect of incorporation have been complied with, the Registrar shall, upon receipt of the documents filed under Regulation 6(1)—
- (a) register the documents;
  - (b) allot a unique number to the company; and
  - (c) issue a certificate of incorporation to the company in the approved form.
- (2) A certificate of incorporation issued under subsection (1) is conclusive evidence that—
- (a) all the requirements of these Regulations as to incorporation have been complied with; and
  - (b) the company is incorporated on the date specified in the certificate of incorporation.

## **8. Registration of company as restricted purposes company**

- (1) If the memorandum of a company limited by shares, as filed under Regulation 6, Regulation 187 or the Transitional Provisions, contains the statements specified in Regulation 10(1) and (2)—
- (a) the company shall be registered on incorporation, continuation or re-registration as having restricted purposes; and
  - (b) the certificate of incorporation, continuation or re-registration shall state that the company is a restricted purposes company.
- (2) A company that is not registered as a restricted purposes company on its incorporation, continuation or re-registration shall not subsequently be registered as a restricted purposes company.

### *Section 2 – Memorandum and Articles*

## **9. Memorandum**

- (1) The memorandum of a company shall state—
- (a) the name of the company;

- (b) whether the company is—
  - (i) a company limited by shares;
  - (ii) a company limited by guarantee that is not authorised to issue shares;
  - (iii) a company limited by guarantee that is authorised to issue shares; or
  - (iv) an unlimited company that is authorised to issue shares;
- (c) the address of the first registered office of the company;
- (d) the name of the first registered agent of the company;
- (e) in the case of a company limited by shares or otherwise authorised to issue shares—
  - (i) the maximum number of shares that the company is authorised to issue or that the company is authorised to issue an unlimited number of shares; and
  - (ii) the classes of shares that the company is authorised to issue and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares. The information in this subsection (1)(e)(ii) may also be set out in the articles of a company;
- (f) in the case of a company limited by guarantee, whether or not it is authorised to issue shares, the amount which each guarantee member of the company is liable to contribute to the company's assets in the event that a liquidator is appointed whilst he is a member. The information in this subsection (1)(f) may also be set out in the articles of a company;
- (g) in the case of a segregated portfolio company, that the company is a segregated portfolio company; and
- (h) in the case of a company which is to have limited duration, the date upon which the company will automatically be dissolved unless the members unanimously resolve to extend the term of the company.

- (2) The memorandum of a company may contain a statement as to any limitations on the business that the company may carry on.

#### 10. **Additional matters to be stated in memorandum of restricted purposes company**

- (1) The memorandum of a company limited by shares may state that the company is a restricted purposes company.
- (2) The memorandum of a restricted purposes company shall state the purposes of the company.
- (3) Nothing in this Regulation prevents the memorandum or articles of a company that is not a restricted purposes company from limiting the purposes, capacity, rights, powers or privileges of the company.

#### 11. **Effect of memorandum and articles**

- (1) The memorandum and articles of a company are binding as between—
  - (a) the company and each member of the company; and

- (b) each member of the company.
- (2) The company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in these Regulations except to the extent that they are negated or modified, as permitted by these Regulations, by the memorandum or the articles.
- (3) The memorandum and articles of a company have no effect to the extent that they contravene or are inconsistent with these Regulations.

## 12. **Amendment of memorandum and articles**

- (1) Subject to subsection (2) and Regulation 14, the members of a company may, by resolution, amend the memorandum or articles of the company.
- (2) The memorandum of a company may include one or more of the following provisions—
  - (a) that specified provisions of the memorandum or articles may not be amended;
  - (b) that a resolution passed by a specified majority of members, greater than 50%, is required to amend the memorandum or articles or specified provisions of the memorandum or articles;
  - (c) that the memorandum and articles must be signed by each member of the company at the time of such amendment for any amendment to be effective; and
  - (d) that the memorandum or articles, or specified provisions of the memorandum or articles, may be amended only if certain specified conditions are met.
- (3) Subject to subsection (4), the memorandum of a company may authorise the directors by resolution to amend the memorandum or articles of the company.
- (4) Notwithstanding any provision in the memorandum or articles to the contrary, the directors of a company shall not have the power to amend the memorandum or articles—
  - (a) to restrict the rights or powers of the members to amend the memorandum or articles;
  - (b) to change the percentage of members required to pass a resolution to amend the memorandum or articles; or
  - (c) in circumstances where the memorandum or articles cannot be amended by the members,

and any resolution of the directors of a company is void and of no effect to the extent that it contravenes this subsection.

- (5) If provision is made in the memorandum for the variation of the rights attached to a class of shares by the terms of issue of the shares, those rights may only be varied in accordance with those provisions. Subject to the memorandum and articles of a company, if provision is not so made the rights may be varied if, but only if—
  - (a) the holders of 75% of the number of outstanding shares of that class consent in writing to the variation; or
  - (b) a resolution passed by the holders of 75% of the number of outstanding shares of that class at a separate meeting of the holders of that class sanctions the variation.

- (6) Any alteration of a provision in the memorandum or articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the memorandum or articles is itself to be treated as a variation of those rights.
- (7) Where the memorandum or articles of a company list the members of the company and their shareholdings, no share may be issued, transferred, repurchased or redeemed unless a resolution has been passed amending the memorandum or articles of the company to reflect such issuance, transfer, repurchase or redemption and such resolution shall take effect upon the shares being issued, transferred, repurchased or redeemed.

### **13. Filing of notice of amendment of memorandum or articles**

- (1) Where a resolution is passed to amend the memorandum or articles of a company, the company shall file for registration—
  - (a) a notice of amendment in the approved form; or
  - (b) a restated memorandum or restated articles incorporating the amendment made (which, if Regulation 12(2)(c) applies, must be signed by each member of the company at the time of such amendment).
- (2) Subsection (1) shall not apply to a resolution passed pursuant to Regulation 95.
- (3) An amendment to the memorandum or articles has effect from the date that the notice of amendment, or restated memorandum or restated articles incorporating the amendment, is registered by the Registrar or from such other date as may be ordered by the Court under subsection (6).
- (4) A company, a member or director of a company or any interested person may apply to the Court for an order that an amendment to the memorandum or articles should have effect from another date being no earlier than the date of the resolution to amend the memorandum or articles.
- (5) An application under subsection (4) may be made—
  - (a) on, or at any time after, the date of the resolution to amend the memorandum or articles; and
  - (b) before or after the notice of amendment, or the restated memorandum or restated articles, has been filed for registration.
- (6) The Court may make an order on an application made under subsection (4) where it is satisfied that it would be just to do so but if, at the time of the order, the notice of amendment, or restated memorandum or restated articles, has not been filed, the Court shall order that the notice of amendment, or restated memorandum or restated articles, must be filed within a period not exceeding ten days after the date of the order.
- (7) If a notice of amendment or restated memorandum or restated articles is not filed within the period specified in a Court order made under subsection (6), the order ceases to have effect and subsection (2) applies as if the order had never been made.

### **14. Amendment of memorandum with respect to restricted purposes**

- (1) A restricted purposes company shall not amend its memorandum to delete or modify the statement specified in Regulation 10(1) and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this subsection.



(2) Subject to Regulation 12(2), a restricted purposes company may amend its memorandum to modify the purposes to which it is restricted.

(3) A company that is not a restricted purposes company shall not amend its memorandum to state that it is a restricted purposes company and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this subsection.

**15. Restated memorandum or restated articles**

(1) A company may, at any time, file a restated memorandum or restated articles. If Regulation 12(2)(c) applies the restated memorandum or restated articles must signed by each member of the company at the time of such restatement.

(2) A restated memorandum or restated articles filed under subsection (1) shall incorporate only such amendments that have been registered under Regulation 13 and that, under any provision of these Regulations, are deemed to have been made.

(3) Where a company files a restated memorandum or restated articles under subsection (1), the restated memorandum or restated articles has effect as the memorandum or articles of the company with effect from the date that it is registered by the Registrar.

(4) The Registrar is not required to verify that a restated memorandum or restated articles filed under this Regulation incorporates all the amendments, or only those amendments, that have been registered under Regulation 13 or that, under any provision of these Regulations, are deemed to have been made.

**16. Provision of copies of memorandum and articles to members**

(1) A copy of the memorandum and a copy of the articles shall be sent to any member who requests a copy on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

(2) A company that contravenes subsection (1) commits a contravention of these Regulations and is liable to a fine not exceeding level 1.

*Section 3 – Company Names*

**17. Company name**

(1) The name of a company shall be a name that comprises no more than one hundred permitted characters that complies with the provisions of this Section, including the words or abbreviations required by subsections (2) to (4).

(2) The name of a limited company, shall end with the word “Limited” or “Incorporated” or the abbreviation “Ltd” or “Inc”.

(3) The name of an unlimited company shall end with the word “Unlimited” or the abbreviation “Unltd”.

(4) The name of a segregated portfolio company shall include the designation “Segregated Portfolio Company” or “SPC” placed immediately before one of the endings specified in subsections (2) or (3).



18. **Exemption from Regulation 17**

- (1) Application may be made to the Registrar in the approved form for authorisation to—
- (a) incorporate a company under a name; or
  - (b) change the name of a company to a name,
- that, in either case, does not include an ending specified in Regulation 17.
- (2) On an application made under subsection (1), the Registrar may authorise the registration of the company under a name that does not include an ending specified in Regulation 17 if the memorandum of the company—
- (a) limits the objects of the company to the pursuit of wholly charitable or non-commercial purposes and requires the company to apply its income solely in promoting those purposes; and
  - (b) prohibits the company from making any distributions to its members.
- (3) An authorisation under subsection (2) shall be subject to such conditions as the Registrar may impose whether on the granting of the authorisation or subsequently.
- (4) A company having the benefits of an authorisation granted under subsection (2) shall notify the Registrar as soon as practicable if—
- (a) its memorandum is amended such that it no longer complies with subsection (2);
  - (b) it breaches or, for any reason, is no longer in compliance with any conditions specified by the Registrar under subsection (3);
  - (c) it pursues purposes that are not wholly charitable or non-commercial or applies its income other than in promoting its purposes; or
  - (d) it makes any distribution to its members.
- (5) If an event that requires notification by a company under subsection (4) occurs, the Registrar may, whether or not the company has provided notification to the Registrar as required by that subsection, by notice in writing—
- (a) revoke the authorisation granted under subsection (2); and
  - (b) direct the company to change its name to a name acceptable to the Registrar that includes an ending specified in Regulation 17 on or before a date specified in the notice, which shall be not less than 14 days after the date of the notice.
- (6) Where the Registrar issues a notice under subsection (5), Regulation 22(2) and (3) apply as if the notice was a notice issued by the Registrar under Regulation 22(1).
- (7) A company that contravenes subsection (5) commits a contravention of these Regulations and is liable to a fine not exceeding level 1.

**19. Restrictions on company names**

- (1) No company shall be registered, whether on incorporation, continuation, re-registration, merger or consolidation under a name—
- (a) subject to Regulation 26, the use of which would contravene another applicable law;
  - (b) that—
    - (i) is identical to the name under which a company is or has been registered under these Regulations or another applicable law; or
    - (ii) is so similar to the name under which a company is or has been registered under these Regulations or another applicable law that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;
  - (c) that is identical to a name that has been reserved under Regulation 24 or that is so similar to a name that has been reserved under Regulation 24 that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;
  - (d) that contains a restricted word, phrase or abbreviation set out in Schedule 4, unless the Registrar has given its prior written consent to the use of the word, phrase or abbreviation in accordance with Regulation 27; or
  - (e) that, in the opinion of the Registrar, is offensive, objectionable or contrary to public policy or to the public interest.
- (2) A company name may only contain one or more numerals if the Registrar is satisfied that it is clear from the context that the name is not a company number.
- (3) For the purposes of subsection (1)(d), the Registrar may, by notice published on the Website, specify additional restricted words, phrases or abbreviations.
- (4) Notwithstanding subsections (1)(b)(ii) or (1)(c), the Registrar may register a company under a name that is similar to the name of another company or which has been reserved under Regulation 24 if both companies are affiliates.
- (5) A company may have an additional foreign character name approved by the Registrar in accordance with Regulation 30.

**20. Company numbers for re-registering and continuing companies**

Nothing in these Regulations shall prohibit the Registrar from re-registering a Former Regulations Company pursuant to the Transitional Provisions or continuing a company into RAK ICC from another jurisdiction in accordance with Part X with its existing company number, together with any prefix which may be appropriate in the circumstances, where the Registrar considers that it is appropriate to do so.

**21. Company may change name**

- (1) Subject to its memorandum and articles, a company may make an application to the Registrar in the approved form to change its name or its foreign character name.
- (2) If the Registrar is satisfied that the proposed new name or foreign character name of the company complies with Regulation 17 and, if appropriate, Regulation 29 and is a name under

which the company could be registered under Regulation 19, the Registrar shall, on receipt of an application under subsection (1)—

- (a) register the company's change of name; and
- (b) issue a certificate of change of name to the company.

**22. Registrar may direct change of name**

- (1) If the Registrar considers, on reasonable grounds, that the name of a company does not comply with Regulations 17, 19 or 20, the Registrar may by written notice direct the company to make application to change its name on or before a date specified in the notice, which shall be not less than 21 days after the date of the notice.
- (2) If a company that has received a notice under subsection (1) fails to file an application to change its name to a name acceptable to the Registrar on or before the date specified in the notice, the Registrar may revoke the name of the company and assign it a new name acceptable to the Registrar.
- (3) Where the Registrar assigns a new name to a company under subsection (2), he shall—
  - (a) register the company's change of name;
  - (b) issue a certificate of change of name to the company; and
  - (c) advertise the change of name on the Website for at least seven days.

**23. Effect of change of name**

- (1) A change of the name of a company under Regulations 21 or 22—
  - (a) takes effect from the date of the certificate of change of name issued by the Registrar; and
  - (b) does not affect any rights or obligations of the company, or any legal proceedings by or against the company, and any legal proceedings that have been commenced against the company under its former name may be continued against it under its new name.
- (2) Where the name of a company is changed under Regulations 21 or 22, the company's memorandum and articles are deemed to be amended to state the new name with effect from the date of the change of name certificate.

**24. Reservation of name**

- (1) The Registrar may, upon a request made by a registered agent in the approved form, reserve for 30 days a name for future adoption by a company under these Regulations.
- (2) The Registrar may refuse to reserve a name if he is not satisfied that the name in respect of the company or proposed company complies with this Section.
- (3) A reservation of a name for future adoption may be extended for a further period of 30 days by a registered agent filing a further request in the approved form. A name may not be reserved for a period of longer than 90 days without the approval of the Registrar.

**25. Use of company name**

- (1) A company shall ensure that its full name and, if it has one, its foreign character name, is clearly stated in—
- (a) every written communication sent by, or on behalf of, the company; and
  - (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.
- (2) A company that contravenes subsection (1) commits a contravention of these Regulations and is liable to a fine not exceeding level 1.

**26. Rights and interest in names**

- (1) Nothing in this Section requires the Registrar, when determining whether to incorporate or continue a company under a name, to register a change of name or to direct a change of name, to—
- (a) make a determination of any person's interest in a name, or the rights of any person concerning a name or the use of a name, whether the interest or rights are alleged to arise under any regulation issued by RAK ICC, Ras Al Khaimah decree, federal law of the UAE or an applicable law or rule of law in a jurisdiction other than RAK ICC;
  - (b) make a determination as to whether a proposed name would contravene the provisions of any law of a jurisdiction other than RAK ICC; or
  - (c) take account of any trade or service mark, or equivalent right, wherever registered.
- (2) Subsection (1) does not prevent the Registrar taking into account any matter specified in that subsection when determining whether, in his opinion, the registration of a company name is, or would be, objectionable or contrary to public policy or to the public interest.
- (3) The registration of a company under these Regulations with a company name does not give the company any interest in, or rights over, the name that it would not have, apart from this Section.

**27. Company name includes restricted words, phrases or abbreviations**

Where the proposed name for a company, whether on incorporation, continuation, re-registration or a change of name, is to include a restricted word, phrase or abbreviation, the application shall be accompanied by the written approval of the Registrar to use the restricted word, phrase or abbreviation. Any approval of the use of a restricted word, phrase or abbreviation shall be at the discretion of the Registrar.

**28. Company name in foreign language**

Where the proposed name for a company has a meaning in a language other than English, the application to register the company under that name, whether on incorporation, continuation, re-registration or a change of name shall be accompanied by a translation of the name or proposed name that has been certified, in accordance with Regulation 281, by the person who translated the name.

**29. Application for approval and registration of foreign character name**

- (1) Regulations 29 to 31 apply where the proposed name for a company has a meaning in a language other than English and a certified translation of that name has been provided under Regulation 28.
- (2) Subject to Regulation 30, on an application made under subsection (6), the Registrar may register a company with an additional foreign character name.
- (3) Where a company is registered with an additional foreign character name—
  - (a) the memorandum shall contain a statement that the company has a foreign character name in addition to its name and shall state the foreign character name; and
  - (b) wherever the name of the company appears in the memorandum or articles, there shall also be a reference to the foreign character name.
- (4) A company shall not be registered with a foreign character name that is—
  - (a) identical to a foreign character name that is registered, or has been registered, to another company under these Regulations; or
  - (b) so similar to a foreign character name that is registered, or has been registered, to another company under these Regulations that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead.
- (5) Notwithstanding subsection (4)(b), the Registrar may register a company with an additional foreign character name that is similar to the foreign character name of another company if both companies are affiliates.
- (6) An application to the Registrar for the approval and registration of a foreign character name may be made together with the application to incorporate, continue or re-register the company or at any time thereafter.
- (7) An application under subsection (6) shall be in the approved form and shall be accompanied by—
  - (a) a statement certified by a person who has the necessary competence—
    - (i) confirming whether or not the foreign character name is a translation of, or has a meaning equivalent to, the name or proposed name of the company; and
    - (ii) specifying the meaning or, where it has more than one possible meaning, the meanings of the foreign character name; and
  - (b) where the application is in relation to an existing company, a notice of amendment of its memorandum and articles to incorporate the matters required under subsection (3) or a restated memorandum and restated articles complying with subsection (3).

**30. Approval of a foreign character name**

- (1) The Registrar shall not approve a foreign character name if—
  - (a) the name does not comply with these Regulations; or

- (b) the Registrar considers that—
  - (i) the name is offensive or objectionable; or
  - (ii) it would be contrary to public policy or the public interest to register the name.
- (2) The Registrar may refuse to approve a foreign character name if—
  - (a) the Registrar is not satisfied that he understands the full or true meaning of the name, whether by reason of the accuracy of the translation, the context in which the name will, or may, be used or otherwise; or
  - (b) it is not, whether for technical or other reasons, practicable to register the name.
- (3) On approving a foreign character name, whether on incorporation, continuation, re-registration, change of name or otherwise, the Registrar shall—
  - (a) register the foreign character company name against the company in the Register of Companies; and
  - (b) issue a certificate of incorporation, continuation, re-registration or registration of additional foreign character name, as appropriate, which shall—
    - (i) indicate that the company has a foreign character name in addition to its name; and
    - (ii) state both its name and the foreign character name.

**31. Change of name where company has foreign character name**

- (1) If a company that has a foreign character name applies to change its name or its foreign character name, it shall file with the application for a change of name, the documents specified in Regulations 28 and 29.
- (2) Where a company applies to change its foreign character name, Regulation 30 applies, with suitable modifications.

**32. Deregistration of foreign character name**

- (1) A company that is registered with a foreign character name may apply to the Registrar for the deregistration of its foreign character name.
- (2) An application under subsection (1) shall be in the approved form and shall be accompanied by—
  - (a) a notice of amendment of its memorandum and articles removing all references to the foreign character name; or
  - (b) a restated memorandum and restated articles which contains no references to a foreign character name.
- (3) On an application under subsection (1), the Registrar shall deregister the foreign character name and remove it from the Register of Companies.
- (4) Upon deregistration of the foreign character name of a company, the Registrar shall issue a certificate of deregistration of the foreign character name.

**33. Interpretation for Regulations 34 to 38**

**(1) For the purposes of Regulations 34 to 38—**

“change date” means the date on which the first company changed its name;

“discontinued company” means a company in respect of which the Registrar has issued a certificate of discontinuance under Regulation 190(8) of these Regulations;

“dissolved company” means a company that has been dissolved under these Regulations or the Former Regulations;

“first company” means the company or a Former Regulations Company that has, as the case may be—

(a) changed its name; or

(b) been dissolved under these Regulations or the Former Regulations; or

“second company” means the company that seeks to use the name of the first company, whether on incorporation, continuation or through a change of name.

**34. Registrar may permit re-use of company names**

**(1) Where permitted under Regulations 35, 36 or 37, the Registrar may incorporate or continue a company under, or register a change of name of a company to, a name that is identical or similar to the name of—**

(a) a company or former company that has—

(i) changed its name;

(ii) been dissolved under these Regulations or the Former Regulations; or

(b) a discontinued company.

**(2) Regulations 35, 36 and 37 are subject to Regulation 38.**

**(3) Nothing in Regulations 35 to 38 is intended to give a company, whether the first company or the second company, any entitlement to the transfer of the name from the first company to the second company.**

**35. Use of changed name**

**(1) Where the first company is a company that has changed its name, the Registrar may permit the previous name of the first company, or a name similar to the previous name of the first company, to be registered to a second company—**

(a) at any time after the expiry of a period of three years from the date that the first company changed its name; or

(b) if the first company provides its written consent—

(i) where the Registrar is satisfied that the change of name is part of a genuine sale of the business or undertaking, or a substantial part of the business or



undertaking, of the first company to the second company, at any time after the first company has changed its name; or

- (ii) where the Registrar is satisfied that the first company and the second company are affiliates, at any time after the first company has changed its name.

- (2) Where a company has changed its name, and the name, or a similar name, has not been registered to a second company, the Registrar may permit the company to change its name to its previous name, or a similar name.

**36. Use of name of dissolved company**

Where the first company is a dissolved company, the Registrar may permit the name of the first company, or a name similar to the name of the first company, to be registered to a second company at any time after the expiry of a period of three years from the date that the first company was dissolved.

**37. Use of name of discontinued company**

- (1) Where the first company is a discontinued company, the Registrar may permit the name of the first company, or a name similar to the name of the first company, to be registered to a second company at any time after the expiry of a period of three years from the date of the certificate of discontinuance issued in respect of the first company.
- (2) If a discontinued company is subsequently continued under these Regulations, the Registrar may permit the company to be continued under its previous name, as stated in the certificate of discontinuance, unless the name has been reused in accordance with these Regulations.

**38. Restrictions on multiple uses of same or similar name**

The Registrar shall not permit a name, including a similar name, to be registered to—

- (a) more than two different companies; or
- (b) to the same company more than twice,

in any period of three years, save in the case of similar names where the companies are affiliates as contemplated by Regulation 19(4).

*Section 4 – Capacity and Powers*

**39. Separate legal personality**

A company is a legal entity in its own right separate from its members and continues in existence until it is dissolved. Subject to these Regulations, a company has the capacity, rights and privileges of a natural person.

**40. Capacity, powers and restrictions**

- (1) Subject to these Regulations, any other applicable law and its memorandum and articles, a company has, irrespective of corporate benefit—
  - (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, powers and privileges.



- (2) Without limiting subsection (1), subject to its memorandum and articles, the powers of a company include the power to do the following—
- (a) unless it is a company limited by guarantee that is not authorised to issue shares—
    - (i) issue and cancel shares and hold treasury shares;
    - (ii) grant options over unissued shares in the company and treasury shares;
    - (iii) issue securities that are convertible into shares; and
    - (iv) give financial assistance to any person in connection with the acquisition of its own shares;
  - (b) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations;
  - (c) guarantee a liability or obligation of any person and secure any obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
  - (d) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.
- (3) For the purposes of subsection (2)(d), the directors may cause the company to transfer any of its assets in trust to one or more trustees, each of which may be an individual, company, association, partnership, foundation or similar entity and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries of the trust. Such trust and trustees may be located in any jurisdiction. The governing law of a trust created by a company may be the law of any jurisdiction and the trust will be recognised and given effect in the Zone to the extent, and in accordance with, the requirements of the governing law of the trust.
- (4) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (3), and those rights or interests may be pleaded against any transferee in any such transfer.
- (5) No company shall—
- (a) carry on business with persons in the Zone unless expressly authorised to do so by RAK ICC;
  - (b) carry on any other business which may, by regulations made by RAK ICC, be prohibited by RAK ICC;
  - (c) carry on banking business in the UAE or the Zone; or
  - (d) carry on business as an insurance or reinsurance company, insurance agent or insurance broker in the UAE or the Zone.
- (6) A company shall not be treated as carrying on business with persons in the Zone by reason only that it—
- (a) makes or maintains professional contact with legal consultants, accountants, management companies or other similar persons carrying on business within the Zone;

- (b) maintains books and records within the Zone;
  - (c) holds within the Zone meetings of its directors or members;
  - (d) maintains a bank account in the Zone for the purpose of conducting its routine operational transactions; or
  - (e) holds assets in areas of the Zone designated by RAK ICC.
- (7) No company shall carry on business in the UAE outside the Zone unless it has first obtained all appropriate licences to conduct the business activity from the competent authorities in the UAE and has complied with applicable laws of the UAE as they apply to companies incorporated outside the UAE. RAK ICC shall not have any liability in respect of a company's failure to obtain the relevant licences.
- (8) If a company wishes to conduct business outside the Zone and outside the UAE, it must ensure that it is appropriately licensed by the competent authorities in the relevant jurisdiction. RAK ICC shall not have any liability in respect of a company's failure to obtain the relevant licences.

**41. Validity of acts of company**

- (1) No act of a company and no transfer of an asset by or to a company shall be invalid by reason only of the fact that the company did not have the capacity, right or power to perform such act or to transfer or receive the asset.
- (2) Subsection (1) does not apply with respect to a restricted purposes company.

**42. Personal liability**

Subject to Regulation 113, no director, agent or voluntary liquidator of a company is liable for any debt, obligation or default of the company, unless specifically provided in these Regulations or in any other applicable law, and except in so far as he may be liable for his own conduct or acts.

**43. Dealings between company and other persons**

- (1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that—
- (a) these Regulations or the memorandum or articles of the company have not been complied with;
  - (b) a person named as a director in the company's register of directors—
    - (i) is not a director of the company;
    - (ii) has not been duly appointed as a director of the company; or
    - (iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
  - (c) a person held out by the company as a director, employee or agent of the company—
    - (i) has not been duly appointed; or

- (ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or
- (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (e).

- (2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

#### 44. **Constructive notice**

- (1) A person is not deemed to have notice or knowledge of any document relating to a company, including the memorandum and articles, or of the provisions or contents of any such document, by reason only of the fact that a document—
  - (a) is available to such person from the Registrar; or
  - (b) is available for inspection by such person at the registered office of the company or at the office of the registered agent.
- (2) Subsection (1) does not apply—
  - (a) in relation to a document filed under Part VIII; or
  - (b) to a document relating to a restricted purposes company.
- (3) A person is deemed to have notice of any document specified in subsection (2) that has been registered with, and made available publicly by, the Registrar under these Regulations, and the provisions and contents of any such document.

### **PART III**

#### **SHARES**

##### *Section 1 – General*

#### 45. **Legal nature of shares**

A share in a company is personal property.

46. **Rights attaching to shares and classes of shares**

- (1) Subject to subsection (2), a share in a company confers on the holder—
- (a) the right to one vote at a meeting of the members of the company or on any resolution of the members of the company;
  - (b) the right to an equal share in any distribution paid in accordance with these Regulations; and
  - (c) the right to an equal share in the distribution of the surplus assets of the company upon its liquidation, winding up or dissolution.
- (2) Where expressly authorised by its memorandum in accordance with Regulation 9(1)(e), a company—
- (a) may issue more than one class of shares; and
  - (b) may issue shares subject to terms that negate, modify or add to the rights specified in subsection (1).

47. **Series of shares**

Subject to its memorandum and articles, a company may issue a class of shares in one or more series, with each share in the series having the rights, privileges, restrictions and conditions for that series as specified in the memorandum of the company, provided that each share in the series shall have the same rights, privileges, restrictions and conditions as all other shares in the same class.

48. **Types of shares**

- (1) Without limiting Regulation 46(2)(b), shares in a company may—
- (a) be redeemable;
  - (b) confer no rights, or preferential rights, to distributions;
  - (c) confer special, limited or conditional rights, including voting rights;
  - (d) confer no voting rights;
  - (e) participate only in certain assets of the company; or
  - (f) where issued in, or converted to, one class or series, be convertible to another class or series, in the manner specified in the memorandum and articles if so specified and the provisions of Part III, Section 2 of these Regulations shall not apply to such conversion.
- (2) Subject to its memorandum and articles, a company may issue bonus shares, partly paid shares and nil paid shares.
- (3) Shares may be held by more than one person as joint owners. The name of each such joint owner shall be entered in the register of members as holders of the relevant shares.

49. **Par value and no par value shares**

- (1) Subject to the memorandum and articles of a company—
  - (a) a share may be issued with or without a par value; and
  - (b) a share with a par value may be issued in any currency.
- (2) The par value of a par value share may be a fraction of the smallest denomination of the currency in which it is issued.

50. **Bearer shares**

- (1) A company has no power to, and shall not—
  - (a) issue a bearer share;
  - (b) convert a registered share to a bearer share; or
  - (c) exchange a registered share for a bearer share.
- (2) A foreign company which wishes to continue into RAK ICC under Regulation 188 or a Former Regulations Company which wishes to re-register with RAK ICC in accordance with the Transitional Provisions which has in issue bearer shares shall be required to convert all such bearer shares into registered shares prior to continuation into or re-registration with RAK ICC.

51. **Fractional shares**

- (1) Subject to its memorandum and articles, a company may issue fractional shares.
- (2) Subject to its memorandum and articles, a fractional share in a company has the corresponding fractional rights, obligations and liabilities of a whole share of the same class.

52. **Change in number of shares company authorised to issue**

- (1) Where the memorandum of a company is amended to change the maximum number of shares that the company is authorised to issue, the company shall, together with the notice of amendment of its memorandum or the restated memorandum filed under Regulation 13(1), file a notice in the approved form.
- (2) A company that contravenes subsection (1) commits a contravention of these Regulations and is liable to a fine not exceeding level 1.

53. **Division and combination of shares**

- (1) Subject to its memorandum and articles, a company may—
  - (a) divide its shares, including issued shares, into a larger number of shares; or
  - (b) combine its shares, including issued shares, into a smaller number of shares.
- (2) A division or combination of shares, including issued shares, of a class or series shall be for a larger or smaller number as the case may be, of shares in the same class or series.

- (3) A company shall not divide its shares under subsection (1)(a) or (2) if it would cause the maximum number of shares that the company is authorised to issue by its memorandum to be exceeded.

- (4) Where par value shares are divided or combined under this Regulation, the aggregate par value of the new shares must be equal to the aggregate par value, if any, of the original shares.

**54. Register of members**

- (1) The Registrar shall maintain a register of members containing, as appropriate for the company—

- (a) the names and addresses of the persons who hold shares in the company; and
- (b) the number of each class and series of shares held by each shareholder.

- (2) The company shall ensure that the register of members is kept up to date.

- (3) A company that contravenes subsection (2) commits a contravention of these Regulations and is liable to a fine not exceeding level 2.

- (4) The company or its registered agent shall file any changes in its register of members with the Registrar in the approved form within five days of such change. Changes will take effect upon the register of members being updated by the Registrar.

- (5) Subject to Regulations 105, 265 and 266, any and all registers of members maintained by the Registrar shall not be disclosed to the public by the Registrar or RAK ICC.

**55. Register of members as evidence of legal title**

- (1) The entry of the name of a person in the register of members maintained by the Registrar as a holder of a share in a company is prima facie evidence that legal title in the share vests in that person.

- (2) A company may treat the holder of a share as the only person entitled to—

- (a) exercise any voting rights attaching to the share;
- (b) receive notices;
- (c) receive a distribution in respect of the share; and
- (d) exercise other rights and powers attaching to the share.

**56. Rectification of register of members**

- (1) If—

- (a) information that is required to be entered in the register of members under Regulation 54 is omitted from the register or inaccurately entered in the register of members, or
- (b) there is unreasonable delay in entering the information in the register of members,

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Registrar for an order that the register be rectified, and the Registrar may

either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register of members, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

- (2) The Registrar may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between—

- (a) two or more members or alleged members; or
- (b) between members or alleged members and the company,

and generally the Registrar may, in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the register of members.

#### **57. Share certificates**

- (1) A company shall state in its articles the circumstances in which share certificates shall be issued.
- (2) If a company issues share certificates, the certificates shall be signed by at least one director of the company or by such other person who may be authorised by the memorandum or articles to sign share certificates and the articles may provide for the signatures to be facsimiles or electronic. A copy of any certificate issued by the company shall be provided to the Registrar within five days.
- (3) The company shall ensure that, prior to registration of any transfer, repurchase or redemption of shares, any share certificates issued by the company in respect of such shares have been returned to the company for cancellation, or an appropriate indemnity has been given by the holder of such shares in respect of any lost share certificates and the Registrar is notified of such return and cancellation or the loss of the certificates prior to the registration of the transfer of such shares.

### *Section 2 – Issue of Shares*

#### **58. Issue of shares**

Subject to these Regulations and to the memorandum and articles, shares in a company may be issued, and options to acquire shares in a company granted, at such times, to such persons, for such consideration and on such terms as the directors may determine.

#### **59. Pre-emptive rights**

- (1) Subsections (2) to (4) apply to a company where the memorandum or articles of the company expressly provide that this Regulation shall apply to the company, but not otherwise.
- (2) Before issuing shares that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the company, the directors shall offer the shares to existing shareholders in such a manner that, if the offer was accepted by those shareholders, the existing voting or distribution rights, or both, of those shareholders would be maintained.
- (3) Shares offered to existing shareholders under subsection (2) shall be offered at such price and on such terms as the shares are to be offered to other persons.
- (4) An offer made under subsection (2) must remain open for acceptance for a reasonable period of time.

- (5) Nothing in this Regulation prevents the memorandum or articles of a company from modifying the provisions of this Regulation or from making different provisions with respect to pre-emptive rights.

**60. Consideration for shares**

- (1) Subject to subsection (2), a share may be issued for consideration in any form or a combination of forms, including money, a promissory note or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services.
- (2) The consideration for a share with par value shall not be less than the par value of the share.
- (3) If a share is issued in contravention of subsection (2), the person to whom the share is issued is liable to pay to the company an amount equal to the difference between the issue price and the par value and the provisions of Regulation 64 shall apply.
- (4) Subject to the memorandum and articles of a company, a bonus share issued by the company shall be deemed to have been fully paid for on issue.

**61. Shares issued for consideration other than money**

Before issuing shares with par value for a consideration other than money whether in whole or in part, the directors shall pass a resolution stating—

- (a) the amount to be credited for the issue of the shares;
- (b) their opinion of the reasonable present cash value of the non-money consideration for the issue; and
- (c) that, in their opinion, the present cash value of the non-money and money consideration, if any, is not less than the amount to be credited for the issue of the shares.

**62. Consent to issue of shares**

The issue by a company of a share that—

- (a) increases a liability of a person to the company; or
- (b) imposes a new liability on a person to the company,

is void if that person, or an authorised agent of that person, does not agree in writing to becoming the holder of the share.

**63. Time of issue**

A share is deemed to be issued when the name of the shareholder is entered in the register of members.

**64. Forfeiture of shares**

- (1) The memorandum or articles of a company, or the terms on which shares in a company are issued, may contain provisions for the forfeiture of shares which are not fully paid for on issue.



- (2) Any provision in the memorandum or articles, or the terms on which shares in a company are issued, providing for the forfeiture of shares shall contain a requirement that a written notice of call specifying a date for payment to be made shall be served on the member who defaults in making payment in respect of the share.
- (3) The written notice of call referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.
- (4) Where a written notice of call has been issued under this Regulation and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the shares to which the notice relates.
- (5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

### *Section 3 – Transfer of Shares*

#### **65. Transferability of shares**

Subject to any limitations or restrictions on the transfer of shares in the memorandum or articles of a company and compliance with the remainder of this Section, a share in a company is freely transferable.

#### **66. Transfer of shares by operation of law and upon death of shareholder**

- (1) Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the memorandum or articles of the company.
- (2) Subject to subsection (3), the personal representative, executor or administrator of a deceased member shall be the only person recognised as having any title to such member's shares but they shall not be entitled to exercise any rights as a member of the company until they have proceeded as follows—
  - (a) any person becoming entitled by operation of law or otherwise to a share or shares in consequence of the death of any member may be registered as a member upon such evidence being produced as may reasonably be required by the directors. An application by any such person to be registered as a member shall be deemed to be a transfer of shares of the deceased and the directors shall treat it as such; and
  - (b) any person who has become entitled to a share or shares in consequence of the death of any member may, instead of being registered himself, request in writing that some person to be named by him be registered as the transferee of such share or shares and such request shall likewise be treated as if it were a transfer.
- (3) Where a deceased member was a joint owner of shares in the company in accordance with Regulation 48(3), the deceased member's ownership interest shall be extinguished and the remaining joint owner(s) shall be the only holders of the relevant shares.

**67. Method of transfer of shares**

- (1) Shares are transferred by an instrument of transfer containing the name and address of the transferee(s) signed by the transferor and the transferee(s). Where transferees will be joint holders of shares, the instrument of transfer may specify that the first named holder of such shares is irrevocably authorised to transfer such shares and give good receipt for any proceeds of the sale of such shares without requiring the consent or signature of the second named holder of such shares. Any such provision shall be binding on the second named holders of such shares and shall be noted on the register of members.
- (2) The instrument of transfer shall be sent to the company within 30 days of signing.
- (3) Subject to the memorandum or articles and to subsection (4), on receipt of an instrument of transfer the company shall, unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution, approve the transfer of the shares and file the instrument of transfer with the Registrar to enter the name of the transferee in the register of members.
- (4) Subject to subsection (5), the directors shall not pass a resolution refusing or delaying the registration of a transfer unless these Regulations or the memorandum or articles permit them to do so.
- (5) The restriction contained in subsection (4) shall not apply to unlimited companies.
- (6) Where the directors pass a resolution under subsection (3), the company shall, as soon as practicable, send the transferor and the transferee a notice of the refusal or delay in the approved form.
- (7) Subject to the memorandum or articles of a company, the directors may refuse or delay the registration of a transfer of shares if the shares to be transferred are not fully paid.
- (8) The transfer of a share is effective when the name of the transferee is entered in the register of members by the Registrar.
- (9) If the directors of a company are satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, they may resolve—
  - (a) to accept such evidence of the transfer of the shares as they consider appropriate; and
  - (b) that the transferee's name should be entered in the register of members, notwithstanding the absence of the instrument of transfer.

A copy of such resolution shall be provided to the Registrar with the instrument of transfer.

*Section 4 – Distributions*

**68. Meaning of solvency test and distribution**

For the purposes of this Section—

- (a) a company satisfies the solvency test if—
  - (i) the value of the company's assets exceeds its liabilities; and
  - (ii) the company is able to pay its debts as they fall due; and

- (b) “distribution”, in relation to a distribution by a company to a member, means—
- (i) the direct or indirect transfer of an asset, other than the company’s own shares, to or for the benefit of the member; or
  - (ii) the incurring of a debt to or for the benefit of a member,

in relation to shares held by a shareholder, or to the entitlements to distributions of a member who is not a shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise and includes a dividend, but does not include a distribution of surplus assets upon the liquidation, winding up or dissolution of a company.

**69. Distributions**

- (1) Subject to this Part and to the memorandum and articles of the company, the directors of a company may, by resolution authorise a distribution by the company to members at such time and of such an amount, as they think fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.
- (2) A resolution of directors passed under subsection (1) shall contain a statement that, in the opinion of the directors, the company will, immediately after the distribution, satisfy the solvency test.
- (3) If, after a distribution is authorised and before it is made, the directors cease to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.

**70. Recovery of distribution made when company did not satisfy solvency test**

- (1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member unless—
  - (a) the member received the distribution in good faith and without knowledge of the company’s failure to satisfy the solvency test;
  - (b) the member has altered his position in reliance on the validity of the distribution; and
  - (c) it would be unfair to require repayment in full or at all.
- (2) If, by virtue of Regulation 69(3), a distribution is deemed not to have been authorised, a director who—
  - (a) ceases, after a distribution is authorised but before it is made, to be satisfied on reasonable grounds that the company would satisfy the solvency test immediately after the distribution is made; and
  - (b) failed to take reasonable steps to prevent the distribution being made,

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

- (3) If, in an action brought against a director or member under this Regulation, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may—

- (a) permit the member to retain; or
- (b) relieve the director from liability in respect of,  
an amount equal to the value of any distribution that could properly have been made.

**71. Company may purchase, redeem or otherwise acquire its own shares**

- (1) Subject to Regulation 69, a company may purchase, redeem or otherwise acquire its own shares in accordance with either—

- (a) Regulations 71(2), 72, 73 and 74; or
- (b) such other provisions for the purchase, redemption or acquisition of its own shares as may be specified in its memorandum or articles.

- (2) A company may acquire its own fully paid share or shares for no consideration by way of surrender of the share or shares to the company by the person holding the share or shares.

- (3) Regulations 71(2), 72, 73 and 74 do not apply to a company to the extent that they are negated, modified or inconsistent with provisions for the purchase, redemption or acquisition of its own shares specified in the company's memorandum or articles.

- (4) Where a company may purchase, redeem or otherwise acquire its own shares otherwise than in accordance with Regulations 72, 73 and 74, it may not purchase, redeem or otherwise acquire the shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted by the memorandum or articles to purchase, redeem or otherwise acquire the shares without that consent.

- (5) Notice of the purchase, redemption or other acquisition shall be filed with the Registrar in the approved form.

- (6) Unless the shares are held as treasury shares in accordance with Regulation 76, any shares acquired by a company are deemed to be cancelled on update of the register of members after the purchase, redemption or other acquisition.

**72. Process for purchase, redemption or other acquisition of own shares**

- (1) The directors of a company may make an offer to purchase, redeem or otherwise acquire shares issued by the company, if the offer is—

- (a) an offer to all shareholders to purchase, redeem or otherwise acquire shares issued by the company that—
  - (i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected; and
  - (ii) affords each shareholder a reasonable opportunity to accept the offer; or
- (b) an offer to one or more shareholders to purchase, redeem or otherwise acquire shares—
  - (i) to which all shareholders have consented in writing; or

- (ii) that is permitted by the memorandum or articles and is made in accordance with Regulation 73.
- (2) Where an offer is made in accordance with subsection (1)(a)—
  - (a) the offer may also permit the company to purchase, redeem or otherwise acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and
  - (b) if the number of additional shares exceeds the number of shares that the company is entitled to purchase, redeem or otherwise acquire, the number of additional shares shall be reduced rateably.

**73. Offer to one or more shareholders**

- (1) The directors of a company shall not make an offer to one or more shareholders under Regulation 72(1)(b)(ii) unless they have passed a resolution stating that, in their opinion—
  - (a) the purchase, redemption or other acquisition is to the benefit of the remaining shareholders; and
  - (b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and to the remaining shareholders.
- (2) A resolution passed under subsection (1) shall set out the reasons for the directors' opinion.
- (3) The directors shall not make an offer to one or more shareholders under Regulation 72(1)(b)(ii) if, after the passing of a resolution under subsection (1) and before the making of the offer, they cease to hold the opinions specified in subsection (1).
- (4) A shareholder may apply to the Court for an order restraining the proposed purchase, redemption or other acquisition of shares under Regulation 72(1)(b)(ii) on the grounds that—
  - (a) the purchase, redemption or other acquisition is not in the best interests of the remaining shareholders; or
  - (b) the terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or the remaining shareholders.

**74. Shares redeemed otherwise than at option of company**

- (1) If a share is redeemable at the option of the shareholder and the shareholder gives the company proper notice of his intention to redeem the share—
  - (a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of the receipt of the notice;
  - (b) unless the share is held as a treasury share under Regulation 76, the share is deemed to be cancelled; and
  - (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.
- (2) If a share is redeemable on a specified date—
  - (a) the company shall redeem the share on that date;

- (b) unless the share is held as a treasury share under Regulation 76, the share is deemed to be cancelled; and
  - (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.
- (3) Where a company redeems a share under subsections (1) or (2), Regulations 72 and 73 do not apply.

**75. Purchases, redemptions or other acquisitions deemed not to be a distribution**

The purchase, redemption or other acquisition by a company of one or more of its own shares is deemed not to be a distribution where—

- (a) the company redeems the share or shares under and in accordance with Regulation 74;
- (b) the company redeems the share or shares pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company;
- (c) the company purchases, redeems or otherwise acquires the share or shares by virtue of the provisions of Regulation 181 or 184; or
- (d) the company acquires its own fully paid share or shares pursuant to Regulation 71(2).

**76. Treasury shares**

- (1) A company may hold shares that have been purchased, redeemed or otherwise acquired under Regulation 71 as treasury shares if—
- (a) the memorandum or articles of the company do not prohibit it from holding treasury shares;
  - (b) the directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares; and
  - (c) the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed 50% of the shares of that class previously issued by the company, excluding shares that have been cancelled.
- (2) All the rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

**77. Transfer of treasury shares**

Treasury shares may be transferred by the company and the provisions of these Regulations and the memorandum and articles that apply to the issue of shares apply to the transfer of treasury shares.

**78. Mortgages and charges of shares**

- (1) A mortgage or charge of shares of a company shall be in writing signed by, or with the authority of, the registered holder of the share to which the mortgage or charge relates.

- (2) A mortgage or charge of shares of a company need not be in any specific form but it shall clearly indicate—
- (a) the intention to create a mortgage or charge; and
  - (b) the amount secured by the mortgage or charge or how that amount is to be calculated.
- (3) Where the governing law of a mortgage or charge of shares in a company is not the law applicable in RAK ICC—
- (a) the mortgage or charge shall be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
  - (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member or prospective member of the company and the company shall continue to be governed by the memorandum and the articles of the company and these Regulations.
- (4) Where the governing law of a mortgage or charge of shares in a company is the law applicable in RAK ICC, in the case of a default by the mortgagor or chargor on the terms of the mortgage or charge, the mortgagee or chargee is entitled to the following remedies—
- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares including to itself; and
  - (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may—
    - (i) vote the shares;
    - (ii) receive distributions in respect of the shares; and
    - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,
- until such time as the mortgage or charge is discharged.
- (5) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of a company, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner—
- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
  - (b) secondly, in discharging the sums secured by the mortgage or charge; and
  - (c) thirdly, in paying any balance due to the mortgagor or chargor.
- (6) Subject to subsection (7), where the governing law of a mortgage or charge of shares in a company is the law applicable in RAK ICC, the remedies referred to in subsection (4) are not exercisable until—
- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and



- (b) the default has not been rectified within 14 days or such shorter period as may be specified in the instrument creating the mortgage or charge from service of the notice specifying the default and requiring rectification thereof.
- (7) Where the governing law of a mortgage or charge of shares in a company is the law applicable in RAK ICC, if the instrument creating the mortgage or charge so provides, the remedies referred to in subsection (4) are exercisable immediately on a default occurring.
- (8) In the case of a mortgage or charge of shares the company shall provide to the Registrar for entry in the register of members of the company—
  - (a) a statement that the shares are mortgaged or charged;
  - (b) the name of the mortgagee or chargee; and
  - (c) the date on which the statement and name are entered in the register of members.
- (9) A shareholder who assigns, mortgages, charges or otherwise creates a security interest over their shares to a person who is not a shareholder of the company shall notify the other shareholders of such action and the terms of such assignment, mortgage, charge or other security interest.

## PART IV

### MEMBERS

#### 79. **Meaning of “shareholder”, “guarantee member” and “unlimited member”**

In these Regulations—

“guarantee member”, in relation to a company, means the person whose name is entered in the register of members as a guarantee member;

“shareholder”, in relation to a company, means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company; and

“unlimited member”, in relation to an unlimited company, means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the unlimited company.

#### 80. **Company to have one or more members**

- (1) A company shall at all times have one or more members.
- (2) In the case of a company limited by guarantee, whether or not authorised to issue shares, at least one of the members of the company shall be a guarantee member and where the company is authorised to issue shares, a guarantee member may also be a shareholder.

#### 81. **Liability of members**

- (1) A member of a limited company has no liability, as a member, for the liabilities of the company.
- (2) The liability of a shareholder to the company, as shareholder, is limited to—
  - (a) any amount unpaid on a share held by the shareholder;



- (b) any liability expressly provided for in the memorandum or articles of the company; and
  - (c) any liability to repay a distribution under Regulation 70(1).
- (3) The liability of a guarantee member to the company, as guarantee member, is limited to—
- (a) the amount that the guarantee member is liable to contribute as specified in the memorandum in accordance with Regulation 9(1)(f); and
  - (b) any other liability expressly provided for in the memorandum or articles of the company; and
  - (c) any liability to repay a distribution under Regulation 70(1).
- (4) An unlimited member has unlimited liability for the liabilities of the company.
- (5) In the event of the winding up of a company limited by guarantee, any former guarantee member who was a guarantee member in the period of one year prior to the commencement of the winding up shall be liable to contribute an amount not exceeding the amount guaranteed by such person to the assets of the company for the payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the contributions of that company's guarantee members and former guarantee members that such former guarantee member would have been liable to contribute had the winding up occurred on the last day of their membership of the company.
- (6) In the event of a winding up of an unlimited company, any former unlimited member who was a limited member in the period of one year prior to the commencement of the winding up shall have an unlimited liability to contribute to the assets of the company an amount sufficient for the payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the contributions of the company's unlimited members and former unlimited members.

## 82. **Members' resolutions**

- (1) Unless otherwise specified in these Regulations or in the memorandum or articles of a company, the exercise by the members of a company of a power which is given to them under these Regulations or the memorandum or articles shall be by a resolution—
- (a) passed at a meeting of members held pursuant to Regulation 83; or
  - (b) passed as a written resolution in accordance with Regulation 89.
- (2) A resolution is passed if approved by a majority in excess of 50% or, if a higher majority is required by the memorandum or articles, that higher majority, of the votes of those members entitled to vote and voting on the resolution.
- (3) For the purposes of subsection (2)—
- (a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting; and
  - (b) unless the memorandum or articles otherwise provide, a guarantee member or an unlimited member is entitled to one vote on any resolution on which he is entitled to vote.

**83. Meetings of members**

- (1) Subject to a company's memorandum and articles, the following may convene a meeting of the members of the company at any time—
  - (a) the directors of the company; or
  - (b) such person or persons as may be authorised by the memorandum or articles to call the meeting.
- (2) Subject to a provision in the memorandum or articles for a lesser percentage, any director of a company shall call a meeting of the members of the company if any director is requested in writing to do so by members entitled to exercise at least 30% of the voting rights in respect of the matter for which the meeting is requested.
- (3) Subject to a company's memorandum and articles, a meeting of the members of the company may be held at such time and in such place, within or outside the Zone, as the convener of the meeting considers appropriate.
- (4) Subject to the memorandum or articles of a company, a member of the company shall be deemed to be present at a meeting of members if—
  - (a) he participates by telephone or other electronic means; and
  - (b) all members participating in the meeting are able to hear each other.
- (5) A member entitled to attend and vote at a meeting of a company is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him; and a proxy appointed to attend and vote instead of a member also has the same right as the member to speak at the meeting; but, unless the memorandum or articles of the company otherwise provide, a proxy is not entitled to vote except at a meeting of members.
- (6) Subject to the memorandum and articles, the following apply where shares are jointly owned—
  - (a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
  - (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
  - (c) if two or more are present in person or by proxy, they must vote as one.
- (7) A body corporate, whether or not a company within the meaning of these Regulations, may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of a company, or of creditors of a company which it is entitled to attend. A person so authorised is entitled to exercise the same powers on behalf of the body corporate that they represent as that body corporate could exercise if it were an individual member or creditor of the company.

**84. Notice of meetings of members**

- (1) Subject to a requirement in the memorandum or articles to give longer notice, a person or persons convening a meeting of the members of a company shall give not less than seven days' notice of the meeting to those persons whose names, on the date the notice is given, appear as members in the register of members and are entitled to vote at the meeting.

- (2) Notwithstanding subsection (1), and subject to the memorandum or articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90% majority, or such other majority as may be specified in the memorandum or articles, of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his part unless his presence at the meeting is to protest the lack of notice given in respect of such meeting.
- (3) The inadvertent failure of the convener or conveners of a meeting of members to give notice of the meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.
- (4) The convener or conveners of a meeting of members may specify in the notice convening such meeting a date, being not earlier than 30 days before the proposed date of such meeting, as the record date for determining those members that are entitled to vote at the meeting.

**85. Quorum for meetings of members**

The quorum for a meeting of the members of a company for the purposes of a resolution of members is that fixed by the memorandum or articles but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present, in person or by proxy, members entitled to exercise at least 50% of the votes.

**86. Voting trusts and members' agreements**

- (1) One or more shareholders of a company may, in accordance with Regulation 67, transfer shares to any person authorised to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply—
  - (a) the instrument of transfer may contain any other provisions not inconsistent with the purpose of the arrangement;
  - (b) a copy of the instrument of transfer shall be:
    - (i) deposited at the registered office of the company and shall be open to the inspection of members of the company—
      - (A) in the case of any beneficiary of the trust under the instrument of transfer, daily during business hours; and
      - (B) in the case of members of the company, subject to the provisions of Regulation 105; and
    - (ii) provided by the company to the Registrar;
  - (c) where certificates for shares have been issued for shares that are to be transferred to a trustee pursuant to this Regulation, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;
  - (d) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby are held by the person named therein pursuant to the instrument of transfer;

- (e) there shall be noted by the Registrar in the register of members of the company against the record of the shares held by the trustee the fact that such an arrangement exists;
  - (f) the voting trustee may vote the shares so issued or transferred during the period specified in the instrument of transfer;
  - (g) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;
  - (h) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the instrument of transfer appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;
  - (i) at any time prior to the time of expiration of any voting trust as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust for such additional period as is stated in the instrument of transfer; and
  - (j) the voting trustee shall, prior to the time of expiration of a voting trust, as originally fixed or as previously extended, as the case may be, deposit at the registered office of the company a copy of the extension and of his consent thereto, and the company shall provide a copy of such documents to the Registrar, and thereupon the duration of the voting trust shall be extended for the period fixed in the extension, but no extension shall affect the rights or obligations of persons not parties thereto.
- (2) Two or more members of a company may by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted—
- (a) as provided by the agreement;
  - (b) as the parties may agree; or
  - (c) as determined in accordance with such procedure as they may agree upon.
- (3) This Regulation shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.

**87. Court may call meeting of members**

- (1) The Court may order a meeting of members to be held and to be conducted in such manner as the Court orders if it is of the opinion that—
  - (a) it is impracticable to call or conduct a meeting of the members of a company in the manner specified in these Regulations or in the memorandum and articles of the company;
  - (b) where directors are required to call a meeting of members pursuant to Regulation 83(2), the directors have failed to do so; or
  - (c) it is in the interests of the members of the company that a meeting of members is held.

- (2) An application for an order under subsection (1) may be made by a member or director of the company.
- (3) The Court may make an order under subsection (1) on such terms, including as to costs of conducting the meeting and as to the provision of security for those costs, as it considers appropriate.

**88. Proceedings at meetings of members**

The Registrar may specify provisions for proceedings of members' meetings which shall apply in respect of a company, except to the extent that the memorandum or articles of the company provide otherwise.

**89. Written resolutions**

- (1) Subject to the memorandum or articles of a company, any action that may be taken by members of the company at a meeting of members may also be taken by a resolution of members consented to by the number of members required to take the action at a meeting of members in writing or by written electronic communication, without the need for any notice.
- (2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more members. Such several documents may be signed or assented to by members in different locations. If several documents of the same resolution that have been signed or assented to by one or more members have different dates, those resolutions shall take effect on the latest of such dates.

**90. Service of notice on members**

Any notice, information or written statement required under these Regulations to be given by a company to members shall be served—

- (a) in the manner specified in the memorandum or articles, as the case may be; or
- (b) in the absence of a provision in the memorandum or articles, by personal service, by mail addressed to each member at the address shown in the register of members or, where the member consents, by and in accordance with such electronic means as may be set out in the memorandum or articles.

**PART V**

**COMPANY ADMINISTRATION**

*Section 1 – Registered Office and Registered Agent*

**91. Registered office**

- (1) A company shall, at all times, have an office (the “registered office”) which—
  - (a) is located—
    - (i) in the UAE, provided that if the company's registered agent has an office in the UAE, the company's registered office shall be the office of its registered agent; or
    - (ii) outside the UAE only with the approval of the Registrar;

- (b) shall be specified—
    - (i) in the memorandum filed under Regulation 6(1); or
    - (ii) if one or more notices of change of registered office have been filed under Regulation 95, in the last such notice to be registered by the Registrar.
  - (2) A company's registered office may not be a postal office box address.
92. **Registered agent**
- (1) A company shall at all times have a registered agent.
  - (2) No person shall act or purport to act as a registered agent unless he has been granted a licence to provide registered agent services by RAK ICC and such licence is in full force and effect.
  - (3) A company's registered agent must notify the Registrar of any change to its name or address.
  - (4) If a company fails to comply with subsection (1) it commits a contravention of these Regulations and is liable to a fine not exceeding level 3.
  - (5) Unless the last registered agent of the company has resigned in accordance with Regulation 98 or ceased to be the company's registered agent in accordance with Regulation 99, the registered agent of a company is—
    - (a) the person specified as the company's first registered agent in the memorandum filed under Regulation 6(1); or
    - (b) if one or more notices of change of registered agent have been filed under Regulation 95, the person specified as the company's registered agent in the last such notice to be registered by the Registrar.
  - (6) Subject to Regulation 99(7), a person who contravenes subsection (2) commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

93. **Registered agent acting on resolution of members or directors**

Subject to the memorandum and articles of a company, a registered agent may act on the instructions of members or directors of a company if those instructions are contained in a resolution passed by the members or directors and a copy of the resolution is made available to the registered agent.

94. **Appointment of registered agent**

- (1) If at any time a company does not have a registered agent it shall forthwith, by resolution of members or directors, appoint a registered agent.
- (2) A resolution to appoint a registered agent may be passed—
  - (a) notwithstanding any provision to the contrary in the memorandum or articles, by the members of the company; or
  - (b) if authorised by the memorandum or articles, by the directors of the company.

- (3) A notice of appointment of registered agent in the approved form shall be signed by the registered agent indicating his agreement to act as registered agent and filed by the registered agent with the Registrar together with:
- (a) if the registered agent is appointed by the members of the company, either the text of the resolution certified by the chairman of the meeting of members at which such resolution was duly passed or a copy of the written resolution signed by the shareholders in accordance with Regulation 89 and certified as a true copy of the original by the registered agent; or
  - (b) if the registered agent is appointed by the directors of the company, the text of the resolution certified by the chairman of the meeting of directors at which such resolution was duly passed.
- (4) The appointment of the registered agent takes effect on the registration by the Registrar of the notice filed with the Registrar under subsection (3).

**95. Change of registered office or registered agent**

- (1) A resolution to change the location of a company's registered office or to change a company's registered agent may be passed—
- (a) notwithstanding any provision to the contrary in the memorandum or articles, by the members of the company; or
  - (b) if authorised by the memorandum or articles, by the directors of the company.
- (2) A company that wishes to change its registered office or registered agent shall file a notice in the approved form together with:
- (a) if the registered office or registered agent is changed by the members of the company, either the text of the resolution certified by the chairman of the meeting of members at which such resolution was duly passed or a copy of the written resolution signed by the shareholders in accordance with Regulation 89 and certified as a true copy of the original by the registered agent; or
  - (b) if the registered office or registered agent is changed by the directors of the company, the text of the resolution certified by the chairman of the meeting of directors at which such resolution was duly passed.
- (3) A notice of change of registered agent shall be signed by the new registered agent indicating his agreement to act as registered agent.
- (4) A notice of change of registered office or registered agent may be filed only by the registered agent of the company or, if the existing registered agent fails to do so within 14 days of a request by the company to do so, by the proposed new registered agent.
- (5) For the purposes of subsection (4), in the case of a notice of change of registered agent, "registered agent" means the existing registered agent.
- (6) A change of registered office or registered agent takes effect on the registration by the Registrar of the notice filed under subsection (2).



- (7) As soon as reasonably practicable after registering a notice of change of registered agent, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration to the company's new registered agent and the former registered agent.
- (8) The company's memorandum is deemed to be amended to state the change of registered office or registered agent with effect from the date of registration of the notice.
- (9) Upon change of a company's registered agent in accordance with this Regulation, the existing registered agent shall transfer all documents and records in respect of the company to the new registered agent within 14 days of the date of the endorsement by the Registrar or the notice of change of registered agent referred to in subsection (7). The existing registered agent may charge an administrative fee in respect of the change of registered agent to the company up to a maximum amount permitted by the Registrar.

**96. Change of registered office where registered agent changes address**

- (1) This Regulation applies in relation to a company which uses its registered agent's office as its registered office where the company's registered agent changes the location of its office in the UAE.
- (2) Where this Regulation applies to a company, a company's registered agent may change the registered office of the company to the changed location of its office in the UAE by filing a notice in the approved form with the Registrar—
  - (a) stating that—
    - (i) the registered agent has moved the location of its office in the UAE; and
    - (ii) the company intends its registered office to continue to be the office of the registered agent; and
  - (b) specifying the registered agent's new office address in the UAE.
- (3) A change of registered office under this Regulation takes effect on the registration by the Registrar of the notice filed under subsection (2).
- (4) Where this Regulation applies to a company and the memorandum of the company states the address of its registered agent, on the registration of the notice filed under subsection (2), the company's memorandum is deemed to be amended to state the changed address of the registered agent's office in the UAE with effect from the date of registration of the notice.
- (5) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

**97. Deemed amendment of memorandum, where registered agent changes company name**

- (1) This Regulation applies in relation to a company where—
  - (a) the company's registered agent changes its company name; and
  - (b) that registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent.



- (2) Where this Regulation applies to a company, its registered agent may file a notice in the approved form—
- (a) stating that—
    - (i) the registered agent has changed its registered name; and
    - (ii) the registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent; and
  - (b) specifying the new company name of the registered agent.
- (3) On the registration of a notice referred to in subsection (2), the company's memorandum is deemed to be amended to state the registered agent's new name with effect from the date of registration of the notice.
- (4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

**98. Resignation of registered agent**

- (1) A person may resign as the registered agent of a company only in accordance with this Regulation. A registered agent may resign irrespective of whether the company is in good standing with RAK ICC or not at the time of the registered agent's resignation.
- (2) A person wishing to resign as the registered agent of a company shall—
- (a) give not less than 90 days written notice of his intention to resign as registered agent of the company (the "resignation notice") on the date specified in the notice sent to a person specified in subsection (3);
  - (b) provide the company with a list of persons who are authorised by RAK ICC to provide registered agent services; and
  - (c) file a copy of the resignation notice with the Registrar.
- (3) A written notice under subsection (2) shall be sent to a director of the company at the director's last known address or, if the registered agent is not aware of the identity of any director of the company, to the person from whom the registered agent last received instructions concerning the company.
- (4) If a company does not change its registered agent in accordance with Regulation 95 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the company's registered agent in the approved form, with a copy to the company, and the Registrar shall update the Register of Companies accordingly.
- (5) Unless the company has changed its registered agent within the period set out in subsection (2), the resignation of a registered agent is effective the day after the notice of resignation is registered by the Registrar.
- (6) A registered agent wishing to rescind his resignation notice shall—
- (a) give at least 14 days written notice of his intention to rescind the resignation notice (the "rescission notice") on the date specified in the rescission notice to the person to whom he sent the resignation notice; and

- (b) file the rescission notice with the Registrar.
- (7) A rescission notice may not be filed—
  - (a) if the company has, by the time of filing, changed its registered agent; or
  - (b) 14 days or less prior to the date specified in subsection (2).
- (8) The rescission notice takes effect on the date specified in the rescission notice unless the company has changed its registered agent before that date.
- 99. **Registered agent ceasing to be eligible to act**
  - (1) For the purposes of this Regulation, a person ceases to be eligible to act as a registered agent upon receipt of notice from the Registrar of the revocation, cancellation or suspension of such person's licence to provide registered agent services.
  - (2) Where a person ceases to be eligible to provide registered agent services, that person shall, with respect to each company of which he was, immediately before ceasing to be eligible to provide registered agent services, the registered agent send to the person specified in subsection (3)—
    - (a) a notice—
      - (i) advising the company that he is no longer eligible to be its registered agent;
      - (ii) advising the company that it must appoint a new registered agent within 14 days of the date of the notice; and
      - (iii) specifying that on the expiration of the period specified in paragraph (ii), he will cease to be the registered agent of the company; and
    - (b) a list of persons who are licenced by RAK ICC to provide registered agent services.
  - (3) A notice under subsection (2) and a list of persons who are licenced by RAK ICC to provide registered agent services shall be sent to a director of the company at the director's last known address or, if the registered agent is not aware of the identity of any director of the company, to the person from whom the registered agent last received instructions concerning the company.
  - (4) A company which is sent a notice under subsection (2) through a director or other person specified in subsection (3) shall, within 14 days of the date of the notice, change its registered agent in accordance with Regulation 95 and the Registrar shall update the Register of Companies accordingly.
  - (5) A person who has ceased to be eligible to provide registered agent services ceases to be the registered agent of each company to which it has sent a notice under subsection (2), through a director or other person specified in subsection (3), on the earlier of—
    - (a) the date that the company changes its registered agent in accordance with subsection (4); or
    - (b) the first day following the expiry of the notice period specified in subsection (4).
  - (6) A registered agent who contravenes subsection (2) and a company that contravenes subsection (4) commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

- (7) A person does not commit a contravention of these Regulations under Regulation 92(2) or this Regulation by reason only of the fact that—
- (a) he ceases to be eligible to provide registered agent services; and
  - (b) after ceasing to be eligible to provide registered agent services, he continues to be the registered agent of a company during the period from the date he ceases to be eligible to provide registered agent services to the date that the company appoints a new registered agent.

**100. Register of Approved Registered Agents**

- (1) The Registrar shall maintain a register of persons licensed to provide registered agent services in which the following details shall be recorded in respect of each licensed registered agent—
- (a) the name of the licensed registered agent;
  - (b) the address of the licensed registered agent;
  - (c) the names of the individuals authorised to sign on behalf of any firm or company that is a licensed registered agent;
  - (d) the date when the registered agent obtained a licence from RAK ICC to provide registered agent services; and
  - (e) where a person ceases to be a licensed registered agent—
    - (i) the date on which the person ceased to be so licensed; and
    - (ii) the reason for his ceasing to be a licensed registered agent.
- (2) RAK ICC may provide for the publication of the names of persons who are licenced by RAK ICC to provide registered agent services.

*Section 2 – Company Records*

**101. Documents to be kept at office of registered agent**

- (1) A company shall keep the following documents at the office of its registered agent—
- (a) the memorandum and articles of the company;
  - (b) pursuant to Regulation 123, the register of directors if kept by the registered agent or a copy of the register of directors if kept by the company; and
  - (c) copies of all notices and other documents filed by the company in the previous five years.
- (2) Where a company keeps a copy of the register of directors at the office of its registered agent, it shall—
- (a) within 14 days of any change in the register of directors, notify the registered agent, in writing, of the change; and
  - (b) provide the registered agent with a written record of the physical address of the place or places at which the original register of directors is kept.

- (3) Where the place at which the original register of directors is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.
- (4) A company that contravenes subsections (1), (2) or (3) commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

**102. Other records to be maintained by company**

- (1) A company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the Zone, as the directors may determine—
  - (a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with Regulation 107; and
  - (b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with Regulation 107.
- (2) Where any records specified under subsection (1) are kept at a place other than at the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place or places at which the records are kept.
- (3) Where the place at which any records specified under subsection (1) is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.
- (4) A company that contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

**103. Records and underlying documentation**

- (1) A company shall—
  - (a) keep at the office of its registered agent or at such other place or places, within or outside the Zone, as the directors may determine, the records and underlying documentation of the company; and
  - (b) retain the records and underlying documentation for a period of at least five years from the date—
    - (i) of completion of the transaction to which the records and underlying documentation relate; or
    - (ii) the company terminates the business relationship to which the records and underlying documentation relate.
- (2) The records and underlying documentation of the company shall be in such form as—
  - (a) are sufficient to show and explain the company's transactions; and
  - (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.
- (3) Where the records and underlying documentation of a company are kept at a place or places other than at the office of the company's registered agent, the company shall provide the registered agent with a written—

- (a) record of the physical address of the place at which the records and underlying documentation are kept;
  - (b) record the name of the person who owns or controls the place or places at which the company's records and underlying documentation are kept; and
  - (c) undertaking advising that the registered agent shall, at any time it so requests, have access to and be provided with the company's records and underlying documentation without delay.
- (4) Where the place or places at which the records and underlying documentation of the company, or the name of the person who owns or controls such place or places, change, the company shall provide its registered agent with the physical address of the new location of the records and underlying documentation or the name of the new owner or controller of the new location, as the case may be, within 14 days of the change of the place or places.
- (5) The registered agent shall keep and maintain a record of the place or places outside the Zone at which the company keeps its records and underlying documentation and such record shall comprise—
  - (a) the name of the company;
  - (b) the address or addresses of the place or places at which the company's records and underlying documentation are kept;
  - (c) the date the written undertaking under subsection (3)(c) was given to the registered agent; and
  - (d) the name of the person who owns or controls the place or places at which the company's records and underlying documentation are kept.
- (6) For the purposes of this Regulation—
  - (a) "business relationship" means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular or habitual basis; and
  - (b) "records and underlying documentation" includes accounts and records (such as invoices, contracts and similar documents) in relation to:
    - (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
    - (ii) all sales and purchases of goods by the company; and
    - (iii) the assets and liabilities of the company.
- (7) A company that contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

104. **Form and retention of records**

The records and underlying documentation required to be kept by a company under these Regulations shall be kept—

- (a) in written form or such other form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents; and
- (b) for at least five years from the date of their creation.

105. **Inspection of records**

- (1) A person appearing to the company to be a director or the registered agent (or authorised representative of the registered agent) of a company is entitled, on giving reasonable notice, to inspect the documents and records of the company—

- (a) in written form;
- (b) without charge; and
- (c) a reasonable time specified by the director,

and to make copies of or take extracts from the documents and records on payment of a reasonable fee as may be specified from time to time.

- (2) Subject to subsection (3), a person who appears to the company to be a member of a company (or authorised representative of a member of a company) is entitled, on giving written notice, to inspect—

- (a) the memorandum and articles;
- (b) the register of directors; and
- (c) minutes of meetings and resolutions of members and of those classes of members of which he is a member,

and to make copies of or take extracts from the documents and records on payment of a reasonable fee as may be specified from time to time.

- (3) Subject to the memorandum and articles, the directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect any document, or part of a document, specified in subsections (2)(b) or (c), refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.
- (4) The directors shall, as soon as reasonably practicable, notify a member of any exercise of their powers under subsection (3).
- (5) Where a company fails or refuses to permit a member to inspect a document or permits a member to inspect a document subject to limitations, that member may apply to the Court for an order that he should be permitted to inspect the document or to inspect the document without limitation.
- (6) On an application under subsection (5), the Court may make such order as it considers just.

106. **Service of process, etc. on company**

- (1) Service of a document may be effected on a company by addressing the document to the company and leaving it at, or sending it by a prescribed method to the company's registered office.
- (2) The Registrar may provide for the methods by which service of a document on a company may be proved.

107. **Books and records**

- (1) A company shall keep—
  - (a) minutes of all meetings of—
    - (i) directors;
    - (ii) members;
    - (iii) committees of directors; and
    - (iv) committees of members; and
  - (b) copies of all resolutions consented to by—
    - (i) directors;
    - (ii) members;
    - (iii) committees of directors; and
    - (iv) committees of members.
- (2) A company that wilfully contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

*Section 3 – General Provisions*

108. **Contracts generally**

- (1) A contract may be entered into by a company as follows—
  - (a) a contract that, if entered into by an individual, would be required by law to be in writing and signed, may be entered into by or on behalf of the company in writing and signed by a director or any other person acting under the express or implied authority of the company, and may be varied or discharged in the same manner; and
  - (b) a contract that, if entered into by an individual, would be valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a director or any other person acting under the express or implied authority of the company, and may be varied or discharged in the same manner.
- (2) A contract entered into in accordance with this Regulation is valid and is binding on the company and its successors and all other parties to the contract.



- (3) Notwithstanding subsection (1)(a), an instrument is validly executed by a company as a deed if it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or any other person acting under the express or implied authority of the company.
- (4) Subject to applicable law, a company may choose a law other than the law of RAK ICC, Ras Al Khaimah or the UAE to govern the contractual and non-contractual obligations applicable to any contract, deed or other binding agreement to which the company is a party.

**109. Contracts before incorporation**

- (1) A person who enters into a written contract in the name of or on behalf of a company before the company is incorporated is personally bound by the contract and is entitled to the benefits of the contract, except where—
  - (a) the contract specifically provides otherwise; or
  - (b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).
- (2) A company may, by any action or conduct signifying its intention to be bound by a written contract entered into in its name or on its behalf before it was incorporated, adopt the contract within such period as may be specified in the contract or, if no period is specified, within a reasonable period after the company's incorporation.
- (3) When a company adopts a contract under subsection (2)—
  - (a) the company is bound by, and entitled to the benefits of, the contract as if the company had been incorporated at the date of the contract and had been a party to it; and
  - (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

**110. Notes and bills of exchange**

A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company if it is made, accepted or endorsed in the name of the company—

- (a) by or on behalf or on account of the company; or
  - (b) by a person acting under the express or implied authority of the company,
- and if so endorsed, the person signing the endorsement is not liable thereon.

**111. Power of attorney**

- (1) Subject to its memorandum and articles, a company may by an instrument in writing appoint a person as its attorney either generally or in relation to a specific matter.
- (2) An act of an attorney appointed under subsection (1) in accordance with the instrument under which he was appointed binds the company.
- (3) An instrument appointing an attorney under subsection (1) must be executed as a deed.



112. **Authentication or attestation**

A document requiring authentication or attestation by a company may be signed by a director or an authorised agent of the company.

113. **Company without members**

If at any time there is no member of a company, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefor without joinder in the proceedings of any other person.

## **PART VI**

### **DIRECTORS**

#### *Section 1 – Management by Directors*

114. **Management by directors**

- (1) The business and affairs of a company shall be managed by, or under the direction or supervision of, the directors of the company.
- (2) The directors of a company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the company.
- (3) Subsections (1) and (2) are subject to any modifications or limitations in the memorandum or articles.
- (4) A company shall, at all times, have at least one director.
- (5) Subject to subsection (4), the number of directors of a company may be fixed by, or in the manner provided in, the articles of the company.
- (6) If at any time a company does not have a director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company for the purposes of these Regulations.

115. **Committees of directors**

- (1) Subject to the memorandum and articles and to subsection (2), the directors may—
  - (a) designate one or more committees of directors, each consisting of one or more directors; and
  - (b) delegate any one or more of their powers to the committee.
- (2) Notwithstanding anything to the contrary in the memorandum or articles, the directors have no power to delegate the following powers to a committee of directors—
  - (a) to amend the memorandum or articles;
  - (b) to designate committees of directors;
  - (c) to delegate powers to a committee of directors;

- (d) to appoint or remove directors;
  - (e) to appoint or remove a registered agent;
  - (f) to approve a plan of merger, consolidation or arrangement;
  - (g) to make a declaration of solvency for the purposes of Regulation 204(1)(a) or approve a liquidation plan; or
  - (h) to make a determination under Regulation 69(1) that the company will, immediately after a proposed distribution, satisfy the solvency test.
- (3) Subsections (2)(b) and (c) do not prevent a committee of directors, where authorised by the directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.
  - (4) Where the directors of a company delegate their powers to a committee of directors under subsection (1), they remain responsible for the exercise of those powers by the committee, unless they believed on reasonable grounds that at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the company by these Regulations.
  - (5) RAK ICC may amend subsection (2) by adding to the powers that the directors have no power to delegate to a committee of directors.

#### *Section 2 – Appointment, Removal and Resignation of Directors*

#### **116. Persons disqualified for appointment as director**

- (1) The following are disqualified for appointment as the director of a company—
  - (a) an individual who is under 21 years of age;
  - (b) a person that is known to be disqualified from being a director (or such similar position) under the laws of any jurisdiction (other than solely by reason of being under 21 years of age);
  - (c) an undischarged bankrupt;
  - (d) a person who, in respect of a particular company, is disqualified by the memorandum or articles from being a director of the company; and
  - (e) a person that is considered unsuitable or unable by reason of capacity or otherwise to act as a director by the Registrar, including where such person—
    - (i) is convicted of a criminal offence;
    - (ii) has been persistently in default in relation to provisions of any applicable law or regulation;
    - (iii) has otherwise committed, while an officer or liquidator of the company, receiver of the company's property or administrative receiver of the company, any fraud in relation to the company or any breach of his duty as such officer, liquidator, receiver or administrative receiver; or

- (iv) is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (2) A person who acts as a director of a company whilst disqualified under subsection (1) is nevertheless deemed to be a director of the company for the purposes of any provision of these Regulations that imposes a duty or obligation on a director.
- (3) For the avoidance of doubt and subject to subsections (1) and (2), a director may be any person, not only a natural person, provided that a company has at least one director who is a natural person.

**117. Consent to act as director**

A person shall not be appointed as the director or alternate director of a company, or nominated as a reserve director, unless he has consented in writing to be a director or alternate director or to be nominated as a reserve director.

**118. Appointment of directors**

- (1) The member(s) of the company shall appoint one or more persons as the first director(s) of the company pursuant to a resolution of members.
- (2) A vacancy on the board may be filled by the appointment of a new director pursuant to a resolution of members. The memorandum and articles of a company may provide one or more member, separately or together, with the sole right to appoint and remove in writing one or more designated directors notwithstanding that such member or members do not have sufficient voting rights to appoint or remove a director by resolution.
- (3) A subsequent director of a company may be appointed—
  - (a) unless the memorandum or articles provide otherwise, by the members; or
  - (b) where permitted by the memorandum or articles, by the directors;
  - (c) where permitted by the memorandum or articles, without a resolution of members by written notice (to the company and all other members) of a particular member identified in the memorandum or articles.
- (4) A director is appointed for such term as may be specified on his appointment.
- (5) Unless the memorandum or articles of a company provide otherwise, a majority of the remaining directors of a company may appoint one or more directors to fill a vacancy on the board.
- (6) For the purposes of subsection (5)—
  - (a) there is a vacancy on the board if a director dies, or in the case of a director that is not a natural person, ceases to exist, or otherwise ceases to hold office as a director prior to the expiration of his term of office; and
  - (b) the directors may not appoint a director for a term exceeding the term that remained when the person who has ceased to be a director left or otherwise ceased to hold office.

- (7) The remaining directors may continue to act notwithstanding any vacancy on the board.
- (8) Subject to Regulation 120, a director holds office until his successor takes office or until his earlier death, resignation or removal.
- (9) Where a company has only one member who is a natural person and that member is also the sole director of the company, notwithstanding anything contained in the memorandum or articles, that sole member/director may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under Regulation 116(1) as a reserve director of the company to act in the place of the sole director in the event of his death.
- (10) The nomination of a person as a reserve director of the company ceases to have effect if—
  - (a) before the death of the sole member/director who nominated him—
    - (i) he resigns as a reserve director; or
    - (ii) the sole member/director revokes the nomination in writing; or
  - (b) the sole member/director who nominated him ceases to be the sole member/director of the company for any reason other than his death.

#### 119. **Removal of directors**

- (1) Subject to the memorandum or articles of a company, a director of the company may be removed from office by—
  - (a) resolution of the members of the company; or
  - (b) where such director has been appointed by a particular member under Regulation 118(3)(c), written notice (to the company and all other members and such director) of removal by such particular member.
- (2) Subject to the memorandum and articles, a resolution under subsection (1)(a) may only be passed—
  - (a) at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or
  - (b) by a written resolution passed by at least 75% of the votes of the members of the company entitled to vote.
- (3) The notice of a meeting called under subsection (2)(a) shall state that the purpose of the meeting is, or the purposes of the meeting include, the removal of a director.
- (4) Where permitted by the memorandum or articles of a company, a director of the company may be removed from office by a resolution of the directors.
- (5) Subject to the memorandum and articles, subsections (2) and (3) apply to a resolution of directors passed under subsection (4) with the substitution, in subsection (2), of “directors” for “members.”

120. **Resignation of director**

- (1) A director of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.
- (2) A director of a company shall resign forthwith if he is, or becomes, disqualified to act as a director under Regulation 116.

121. **Liability of former directors**

A director who vacates office remains liable under any provisions of these Regulations that impose liabilities on a director in respect of any acts or omissions or decisions made whilst he was a director.

122. **Validity of acts of director**

The acts of a person as a director are valid notwithstanding that—

- (a) the person's appointment as a director was defective; or
- (b) the person is disqualified to act as a director under Regulation 116.

123. **Register of directors**

- (1) A company shall keep, or procure that its registered agent keeps, a register to be known as a register of directors containing—
  - (a) the names and addresses of the persons who are directors of the company or who have been nominated as reserve directors of the company;
  - (b) the date on which each person whose name is entered in the register of directors was appointed as a director, or nominated as a reserve director of the company;
  - (c) the date on which each person named as a director ceased to be a director of the company;
  - (d) the date on which the nomination of any person nominated as a reserve director ceased to have effect; and
  - (e) such other information as may be prescribed.
- (2) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (3) The register of directors is prima facie evidence of any matters directed or authorised by these Regulations to be contained therein.
- (4) A company must file with the Registrar a copy of its register of directors within 14 days of the appointment of its first director and any subsequent appointment, resignation or removal of a director.
- (5) A company shall file any changes in its register of directors by filing a copy of the register containing the changes within 14 days of such change.

- (6) Subject to Regulations 265 and 266, copies of registers of directors filed with the Registrar shall not be disclosed to the public by the Registrar or RAK ICC.

**124. Emoluments of directors**

Subject to the memorandum or articles of a company, the directors of the company may fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

*Section 3 – Duties of Directors and Conflicts*

**125. Duties of directors**

- (1) Subject to this Regulation, a director of a company, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the director believes to be in the best interests of the company.
- (2) Subject to subsection (4), a director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum or articles of the company, act in a manner which he believes is in the best interests of that company's parent even though it may not be in the best interests of the company.
- (3) Subject to subsection (4), a director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum or articles of the company and with the prior agreement of the shareholders other than its parent, act in a manner which he believes is in the best interests of that company's parent even though it may not be in the best interests of the company.
- (4) Subject to subsection (4), a director of a company that has one or more shareholders who are not affiliated companies and whose memorandum states is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the memorandum or articles of the company, act in a manner which he believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.
- (5) The provisions of subsections (2), (3) and (4) shall not apply to directors of unlimited companies.

**126. Powers to be exercised for proper purpose**

A director shall exercise his powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes these Regulations or the memorandum or articles of the company.

**127. Standard of care**

A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, without limitation—

- (a) the nature of the company;
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him.

128. **Reliance on records and reports**

- (1) Subject to subsection (2), a director of a company, when exercising his powers or performing his duties as a director, is entitled to rely upon the register of members and upon books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by—
  - (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
  - (c) any other director, or committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.
- (2) Subsection (1) applies only if the director—
  - (a) acts in good faith;
  - (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
  - (c) has no knowledge that his reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

129. **Disclosure of interest**

- (1) A director of a company shall, forthwith after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board.
- (2) RAK ICC may prescribe circumstances in which a director is interested in a transaction for the purposes of this Regulation and Regulation 130 and such circumstances may include a director's relationship with another person who will or may obtain a benefit from the transaction.
- (3) A director of a company is not required to comply with subsection (1) if—
  - (a) the transaction or proposed transaction is between the director and the company; and
  - (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- (4) For the purposes of subsection (1), a disclosure to the board to the effect that a director is a member, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction,
- (5) Subject to Regulation 130(1), the failure by a director to comply with subsection (1) does not affect the validity of a transaction entered into by the director or the company.
- (6) For the purposes of subsection (1), a disclosure is not made to the board unless it is made or brought to the attention of every director on the board.



- (7) A director who contravenes subsection (1) commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

**130. Avoidance by company of transactions in which director is interested**

- (1) Subject to this Regulation, a transaction entered into by a company in respect of which a director is interested is voidable by the company unless the director's interest was—
- (a) disclosed to the board in accordance with Regulation 129 prior to the company entering into the transaction; or
  - (b) not required to be disclosed by virtue of Regulation 129(3).
- (2) Notwithstanding subsection (1), a transaction entered into by a company in respect of which a director is interested is not voidable by the company if—
- (a) the material facts of the interest of the director in the transaction are known by the members entitled to vote at a meeting of members and the transaction is approved or ratified by a resolution of members; or
  - (b) the company received fair value for the transaction.
- (3) For the purposes of subsection (2), a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into.
- (4) Subject to the memorandum or articles, a director of a company who is interested in a transaction entered into or to be entered into by the company may—
- (a) vote on a matter relating to the transaction;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
  - (c) sign a document on behalf of the company, or do any other thing in his capacity as a director, that relates to the transaction.
- (5) The avoidance of a transaction under subsection (1) does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—
- (a) from a person other than the company (the “transferor”);
  - (b) for valuable consideration; and
  - (c) without knowledge of the circumstances of the transaction under which the transferor acquired the property from the company.

*Section 4 – Proceedings of Directors and Miscellaneous Provisions*

**131. Meetings of directors**

- (1) Subject to the memorandum or articles of a company, the directors of a company may meet at such times and in such manner and places within or outside the Zone as they may determine to be necessary or desirable.



- (2) Subject to the memorandum and articles, any one or more directors may convene a meeting of directors.
- (3) A director shall be deemed to be present at a meeting of directors if—
  - (a) he participates by telephone or other electronic means; and
  - (b) all directors participating in the meeting are able to hear each other.

**132. Notice of meeting of directors**

- (1) Subject to any requirements as to notice in the memorandum or articles, a director shall be given reasonable notice of a meeting of directors.
- (2) Notwithstanding subsection (1), subject to the memorandum or articles, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the memorandum or articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part unless his presence at the meeting is to protest the lack of notice given in respect of such meeting.
- (3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

**133. Quorum for meetings of directors**

- (1) The quorum for a meeting of directors is that fixed by the memorandum or articles but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting 50% of the total number of directors are present in person or by alternate.
- (2) If a company has only one director the provisions herein contained for meetings of directors shall not apply and such sole director shall have full power to represent and act for the company in all matters as are not required to be exercised by members by these Regulations or the memorandum and articles.

**134. Directors' resolutions**

- (1) A resolution of directors may be passed—
  - (a) at a meeting of directors; or
  - (b) subject to the memorandum and articles, as a written resolution.
- (2) A resolution of directors is passed by a majority in excess of 50%, or if a higher majority is required by the memorandum or articles by that higher majority, of the votes cast by directors who are present at the meeting and entitled to vote on the resolution.
- (3) A written resolution is a resolution consented to in writing or by written electronic communication, without the need for any notice—
  - (a) by such majority of the votes of the directors entitled to vote on the resolution as may be specified in the memorandum or articles; or
  - (b) in the absence of any provision in the memorandum or articles, by a majority in excess of 50% of the directors entitled to vote on the resolution.

- (4) A written resolution may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more directors.

**135. Appointment of alternate directors**

- (1) Subject to the memorandum and articles of a company, a director of the company may appoint as an alternate any other director or any other person who is not disqualified for appointment as a director under Regulation 116 to—

- (a) exercise the appointing director's powers; and
- (b) carry out the appointing director's responsibilities,

in relation to the taking of decisions by the directors in the absence of the appointing director.

- (2) The appointing director may, at any time, terminate the alternate's appointment.

- (3) The appointment of an alternate director and its termination shall be in writing and written notice of the appointment and termination shall be given by the appointing director to the company—

- (a) within such period as may be specified in the memorandum or articles; or
- (b) if no period is specified in the memorandum or articles, as soon as reasonably practicable.

- (4) The termination of the appointment of an alternate director does not take effect until written notice of the termination has been given to the company.

- (5) An alternate director—

- (a) has no power to appoint an alternate, whether of the appointing director or of the alternate director; and
- (b) does not act as an agent of or for the appointing director.

**136. Rights and duties of alternate directors**

- (1) An alternate director has the same rights as the appointing director in relation to any directors' meeting and any written resolution circulated for written consent.

- (2) Any exercise by the alternate director of the appointing director's powers in relation to the taking of decisions by the directors, is as effective as if the powers were exercised by the appointing director.

- (3) An alternate director is liable for his own acts and omissions as an alternate director and these Regulations apply to a person appointed as an alternate director, when acting as such.

**137. Indemnification**

- (1) Subject to subsection (2) and its memorandum or articles, a company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in

settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who—

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the company; or
  - (b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise.
- (2) Subsection (1) does not apply to a person referred to in that subsection unless the person acted honestly and in good faith and in what he believed to be in the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.
- (3) For the purposes of subsection (2), a director acts in the best interests of the company if he acts in the best interests of—
  - (a) the company's parent; or
  - (b) a shareholder or shareholders of the company,in either case, in the circumstances specified in Regulation 125(2), (3) or (4), as the case may be.
- (4) The termination of any proceedings by any judgement, order, settlement, conviction or voluntary dismissal does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.
- (5) Expenses, including legal fees, incurred by a director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the director to repay the amount if it shall ultimately be determined that the director is not entitled to be indemnified by the company in accordance with subsection (1).
- (6) Expenses, including legal fees, incurred by a former director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the former director to repay the amount if it shall ultimately be determined that the former director is not entitled to be indemnified by the company in accordance with subsection (1) upon such other terms and conditions, if any, as the company deems appropriate.
- (7) The indemnification and advancement of expenses provided by, or granted pursuant to, this Regulation is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as a director of the company.
- (8) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

- (9) A company shall not indemnify a person in breach of subsection (2) and any indemnity given in breach of that subsection is void and of no effect.

138. **Insurance**

A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under Regulation 137.

## **PART VII**

### **SEGREGATED PORTFOLIO COMPANIES**

139. **Interpretation for this Part**

- (1) In this Part—

“general assets” of a segregated portfolio company has the meaning specified in Regulation 149(3);

“portfolio liquidator” means the person appointed as portfolio liquidator under a portfolio liquidation order;

“portfolio liquidation order” means an order made under Regulation 158;

“segregated portfolio” means a segregated portfolio created by a segregated portfolio company under Regulation 143 for the purpose of segregating the assets and liabilities of the company in accordance with this Part;

“segregated portfolio assets” has the meaning specified in Regulation 149(2);

“segregated portfolio distribution” means a distribution made in respect of segregated portfolio shares and “segregated portfolio dividend” shall be construed accordingly;

“segregated portfolio shares” means shares issued in respect of a segregated portfolio in accordance with Regulation 145(1); and

“segregated portfolio transfer order” means an order of the Court made under Regulation 155(4).

- (2) These Regulations apply to a segregated portfolio company subject to the provisions of this Part and to such modifications as are necessary.

140. **Incorporation or registration as segregated portfolio company**

A company limited by shares may, with the written approval of the Registrar—

- (a) be incorporated as a segregated portfolio company; or
- (b) if it has already been incorporated, be registered by the Registrar as a segregated portfolio company.

**141. Application for approval of the Registrar**

- (1) An application for approval to incorporate or register a company as a segregated portfolio company shall be made to the Registrar in the approved form and shall be accompanied by such documentation as may be prescribed.
- (2) The Registrar may require an applicant under subsection (1) to furnish it with such other documentation and information as it considers necessary to determine the application.

**142. Registrar may approve application**

- (1) On receipt of an application under Regulation 141, if it is satisfied that the company has, or has available to it, the knowledge and expertise necessary for the proper management of segregated portfolios, the Registrar may give its approval to the incorporation or registration of a company as a segregated portfolio company subject to such conditions as it considers appropriate.
- (2) The Registrar may, at any time—
  - (a) vary or revoke any condition subject to which an approval under subsection (1) was given; and
  - (b) impose any condition in respect of any such approval.

**143. Segregated portfolios**

- (1) Subject to subsection (4), a segregated portfolio company may create one or more segregated portfolios for the purpose of segregating the assets and liabilities of the company held within or on behalf of a segregated portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company.
- (2) A segregated portfolio company is a single legal entity and a segregated portfolio of or within a segregated portfolio company does not constitute a legal entity separate from the company.
- (3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words “Segregated Portfolio”.
- (4) Where pursuant to the rules made under Regulation 164, a segregated portfolio company is required to obtain the approval of the Registrar for the creation of a segregated portfolio, the company shall not create a segregated portfolio unless it has obtained the prior written approval of the Registrar.
- (5) A segregated portfolio company that contravenes subsection (4) commits a contravention of these Regulations and is liable to a fine not exceeding level 3.
- (6) Upon its annual renewal, a segregated portfolio company shall provide the Registrar with a statement of the company’s existing segregated portfolios and the segregated portfolios created or terminated during the previous year.

**144. Termination and reinstatement of segregated portfolios**

- (1) Where a segregated portfolio has no segregated portfolio assets or liabilities of the segregated portfolio company attributable to it, the segregated portfolio company may terminate the segregated portfolio.

- (2) Where a segregated portfolio company was required to obtain the approval of the Registrar for the creation of a segregated portfolio under Regulation 143(4), the segregated portfolio company shall, within seven days of the termination of the segregated portfolio under subsection (1), give written notice to the Registrar of the termination of the segregated portfolio.
- (3) Subject to subsection (4), a segregated portfolio company may reinstate a segregated portfolio which has been terminated under subsection (1).
- (4) Where a segregated portfolio company was required to obtain the approval of the Registrar for the creation of a segregated portfolio that has been terminated under subsection (1), the company shall not reinstate the portfolio unless it has obtained the prior written approval of the Registrar.
- (5) A segregated portfolio company that contravenes subsections (2) or (4) commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

**145. Segregated portfolio shares**

- (1) A segregated portfolio company may, in respect of a segregated portfolio, issue shares, the proceeds of which shall be included in the segregated portfolio assets of the segregated portfolio in respect of which the segregated portfolio shares are issued.
- (2) Segregated portfolio shares may be issued in one or more classes and a class of segregated portfolio shares may be issued in one or more series.
- (3) Notwithstanding Regulation 9(1)(g), the memorandum of a segregated portfolio company is not required to state the classes of segregated portfolio shares that a segregated portfolio company is authorised to issue.
- (4) Unless the context otherwise requires, references in Part III to shares include references to segregated portfolio shares.

**146. General shares**

The proceeds of the issue of shares in a segregated portfolio company, other than segregated portfolio shares, shall be included in the company's general assets.

**147. Segregated portfolio distributions and dividends**

- (1) Subject to this Regulation, a segregated portfolio company may pay a dividend or otherwise make a distribution in respect of segregated portfolio shares.
- (2) Segregated portfolio dividends may be paid, and segregated portfolio distributions made, by reference only to the segregated portfolio assets and liabilities attributable to the segregated portfolio in respect of which the segregated portfolio shares were issued.
- (3) In determining whether a segregated portfolio company satisfies the solvency test for the purposes of Regulation 68, in respect of a segregated portfolio distribution, no account shall be taken of—
  - (a) the assets and liabilities of or attributable to any other segregated portfolio of the company; or
  - (b) the company's general assets and liabilities.

- (4) The rules made under Regulation 164 may prescribe restrictions on the power of a segregated portfolio company to make distributions, including segregated portfolio distributions, where the company or any segregated portfolio of or within the company does not satisfy the solvency test.

**148. Company to act on behalf of portfolios**

- (1) Any act, matter, deed, agreement, contract or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by the segregated portfolio company for and on behalf of such segregated portfolio or portfolios which shall be identified or specified and, where in writing, it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.
- (2) If a segregated portfolio company contravenes subsection (1), the directors shall, as soon as they become aware of the contravention—
- (a) make any necessary enquiries to determine the correct segregated portfolio or segregated portfolios to which the relevant acts, matter, deed, agreement, contract, or other instrument or arrangement should be attributed;
- (b) make the correct attribution; and
- (c) notify in writing all persons who are party to the act, matter, deed, agreement, contract or other instrument or arrangement that was executed, or which may be adversely affected by any such attribution, of that attribution and the parties' rights under subsection (3).
- (3) Any person notified under subsection (2)(c), or who should have been so notified, who objects to an attribution by the directors under subsection (2) may, within 30 days of receiving written notice under that subsection in the case of persons who received such notice, apply to the Court for a re-attribution.
- (4) The Court may, upon hearing an application under subsection (3), and taking account of the intention of the parties and such other factors as it considers relevant, order that the act, matter, deed, agreement, contract, or other instrument or arrangement is considered to be attributed to a particular segregated portfolio or portfolios or to the general assets, if applicable in particular proportions or on a particular basis, and may make such ancillary orders as it considers appropriate.

**149. Assets**

- (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets.
- (2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.
- (3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.
- (4) The assets of a segregated portfolio comprise—
- (a) assets representing the consideration paid or payable for the issue of segregated portfolio shares and reserves attributable to the segregated portfolio; and



- (b) all other assets attributable to or held within the segregated portfolio.
- (5) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures—
  - (a) to segregate, and keep segregated, segregated portfolio assets separate and separately identifiable from general assets;
  - (b) to segregate, and keep segregated, segregated portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and
  - (c) where relevant, to apportion or transfer assets and liabilities between segregated portfolios, or between segregated portfolios and general assets of the company.
- (6) Notwithstanding subsection (5), the directors of a segregated portfolio company may cause or permit segregated portfolio assets and general assets to be held—
  - (a) by or through a nominee; or
  - (b) by a company, the shares and capital interests of which may be segregated portfolio assets or general assets or a combination of both.
- (7) The directors of a segregated portfolio company do not breach the duties imposed on them under subsection (5) by reason only that they cause or permit segregated portfolio assets or general assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets remain separately identifiable in accordance with subsection (5).

**150. Creditors of a segregated portfolio company**

- (1) The rights of creditors of a segregated portfolio company shall correspond with the liabilities provided for in Regulation 152 and no creditor of a segregated portfolio company shall have any rights other than the rights specified in this Regulation and in Regulations 151 and 152.
- (2) Subject to subsection (3), the following terms shall be implied in every transaction entered into by a segregated portfolio company—
  - (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio;
  - (b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, 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 by any means or otherwise levying execution against any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.



- (3) Subsection (2) does not apply to the extent that it is excluded in writing.
- (4) All sums recovered by a segregated portfolio company as a result of any trust referred to in subsection (2)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (2)(b).
- (5) Any asset or sum recovered by a segregated portfolio company pursuant to the implied terms set out in subsection (2)(b) or (2)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the segregated portfolio affected.
- (6) In the event of any segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company being taken in execution in respect of a liability not attributable to that segregated portfolio, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated portfolio 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 segregated portfolio affected; and
  - (b) transfer or pay, from the segregated portfolio assets or general assets to which the liability was attributable to the segregated portfolio affected, assets or sums sufficient to restore to the segregated portfolio affected the value of the assets lost.
- (7) Where under subsection (6)(b) a segregated portfolio company is obliged to make a transfer or payment from segregated portfolio assets attributable to a segregated portfolio of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its general assets.
- (8) This Regulation shall have extra-territorial application.

**151. Segregated portfolio assets**

Segregated portfolio assets—

- (a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and
- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company who are not creditors in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

**152. Segregation of liabilities**

- (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio—
- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to—
    - (i) firstly the segregated portfolio assets attributable to such segregated portfolio; and

- (ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by RAK ICC; and
  - (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the segregated portfolio assets attributable to any other segregated portfolio.
- (2) Where a liability of a segregated portfolio company to a person—
- (a) arises otherwise than from a matter in respect of a particular segregated portfolio or particular segregated portfolios; or
  - (b) is imposed otherwise than in respect of a particular segregated portfolio or particular segregated portfolios,

such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

**153. General liabilities and assets**

- (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.
- (2) Income, receipts and other assets or rights of, or acquired by, a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

**154. Financial statements**

The financial statements of a segregated portfolio company shall take into account the segregated nature of the company and shall include an explanation of—

- (a) the nature of the company;
- (b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts; and
- (c) the effect that any existing deficit in the assets of one or more segregated portfolios of the company has on the general assets of the company.

**155. Limitation on transfer of segregated portfolio assets from segregated portfolio company**

- (1) The segregated portfolio assets attributable to any segregated portfolio of a segregated portfolio company may only be transferred to another person in accordance with, or as permitted by, this Regulation.
- (2) A transfer, pursuant to subsection (1), of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company shall not, of itself, entitle creditors of that company to have recourse to the assets of the person to whom the segregated portfolio assets were transferred.
- (3) Subject to subsections (8) and (9), no transfer of the segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company may be made except under the

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

- (4) The Court shall not make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company—
  - (a) unless it is satisfied—
    - (i) that the creditors of the company entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio consent to the transfer, or
    - (ii) that those creditors would not be unfairly prejudiced by the transfer; and
  - (b) without hearing the representations of RAK ICC on the matter.
- (5) The Court, on hearing an application for a segregated portfolio transfer order, may—
  - (a) make an interim order or adjourn the hearing, conditionally or unconditionally; or
  - (b) dispense with any of the requirements of subsection (4)(a).
- (6) The Court may attach such conditions as it thinks fit to a segregated portfolio transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio in relation to which the order is sought.
- (7) The Court may make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company notwithstanding that—
  - (a) a voluntary liquidator has been appointed in respect of the company; or
  - (b) a portfolio liquidation order has been made in respect of the segregated portfolio or any other segregated portfolio of the company.
- (8) The provisions of this Regulation are without prejudice to any power of a segregated portfolio company lawfully to make payments or transfers from the segregated portfolio assets attributable to any segregated portfolio of the company to a person entitled, in conformity with the provisions of these Regulations, to have recourse to those segregated portfolio assets.
- (9) Notwithstanding the provisions of this Regulation, a segregated portfolio company shall not require a segregated portfolio transfer order to invest, and change investment of, segregated portfolio assets or otherwise to make payments or transfers from segregated portfolio assets in the ordinary course of the company's business.
- (10) Regulation 161 shall not apply to a transfer of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company made in compliance with this Regulation.

**156. Meaning of “liquidator”**

For the purposes of Regulations 156 to 163 inclusive, “liquidator” means a voluntary liquidator and “liquidation” shall be construed accordingly.

**157. Liquidation of segregated portfolio company**

Notwithstanding the provisions of Part XII or any statutory provision or rule of law to the contrary, in the liquidation of a segregated portfolio company, the liquidator—

- (a) shall be bound to deal with the company's assets in accordance with the requirements set out in Regulation 149(5); and
- (b) in discharge of the claims of creditors of the segregated portfolio company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

**158. Portfolio liquidation orders**

- (1) Subject to the provisions of this Regulation, if in relation to a segregated portfolio company the Court is satisfied—
  - (a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and
  - (b) that the making of an order under this Regulation would achieve the purposes set out in subsection (3),the Court may make a portfolio liquidation order under this Regulation in respect of that segregated portfolio.
- (2) A portfolio liquidation order may be made in respect of one or more segregated portfolios.
- (3) A portfolio liquidation order is an order directing that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a portfolio liquidator specified in the order for the purposes of—
  - (a) the orderly closing down of the business of or attributable to the segregated portfolio; and
  - (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.
- (4) Where the Court makes a portfolio liquidation order it shall, at the same time, appoint an individual who is permitted to provide audit services in the UAE to act as portfolio liquidator under the portfolio liquidation order.
- (5) A portfolio liquidation order—
  - (a) shall not be made if a liquidator is appointed in respect of the segregated portfolio company; and
  - (b) shall cease to be of effect upon the appointment of a liquidator in respect of the segregated portfolio company, but without prejudice to the prior acts of the portfolio liquidator or his agents.
- (6) The members of a segregated portfolio company shall not pass a resolution to appoint a liquidator of the company, whether under Part XII or any other applicable statutory provision

if any segregated portfolio is subject to a portfolio liquidation order without the prior leave of the Court.

- (7) Any resolution passed contrary to subsection (6) shall be void and of no effect.

**159. Application for portfolio liquidation order**

- (1) An application for a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company may be made by—

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated portfolio;
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e) the Registrar.

- (2) Notice of an application to the Court for a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company shall be served upon—

- (a) the company;
- (b) the Registrar; and
- (c) such other persons, if any, as the Court may direct,

each of whom shall be given an opportunity to make representations to the Court before the order is made.

- (3) The Court, on hearing an application—

- (a) for a portfolio liquidation order; or
- (b) for leave, pursuant to Regulation 158(6), to pass a resolution appointing a liquidator,

may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.

- (4) The Court may make a portfolio liquidation order subject to such terms and conditions as it considers appropriate.

**160. Conduct of portfolio liquidation**

- (1) The portfolio liquidator of a portfolio of a segregated portfolio company—

- (a) may do all such things as may be necessary for the purposes set out in Regulation 158(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of, or attributable to, the segregated portfolio.

- (2) The portfolio liquidator may at any time apply to the Court—
- (a) for directions as to the extent or exercise of any function or power;
  - (b) for the portfolio liquidation order to be discharged or varied; or
  - (c) for an order as to any matter arising in the course of the liquidation of the portfolio.
- (3) In exercising his functions and powers the portfolio liquidator shall be deemed to act as agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.
- (4) Any person dealing with the portfolio liquidator in good faith is not concerned to inquire whether the portfolio liquidator is acting within his powers.
- (5) When an application has been made for, and during the period of operation of, a portfolio liquidation order—
- (a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the portfolio liquidation order was made; and
  - (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of, or attributable to, the segregated portfolio in respect of which the portfolio liquidation order was made, except by leave of the Court, which may be conditional or unconditional.
- (6) During the period of operation of a portfolio liquidation order—
- (a) the powers, functions and duties of the directors in respect of the business of, or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made continue to the extent specified in this Part or in rules made under Regulation 164 or to the extent that the portfolio liquidator or the Court shall direct; and
  - (b) the portfolio liquidator of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

**161. Distribution of segregated portfolio assets**

- (1) Subject to subsection (2) and to any agreement between the segregated portfolio company and any creditor of the company as to the subordination of the debts due to that creditor or to the debts due to the company's other creditors, the portfolio liquidator of a segregated portfolio shall, in the winding up of the business of that segregated portfolio, apply the segregated portfolio assets in satisfaction of the company's liabilities attributable to that segregated portfolio *pari passu*.
- (2) Creditors of a segregated portfolio that is subject to a portfolio liquidation order shall be regarded as preferential creditors of the segregated portfolio to the extent that they would be preferential creditors if the segregated portfolio was a company.

- (3) Subject to the memorandum or articles, any surplus shall be distributed among the holders of the segregated portfolio shares or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the company.
- (4) Where there are no segregated portfolio shares and no persons otherwise entitled to the surplus, any surplus shall be paid to the segregated portfolio company and shall become a general asset of the company.

**162. Discharge and variation of portfolio liquidation orders**

- (1) The Court shall not discharge a portfolio liquidation order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.
- (2) Subject to subsection (1), the Court, on hearing an application for the discharge or variation of a portfolio liquidation order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.
- (3) Upon the Court discharging a portfolio liquidation order in respect of a segregated portfolio on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the portfolio liquidator to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.
- (4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the segregated portfolio company.
- (5) The Court may, upon discharging a portfolio liquidation order in respect of a segregated portfolio of a segregated portfolio company, direct that the segregated portfolio shall be dissolved on such date as the Court may specify.
- (6) When a segregated portfolio of a segregated portfolio company has been dissolved under subsection (5), the company may not undertake business or incur liabilities in respect of that segregated portfolio.

**163. Remuneration of portfolio liquidator**

The remuneration of a portfolio liquidator shall be fixed by the Court and shall be payable, in priority to all other claims, from—

- (a) the segregated portfolio assets attributable to the segregated portfolio in respect of which the portfolio liquidator was appointed; and
  - (b) to the extent that these may be insufficient, from the general assets of the company,
- but not from any of the segregated portfolio assets attributable to any other segregated portfolio.

**164. Segregated portfolio company rules**

- (1) The Registrar may make additional rules concerning segregated portfolio companies.



- (2) Without limiting subsection (1), rules made under that subsection may—
- (a) make provision in respect of any of the following matters—
- (i) the classes or descriptions of segregated portfolio company which shall obtain the approval of the Registrar for the creation of segregated portfolios, or circumstances in which such approval is required to be obtained;
  - (ii) where the Registrar's approval is required for the creation of segregated portfolios under paragraph (i), the procedure for the application for, and the granting of, the Registrar's approval;
  - (iii) the conduct of the business of segregated portfolio companies;
  - (iv) the manner in which segregated portfolio companies may carry on, or hold themselves out as carrying on, business;
  - (v) the form and content of the financial statements of segregated portfolio companies and the audit requirements applicable with respect to such financial statements;
  - (vi) the portfolio liquidation of segregated portfolios; and
  - (vii) the fees payable by segregated portfolio companies and by applicants for an approval under Regulation 141;
- (b) provide for modifications to applicable statutory provisions necessary to apply such provisions to the liquidation and administration of segregated portfolios and of segregated portfolio companies;
- (c) generally give effect to this Part; and
- (d) provide for the fees and penalties payable by segregated portfolio companies which may be in addition to, or in substitution for, the fees and penalties specified in these Regulations.
- (3) Rules made under this Regulation may make different provision in relation to different persons, circumstances or cases.

## **PART VIII**

### **REGISTRATION OF CHARGES**

#### **165. Interpretation for this Part**

- (1) In this Part—
- “charge” means any form of security interest over property, wherever situated, other than an interest arising by operation of law;
- “liability” includes contingent and prospective liabilities; and
- “property” includes existing and future property.
- (2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which was, immediately before its acquisition, the subject of a



charge and which remains subject to that charge after its acquisition and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the property.

**166. Creation of charges by a company**

- (1) Subject to its memorandum and articles, a company may, by an instrument in writing, create a charge over its property.
- (2) The governing law of a charge created by a company may be the law of such jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent, and in accordance with, the requirements of the governing law.
- (3) Where a company acquires property subject to a charge—
  - (a) subsection (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and
  - (b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the acquisition by the company of the property subject to the charge.

**167. Company to keep register of charges**

- (1) A company shall keep, or procure that its registered agent keeps, a register of all charges created by the company or existing on property acquired by the company showing—
  - (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
  - (b) a short description of the liability secured by the charge;
  - (c) a short description of the property charged;
  - (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;
  - (e) the name and address of the holder of the charge; and
  - (f) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.
- (2) A copy of the register of charges shall be kept at the registered office of the company or at the office of its registered agent.
- (3) Where a change occurs in the company's register of charges which is kept at the office of its registered agent, the company shall, within four days of the change occurring, transmit a copy of the register containing the change to the registered agent.
- (4) A company that contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

168. **Registration of charges**

- (1) Where a company creates a charge, an application to the Registrar to register the charge may be made by—
  - (a) the registered agent of the chargor;
  - (b) the chargee, or a person authorised to act on his behalf; or
  - (c) any other person interested in the charge (including any duly authorised representative of such person).
- (2) An application under subsection (1) is made by filing an application, specifying the particulars of the charge, in the approved form.
- (3) The Registrar shall keep, with respect to each company, a Register of Charges containing the following information—
  - (a) the company number and name of the company that has created the charge;
  - (b) the date and time of registration of the charge;
  - (c) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
  - (d) a clear statement of the liability secured by the charge;
  - (e) a clear statement of the property charged;
  - (f) the name and address of the agent or trustee for the security or, if there is no such agent or trustee, the name and address of the chargee;
  - (g) the name and address of the holder of the charge;
  - (h) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge;
  - (i) the name and address of the person who filed the charge for registration and the person's entitlement to file the charge;
  - (j) details of any variation of the charge registered under Regulation 169;
  - (k) the date and time of registration of any variation of the charge registered under Regulation 169;
  - (l) the name and address of the person who filed the variation of the charge for registration and the person's entitlement to file the variation;
  - (m) where a notice of satisfaction or release is registered under Regulation 170, details of the satisfaction of any charge registered under Regulation 168 or, where a charge has ceased to affect the property, or any part of the property of the company, details of the property that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property; and

- (n) the date and time of registration of the notice of satisfaction or release registered under Regulation 170.
- (4) If the Registrar is satisfied that the requirements of this Part as to registration have been complied with, upon receipt of an application under subsection (2), the Registrar shall forthwith—
  - (a) register the charge in the Register of Charges kept by him for that company; and
  - (b) issue a certificate of registration of the charge and send a copy to the company and to the chargee.
- (5) The Registrar shall state in the Register of Charges and on the certificate of registration the date and time on which a charge was registered.
- (6) A certificate issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the certificate was registered on the date and time stated in the certificate.

**169. Variation of registered charge**

- (1) Where there is a variation in the terms of a charge registered under Regulation 168, application for the variation to be registered may be made by—
  - (a) the registered agent of the chargor;
  - (b) the chargee, or a person authorised to act on his behalf; or
  - (c) any other person interested in the charge (including any duly authorised representative of such person).
- (2) An application under subsection (1) is made by filing an application in the approved form.
- (3) Upon receipt of an application complying with subsection (2), the Registrar shall forthwith—
  - (a) register the variation of the charge; and
  - (b) issue a certificate of variation and send a copy of the certificate to the company and to the chargee.
- (4) The Registrar shall state in the Register of Charges and on the certificate of variation the date and time on which a variation of charge was registered.
- (5) A certificate issued under subsection (3) is conclusive proof that the variation referred to in the certificate was registered on the date and time stated in the certificate.

**170. Satisfaction or release of charge**

- (1) A notice of satisfaction or release in the approved form may be filed under this Regulation if—
  - (a) all liabilities secured by the charge registered under Regulation 168 have been paid or satisfied in full; or
  - (b) a charge registered under Regulation 168 has ceased to affect the property, or any part of the property, of a company.

- (2) A notice of satisfaction or release shall—
- (a) state whether the charge has been paid or satisfied in full or whether the charge has ceased to affect the property, or any part of the property, of the company; and
  - (b) if the charge has ceased to affect the property, or any part of the property of the company, specify the property of the company that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property.
- (3) A notice of satisfaction or release may be filed by—
- (a) the registered agent of the chargor;
  - (b) the chargee, or a person authorised to act on his behalf; or
  - (c) any other person interested in the charge (including any duly authorised representative of such person).
- (4) If the notice of satisfaction or release is filed by or on behalf of the company or any other person interested in the charge (including any duly authorised representative of such person) it shall be—
- (a) signed by the chargee, or a person authorised to act on his behalf; and
  - (b) accompanied by a statutory declaration in the approved form verifying the matters stated in the notice.
- (5) If the Registrar is satisfied that a notice filed under subsection (1) is correctly completed, complies with subsection (2) and, if filed by or on behalf of the company, subsection (4) has been complied with, the Registrar shall forthwith—
- (a) register the notice; and
  - (b) issue a certificate of the satisfaction, release or partial release of the charge and send a copy of the certificate to the company and to the chargee.
- (6) The Registrar shall state in the Register of Charges and on the certificate issued under subsection (5) the date and time on which the notice filed under subsection (1) was registered.
- (7) From the date and time stated in the certificate issued under subsection (6), the charge is deemed not to be registered in respect of the property specified in the notice filed under subsection (1).

**171. Filing of application by or on behalf of chargee**

- (1) An application for the registration of a charge under Regulation 168 or for the variation of a charge under Regulation 169 made by the chargee, or a person authorised to act on the chargee's behalf, or another person interested in the charge (including any duly authorised representative of such person) shall, subject to subsection (2), be accompanied by a written notice in the approved form stating the full name and address of a person in the UAE who is authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.
- (2) Subsection (1) does not apply to a chargee if the chargee is—
- (a) a company incorporated or continued under these Regulations, the laws of the UAE or regulations of a free zone in the UAE; or

- (b) an individual resident in the UAE.
- (3) A chargee, or a person authorised to act on the chargee's behalf, or another person interested in the charge (including any duly authorised representative of such person) may give the Registrar written notice in the approved form of a change in the person in the UAE authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.
- (4) The Registrar shall be deemed to comply with the requirements of this Part in relation to the sending of documents to a chargee by sending the documents to the person in the UAE most recently notified to the Registrar as the person authorised by the chargee to accept documents on its behalf.

**172. Priority of relevant charges**

- (1) A charge on property of a company created on or after the Commencement Date that is registered in accordance with Regulation 168 has priority over—
  - (a) a charge on the property that is registered in accordance with Regulation 168 after the date on which such first registered charge is registered; and
  - (b) a charge on the property that is not registered in accordance with Regulation 168.
- (2) Charges on property created on or after the Commencement Date which are not registered in accordance with Regulation 168 shall rank among themselves in the order in which they would have ranked had this Regulation not come into force.
- (3) Charges on property created prior to the Commencement Date shall continue to rank in the order in which they would have ranked had this Regulation not come into force and, where they would have taken priority over a charge created on or after the Commencement Date, they shall continue to take such priority after the Commencement Date.

**173. Exceptions to Regulation 172**

Notwithstanding Regulation 172—

- (a) the order of priorities of charges is subject to—
  - (i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over; or
  - (ii) any agreement between chargees that determines the priorities in relation to the charges held by the respective chargees; and
- (b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the company to create any future charge ranking in priority to or equally with the charge.

**PART IX**

MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS,  
ARRANGEMENTS AND DISSENTERS

174. **Interpretation for purposes of this Part**

(1) In this Part—

“consolidated company” means the new company that results from the consolidation of two or more constituent companies;

“consolidation” means the consolidating of two or more constituent companies into a new company;

“constituent company” means an existing company that is participating in a merger or consolidation with one or more other existing companies;

“merger” means the merging of two or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least 90% of the outstanding shares of each class of shares in another company;

“subsidiary company” means a company at least 90% of whose outstanding shares of each class of shares are owned by another company; and

“surviving company” means the constituent company into which one or more other constituent companies are merged.

(2) The definitions of “subsidiary” and “parent” in Regulation 2 do not apply to this Part.

175. **Approval of merger and consolidation**

(1) Two or more companies may merge or consolidate in accordance with this Regulation.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires—

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares, specifying each such class entitled to vote on the merger or consolidation; and

(ii) a specification of each such class, if any, entitled to vote as a class;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination thereof; and

(d) in respect of a merger, a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.

- (3) In the case of a consolidation, the plan of consolidation shall have annexed to it a memorandum and articles complying with Part II, Section 2 of these Regulations to be adopted by the consolidated company.
- (4) Shares in each constituent company may be converted into shares or other securities (or shares and other securities) in the surviving company in a fixed ratio set out in the plan of consolidation and the plan of consolidation may contain provisions dealing with fractional entitlements.
- (5) The following apply in respect of a merger or consolidation under this Regulation—
  - (a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of every class of shares that are entitled to vote on the merger or consolidation as a class if the memorandum or articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the memorandum or articles, would entitle the class to vote on the proposed amendment as a class;
  - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and
  - (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation.

176. **Registration of merger and consolidation**

- (1) After approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company containing—
  - (a) the plan of merger or consolidation;
  - (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar; and
  - (c) the manner in which the merger or consolidation was authorised with respect to each constituent company.
- (2) The articles of merger or consolidation shall be filed with the Registrar together with—
  - (a) in the case of a merger, any resolution to amend the memorandum and articles of the surviving company; and
  - (b) in the case of a consolidation, memorandum and articles for the consolidated company complying with Part II, Section 2 of these Regulations.
- (3) If he is satisfied that the requirements of these Regulations in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with Regulation 17 and, if appropriate, Regulation 29 and is a name under which the company could be registered under Regulation 19, the Registrar shall—
  - (a) register—
    - (i) the articles of merger or consolidation; and



- (ii) in the case of a merger, any amendment to the memorandum or articles of the surviving company or, in the case of a consolidation, the memorandum and articles of the consolidated company; and
- (b) issue a certificate of merger or consolidation in the approved form and, in the case of a consolidation, a certificate of incorporation of the consolidated company.
- (4) A certificate of merger or consolidation issued by the Registrar is conclusive evidence of compliance with all requirements of these Regulations in respect of the merger or consolidation. The plan of merger or consolidation shall take effect upon issuance of the certificate by the Registrar.

**177. Merger with subsidiary**

- (1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of any company, in accordance with this Regulation.
- (2) The directors of the parent company shall approve a written plan of merger containing—
  - (a) the name of each constituent company and the name of the surviving company;
  - (b) with respect to each constituent company—
    - (i) the designation and number of outstanding shares of each class of shares; and
    - (ii) the number of shares of each class of shares in each subsidiary company owned by the parent company;
  - (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other assets, or a combination thereof; and
  - (d) a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.
- (3) Shares in each company to be merged may be converted into shares or other securities (or shares and other securities) in the surviving company in a fixed ratio set out in the plan of consolidation and the plan of merger may contain provisions dealing with fractional entitlements; but if the parent company is not the surviving company, shares of each class of shares in the parent company may only be converted into similar shares of the surviving company.
- (4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.
- (5) Articles of merger shall be executed by the parent company and shall contain—
  - (a) the plan of merger;
  - (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar; and
  - (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to, or waived by, the members of each subsidiary company.



- (6) The articles of merger shall be filed with the Registrar together with any resolution to amend the memorandum and articles of the surviving company.
- (7) If he is satisfied that the requirements of this Regulation have been complied with and that the proposed name of the surviving company complies with Regulation 17 and, if appropriate, Regulation 29 and is a name under which the company could be registered under Regulation 19, the Registrar shall—
  - (a) register—
    - (i) the articles of merger; and
    - (ii) any amendment to the memorandum or articles of the surviving company; and
  - (b) issue a certificate of merger in the approved form.
- (8) A certificate of merger issued by the Registrar is conclusive evidence of compliance with all requirements of these Regulations in respect of the merger.

**178. Effect of merger**

- (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.
- (2) As soon as a merger or consolidation becomes effective—
  - (a) the surviving company or the consolidated company in so far as is consistent with its memorandum and articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
  - (b) in the case of a merger, the memorandum and articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles are contained in the articles of merger;
  - (c) in the case of a consolidation, the memorandum and articles filed with the articles of consolidation of a company under these Regulations, are the memorandum and articles of the consolidated company;
  - (d) assets of every description, including rights which can only be claimed or enforced by action (*choses in action*) the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
  - (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs—
  - (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
  - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director,

officer or agent thereof, are abated or discontinued by the merger or consolidation, but—

- (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be; or
- (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register of Companies—

- (a) a constituent company that is not the surviving company in a merger; or
- (b) a constituent company that participates in a consolidation.

**179. Merger or consolidation with foreign company**

(1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside RAK ICC in accordance with this Regulation, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if—

- (a) the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside RAK ICC are incorporated; and
- (b) the surviving company or the consolidated company is to be incorporated under these Regulations.

(2) A company shall comply with the provisions of these Regulations with respect to merger or consolidation, as the case may be, and a company incorporated under the laws of a jurisdiction outside RAK ICC shall comply with the laws of that jurisdiction.

(3) The effect under this Regulation of a merger or consolidation is the same as in the case of a merger or consolidation under Regulation 175.

(4) The merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

**180. Disposition of assets**

Subject to the memorandum or articles of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than 50% in value of the assets of the company, other than a transfer pursuant to the power described in Regulation 40(3), if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

- (a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors;
- (b) upon approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be authorised by a resolution of members;

- (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

**181. Redemption of minority shares**

(1) Subject to the memorandum or articles of a company—

- (a) members of the company holding 90% of the votes of the outstanding shares entitled to vote; and
- (b) members of the company holding 90% of the votes of the outstanding shares of each class of shares entitled to vote as a class,

may give a written instruction to the company directing it to redeem the shares held by the remaining members.

- (2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.
- (3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

**182. Arrangements**

(1) In this Regulation, “arrangement” means—

- (a) an amendment to the memorandum or articles;
- (b) a reorganisation or reconstruction of a company;
- (c) a merger or consolidation of one or more companies that are companies registered under these Regulations with one or more other companies, if the surviving company or the consolidated company is a company incorporated under these Regulations;
- (d) a separation of two or more businesses carried on by a company;
- (e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination thereof;
- (f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;
- (g) a dissolution of a company; and
- (h) any combination of any of the things specified in paragraphs (a) to (g).

(2) If the directors of a company determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may approve a plan of arrangement

that contains details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of these Regulations or otherwise permitted.

- (3) Upon approval of the plan of arrangement by the directors, the company shall make application to the Court for approval of the proposed arrangement.
- (4) The Court may, upon an application made to it under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of 20 days immediately following the date of the order, and in making the order the Court may—
  - (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
  - (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
  - (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under Regulation 184;
  - (d) conduct a hearing and permit any interested person to appear; and
  - (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.
- (5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto.
- (6) The directors of the company, upon confirming the plan of arrangement, shall—
  - (a) give notice to the persons to whom the order of the Court requires notice to be given; and
  - (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.
- (7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement shall be executed by the company and shall contain—
  - (a) the plan of arrangement;
  - (b) the order of the Court approving the plan of arrangement; and
  - (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.
- (8) The articles of arrangement shall be filed with the Registrar who shall register them.
- (9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate in the approved form certifying that the articles of arrangement have been registered.
- (10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

183. **Arrangement where company in voluntary liquidation**

The liquidator of a company may approve a plan of arrangement under Regulation 182 in which case, that Regulation applies as if “liquidator” was substituted for “directors” and subject to such other modifications as are appropriate.

184. **Rights of dissenters**

- (1) A member of a company is entitled to payment of the fair value of his shares upon dissenting from—
- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
  - (b) a consolidation, if the company is a constituent company;
  - (c) any sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, on which such member would be entitled to vote if a meeting of members was held in accordance with Regulation 180(c), but not including—
    - (i) a disposition pursuant to an order of the Court having jurisdiction in the matter;
    - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
    - (iii) a transfer pursuant to the power described in Regulation 40(3);
  - (d) a redemption of his shares by the company pursuant to Regulation 181; and
  - (e) an arrangement, if permitted by the Court.
- (2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which this action is submitted to a vote, or at the meeting but before the vote, written objection to this action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with these Regulations or where the proposed action is authorised by written consent of members without a meeting.
- (3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if this action is taken.
- (4) Within 20 days immediately following the date on which the vote of members authorising this action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented in writing to, the proposed action.
- (5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating—
- (a) his name and address;

- (b) the number and classes of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of his shares,

and a member who elects to dissent from a merger under Regulation 177 shall give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with Regulation 177.

- (6) A member who dissents shall do so in respect of all shares that he holds in the company.
- (7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.
- (8) Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.
- (9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply—
  - (a) the company and the dissenting member shall each designate an appraiser;
  - (b) the two designated appraisers together shall designate a third appraiser;
  - (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
  - (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.
- (10) Shares acquired by the company pursuant to subsections (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.
- (11) The enforcement by a member of his entitlement under this Regulation excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this Regulation does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.
- (12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of Regulation 181 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within seven days

immediately following the direction given to a company pursuant to Regulation 181 to redeem its shares.

**185. Schemes of arrangement**

- (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be summoned in such manner as the Court directs.
- (2) An application under subsection (1) may be made by—
  - (a) the company;
  - (b) a creditor of the company;
  - (c) a member of the company;
  - (d) if the company is in voluntary liquidation within the meaning of Regulation 206, by the voluntary liquidator; or
  - (e) if the company is being wound up under any applicable statutory provisions as amended from time to time, by the creditor.
- (3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the company.
- (4) An order of the Court made under subsection (3) shall have no effect until a copy of the order has been filed with the Registrar.
- (5) A copy of an order of the Court made under subsection (3) shall be annexed to every copy of the company's memorandum issued after the order has been made.
- (6) In this Regulation, "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.
- (7) The Registrar may provide for the information and explanations to be contained in, or to accompany, a notice calling a meeting under this Regulation.
- (8) Where the Court makes an order with respect to a company under this Regulation, Regulations 174 to 184 shall not apply to the company.
- (9) A company that contravenes subsection (5) commits a contravention of these Regulations and is liable to a fine not exceeding level 2.



## PART X

### CONTINUATION

#### 186. Foreign company may continue under these Regulations

- (1) Subject to subsection (2), a foreign company may continue as a company incorporated under these Regulations in accordance with this Part if the laws of the jurisdiction in which it is registered permit it to continue in another jurisdiction, including RAK ICC.
- (2) A foreign company may not continue as a company incorporated under these Regulations if—
  - (a) it is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;
  - (b) a receiver or manager has been appointed in relation to any of its assets;
  - (c) it has entered into an arrangement with its creditors, that has not been concluded;
  - (d) an application made to a court in another jurisdiction for the liquidation of the company or for the company to be subject to liquidation or insolvency proceedings has not been determined; or
  - (e) if the Registrar is of the opinion that it would be contrary to the public interest to do so.
- (3) For the purposes of satisfying himself that the requirements of subsection (1) have been met and none of the disqualifications mentioned in subsection (2) applies, the Registrar may rely on a certificate issued by a director of the foreign company attesting to the foreign company's compliance with the requirements and the non-application of the disqualifications, if the certificate is signed by the director.
- (4) The certificate referred to in subsection (3) shall be in the approved form and shall be accompanied by an extract of the law relied upon for the purposes of subsection (1).

#### 187. Application to continue under these Regulations

- (1) An application by a foreign company to continue under these Regulations shall be made by filing—
  - (a) a certified copy of its certificate of incorporation, or such other document as evidences its incorporation, registration or formation;
  - (b) a memorandum and articles complying with subsections (2) and (3);
  - (c) evidence satisfactory to the Registrar that the application to continue and the proposed memorandum and articles have been approved—
    - (i) by a majority of the directors or equity holders or the other persons who are charged with exercising the powers of the company; or
    - (ii) in such other manner as may be established by the company for exercising the powers of the company; and
  - (d) evidence satisfactory to the Registrar that the company is not disqualified from continuing into RAK ICC under Regulation 186(2).



- (2) Subject to subsection (3), the memorandum of, a company continuing under these Regulations shall comply with Regulation 9.
- (3) The memorandum of a company applying to continue under these Regulations shall, in addition to the matters required to be stated under Regulation 9, state—
- (a) the name of the company at the date of the application and the name under which it proposes to be continued;
  - (b) the jurisdiction under which it is incorporated, registered or formed; and
  - (c) the date on which it was incorporated, registered or formed.
- (4) The memorandum and articles of a company applying to continue under these Regulations shall be signed by, or on behalf of, the persons who have approved them under subsection (1)(c).
- (5) The application under this Regulation shall also be accompanied by evidence, satisfactory to the Registrar, of the following matters—
- (a) that the foreign company is authorised, by the laws of the jurisdiction under which it is incorporated, to make the application to the Registrar;
  - (b) where the constitution of the foreign company or the law of that jurisdiction requires that any authorisation be given for the application to the Registrar, that it has been given;
  - (c) that if a certificate of continuation is issued under these Regulations pursuant to the application under this Regulation, the foreign company will thereupon cease to be incorporated under the other jurisdiction; and
  - (d) that if a certificate of continuation is so issued, the interests of the members and the creditors of the foreign company will not be unfairly prejudiced.
- (6) If a document which is submitted in accordance with this Regulation is not in the English language, the application under this Regulation shall also be accompanied by a translation of the instrument into English.

**188. Continuation**

- (1) If the Registrar is satisfied that the requirements of these Regulations in respect of continuation have been complied with, upon receipt of the documents specified in Regulation 187(1), the Registrar shall—
- (a) register the documents;
  - (b) allot a unique number to the company; and
  - (c) issue a certificate of continuation to the company in the approved form.
- (2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that—
- (a) all the requirements of these Regulations as to continuation have been complied with; and

- (b) the company is continued as a company incorporated under these Regulations under the name designated in its memorandum on the date specified in the certificate of continuation.
- (3) Notwithstanding the provisions of Regulation 186 and this Regulation, the Registrar may—
  - (a) refuse to continue a foreign company under this Part if he is of the opinion that it would be contrary to the public interest to do so; and
  - (b) require the publication of a public notice in such places and form as the Registrar may prescribe prior to deciding whether to grant a certificate of continuation under this Part.
- (4) Upon issue of the certificate of continuation under subsection (1), the company shall file the certificate of discontinuation (or other evidence of such discontinuation) provided by the former jurisdiction.

**189. Effect of continuation**

- (1) When a foreign company is continued under these Regulations—
  - (a) these Regulations apply to the company as if it had been incorporated under Regulation 7 after the Commencement Date;
  - (b) the company is capable of exercising all the powers of a company incorporated under these Regulations;
  - (c) the company is no longer to be treated as a company incorporated under the laws of a jurisdiction outside RAK ICC; and
  - (d) the memorandum and articles filed under Regulation 187(1) become the memorandum and articles of the company.
- (2) The continuation of a foreign company under these Regulations does not affect—
  - (a) the continuity of the company as a legal entity; or
  - (b) the assets, rights, obligations or liabilities of the company.
- (3) Without limiting subsection (2)—
  - (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under these Regulations; and
  - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under these Regulations, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- (4) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation shall be deemed to have been issued in conformity with these Regulations.

190. **Continuation under foreign law**

- (1) Subject to subsection (3) and its memorandum or articles, a company for which the Registrar would issue a certificate of good standing pursuant to Regulation 268(1) may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside RAK ICC in the manner provided under those laws.
- (2) Where a company that wishes to continue as a company incorporated under the laws of a jurisdiction outside RAK ICC has a charge registered in respect of the property of the company under Regulation 167/168, it shall, before continuing, provide a written declaration addressed to the Registrar specifying that—
  - (a) a notice of satisfaction of release in respect of the charge has been filed and registered under Regulation 170;
  - (b) where paragraph (a) has not been complied with, the chargee to whom the registered charge relates has been notified in writing of the intention to continue the company as a company incorporated under the laws of a jurisdiction outside RAK ICC and the chargee has given his consent or has no objection to the continuation; or
  - (c) where paragraph (a) has not been satisfied and the chargee, after notification under paragraph (b), has not given his consent or expressed non-objection to the continuation, the chargee's interest secured by the registered charge shall not be diminished or in any way compromised by the continuation and the charge shall operate as a liability to which subsection (10)(b) applies.
- (3) A company that continues as a company incorporated under the laws of jurisdiction outside RAK ICC does not cease to be a company incorporated under these Regulations unless—
  - (a) the laws of the jurisdiction outside RAK ICC permit the continuation and the company has complied with those laws;
  - (b) the registered agent of the company has filed with the Registrar the required notice of continuation under subsection (6); and
  - (c) the Registrar has issued a certificate of discontinuance of the company under subsection (8)(a).
- (4) For the purposes of establishing compliance with subsection (3)(a), the registered agent of the company shall file a statement in the approved form signed by a director of the company confirming that—
  - (a) the laws of the jurisdiction outside RAK ICC permit the continuation of the company; and
  - (b) the company has complied with those laws.
- (5) Subject to subsections (2), (3) and (4), where the continuation of a company under the laws of a jurisdiction outside RAK ICC is dependent upon the issuing of a certificate of discontinuance under subsection (8)(a), the Registrar may rely upon a provisional certificate of continuance (however described) issued in respect of that company under the laws of that jurisdiction as a basis to issue the certificate of discontinuance.

- (6) The registered agent of a company that continues as a company incorporated under the laws of a jurisdiction outside RAK ICC shall file a notice of the company's continuation in the approved form.
- (7) The application under this Regulation shall also be accompanied by evidence, satisfactory to the Registrar, of the following matters—
- (a) that the laws of the jurisdiction outside RAK ICC in which the company proposes to continue allow its continuation there as a body corporate incorporated under those laws;
  - (b) that those laws provide that upon the continuation of the company as a body corporate in that jurisdiction and that if a certificate of discontinuance is issued—
    - (i) all of the property and rights of the company shall continue to be owned and enjoyed by it following its continuation as a company under the laws of that jurisdiction;
    - (ii) the company shall continue to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of that jurisdiction;
    - (iii) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, shall be released or impaired by its continuation as a company under the laws of that jurisdiction; and
    - (iv) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of that jurisdiction, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be;
  - (c) that notice has been given to the shareholders and creditors of the company of the application to the Registrar under this Regulation, and either—
    - (i) that no shareholder or creditor has applied to the Court for an order restraining the application made to the Registrar under this Regulation; or
    - (ii) that the application of every shareholder and creditor who has so applied to the Court has been determined by the Court in a way which does not prevent the Registrar from granting the application made to it under this Regulation; and
  - (d) that the company has complied with such other conditions as may be prescribed.
- (8) If the Registrar is satisfied that the requirements of these Regulations in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with, the Registrar shall—
- (a) issue a certificate of discontinuance of the company in the approved form;
  - (b) strike the name of the company off the Register of Companies with effect from the date of the certificate of discontinuance; and
  - (c) publish the striking off of the company on the Website for at least seven days.

- (9) A certificate of discontinuance issued under subsection (7) is prima facie evidence that—
- (a) all the requirements of these Regulations in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and
  - (b) the company was discontinued on the date specified in the certificate of discontinuance.
- (10) Where a company is continued under the laws of a jurisdiction outside RAK ICC—
- (a) the company continues to own and enjoy all of the property and rights that existed prior to its continuation as a company under the laws of that jurisdiction;
  - (b) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of that jurisdiction;
  - (c) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of that jurisdiction;
  - (d) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of that jurisdiction, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and
  - (e) service of process may continue to be effected on the registered agent of the company in RAK ICC in respect of any claim, debt, liability or obligation of the company during its existence as a company under these Regulations.

**191. Waiver of requirements by Registrar**

- (1) Notwithstanding anything to the contrary set out in this Part, the Registrar may waive or disapply any of the requirements imposed by this Part and proceed to register a continuation or discontinuation.
- (2) The waiver or disapplication by the Registrar of the requirements of this Part may be conditional or unconditional.

## **PART XI**

### **MEMBERS' REMEDIES**

**192. Interpretation for this Part**

In this Part, “member”, in relation to a company, means—

- (a) a shareholder or a personal representative of a shareholder; or
- (b) a guarantee member of a company limited by guarantee.

**193. Restraining or compliance order**

- (1) If a company or a director of a company engages in, or proposes to engage in or has engaged in, conduct that contravenes these Regulations or the memorandum or articles of the company, the Court may, on the application of a member or a director of the company, make an order

directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes, these Regulations or the memorandum or articles.

- (2) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.
- (3) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it could make as a final order under that subsection.

**194. Actions by a member on behalf of a company**

- (1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member to—
  - (a) bring proceedings in the name and on behalf of that company; or
  - (b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.
- (2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must take the following matters into account—
  - (a) whether the member is acting in good faith;
  - (b) whether the proposed proceedings are in the interests of the company taking account of the views of the company's directors on commercial matters;
  - (c) whether the proceedings are likely to succeed;
  - (d) the costs of the proceedings in relation to the relief likely to be obtained; and
  - (e) whether an alternative remedy to the proposed proceedings is available.
- (3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that—
  - (a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
  - (b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.
- (4) Unless the Court otherwise orders, not less than 28 days' notice of an application for leave under subsection (1) must be served on the company and the company is entitled to appear and be heard at the hearing of the application.
- (5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).
- (6) Except as provided in this Regulation, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

**195. Costs of actions by a member on behalf of a company**

- (1) If the Court grants leave to a member to bring or intervene in proceedings under Regulation 194, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.
- (2) If the Court, on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order—
  - (a) that the company bear such proportion of the costs as it considers to be reasonable; or
  - (b) that the company shall not bear any of the costs.

**196. Powers of Court when leave granted under Regulation 194**

The Court may, at any time after granting a member leave under Regulation 194, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including—

- (a) an order authorising the member or any other person to control the proceedings;
- (b) an order giving directions for the conduct of the proceedings;
- (c) an order that the company or its directors provide information or assistance in relation to the proceedings; and
- (d) an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid in whole or in part to former and present members of the company instead of to the company.

**197. Compromise, settlement or withdrawal of actions by a member on behalf of a company**

No proceedings brought by a member or in which a member intervenes with the leave of the Court under Regulation 194 may be settled or compromised or discontinued without the approval of the Court.

**198. Personal actions by members**

A member of a company may bring an action against the company for breach of a duty owed by the company to him as a member.

**199. Representative actions**

Where a member of a company brings proceedings against the company and other members have the same or substantially the same interest in relation to the proceedings, the Court may appoint that member to represent all or some of the members having the same interest and may, for that purpose, make such order as it thinks fit, including an order—

- (a) as to the control and conduct of the proceedings;
- (b) as to the costs of the proceedings; and
- (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.



200. **Prejudiced members**

- (1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may apply to the Court for an order under this Regulation.
- (2) If, on an application under this Regulation, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders—
  - (a) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;
  - (b) requiring the company or any other person to pay compensation to the member;
  - (c) regulating the future conduct of the company's affairs;
  - (d) amending the memorandum or articles of the company;
  - (e) appointing a receiver of the company;
  - (f) appointing a liquidator of the company under Regulation 241;
  - (g) directing the rectification of the records of the company; or
  - (h) setting aside any decision made or action taken by the company or its directors in breach of these Regulations or the memorandum or articles of the company.
- (3) No order may be made against the company or any other person under this Regulation unless the company or that person is a party to the proceedings in which the application is made.

**PART XII**

**LIQUIDATION, STRIKING-OFF AND DISSOLUTION**

201. **Interpretation for this Part**

In this Part, unless the context otherwise requires—

- (a) a person is a creditor of another person (the debtor) if he has a claim against the debtor, whether by assignment or otherwise, that is, or would be, an admissible claim in—
  - (i) the liquidation of the debtor that is a company; or
  - (ii) the bankruptcy of the debtor that is an individual;
- (b) “insolvent”, in relation to a company means—
  - (i) the value of that company's liabilities exceeds, or will exceed, its assets; or
  - (ii) that company is, or will be, unable to pay its debts as they fall due;
- (c) “liability” means a liability to pay money or money's worth including a liability under an applicable law, a liability in contract, tort or bailment, a liability for a breach of trust and a liability arising out of an obligation to make restitution, and “liability” includes



a debt. A liability may be present or future, certain or contingent, fixed or liquidated, sounding only in damages or capable of being ascertained by fixed rules or as a matter of opinion. For purposes of this Part, an illegal or unenforceable liability is deemed not to be a liability; and

- (d) “secured creditor” means a creditor of a debtor with an enforceable security interest over an asset of the debtor in respect of his claim.

**202. Filing of notices by voluntary liquidators**

Where any notice or other document is required under this Part to be filed by a voluntary liquidator, the document may only be filed by—

- (a) a person qualified to act as the registered agent of a company in accordance with Regulation 92; or
- (b) the voluntary liquidator, provided that a copy of such notice or other document is provided to the registered agent of the company within three days.

*Section 1 – Liquidation*

**203. Application of this Section**

- (1) A company may only be liquidated under this Section if—
  - (a) it has no liabilities; or
  - (b) it is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities.
- (2) A company may be liquidated notwithstanding that there is a charge registered in respect of the company’s property under Regulation 167167168.

**204. Declaration of solvency**

- (1) Where it is proposed to appoint a voluntary liquidator under this Section, the directors of the company shall—
  - (a) make a declaration of solvency in the approved form stating that, in their opinion—
    - (i) the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
    - (ii) the value of the company’s assets equals or exceeds its liabilities; and
  - (b) approve a liquidation plan specifying—
    - (i) the reasons for the liquidation of the company;
    - (ii) their estimate of the time required to liquidate the company;
    - (iii) whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company;

- (iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator in accordance with Regulation 205;
  - (v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions;
  - (vi) that, where there is a charge registered in respect of the company's property under Regulation 168, a notice of satisfaction or release has been filed and registered under Regulation 169170;
  - (vii) that, where paragraph (vi) has not been complied with, the chargee to whom the registered charge relates has been notified in writing of the intention to liquidate the company and has given his or her consent or has no objection to the liquidation; or
  - (viii) that, where paragraph (vi) has not been satisfied and the chargee after notification under paragraph (vii), has not given his or her consent or expressed non-objection to the liquidation, the liquidation shall take into account and appropriately settle any interest in relation to the registered charge.
- (2) Subject to Regulation 208(2), a declaration of solvency has no effect for the purposes of this Section unless—
- (a) it is made on a date no more than four weeks earlier than the date of the resolution to appoint a voluntary liquidator; and
  - (b) it has attached to it a statement of the company's assets and liabilities as at the latest practical date before the making of the declaration.
- (3) A statement of the company's assets and liabilities shall be in a form approved by the directors of the company.
- (4) A liquidation plan has no effect for the purposes of Regulation 207(1)(e) unless it is approved by the directors no more than six weeks prior to the date of the resolution to appoint a voluntary liquidator.
- (5) A director making a declaration of solvency under this Regulation without having reasonable grounds for the opinion that the company is and will continue to be able to discharge, pay or provide for its debts in full as they fall due, commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

## 205. **Appointment of voluntary liquidator**

- (1) A voluntary liquidator or two or more joint voluntary liquidators may be appointed in respect of a company—
- (a) by a resolution of the directors passed under subsection (2); or
  - (b) by a resolution of the members passed under subsection (3),
- and the proposed remuneration for such voluntary liquidator(s) shall be as approved by the directors or members, as applicable, in such resolution.

- (2) The directors of a company may, by resolution, appoint an individual that is eligible in accordance with subsection (6) as the voluntary liquidator of the company and approve the remuneration of such liquidator—
- (a) upon the expiration of such time as may be specified in its memorandum or articles for the company's existence;
  - (b) upon the happening of such event as may be specified in its memorandum or articles as an event that shall terminate the existence of the company;
  - (c) in the case of a company limited by shares, if it has never issued any shares; or
  - (d) in any other case—
    - (i) if the memorandum or articles permit them to pass a resolution for the appointment of a voluntary liquidator; and
    - (ii) the members have, by resolution, approved the liquidation plan.
- (3) The members of a company may, by resolution—
- (a) approve the liquidation plan; and
  - (b) appoint an eligible individual as the voluntary liquidator of the company and approve the remuneration of such liquidator.
- (4) The following provisions apply to a members' resolution under subsections (2)(d)(ii) or (3)—
- (a) holders of the outstanding shares of a class or series of shares are entitled to vote on the resolution as a class or series only if the memorandum or articles so provide;
  - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the liquidation plan, shall be given to each member, whether or not entitled to vote on the liquidation plan; and
  - (c) if it is proposed to obtain the written consent of members, a copy of the liquidation plan shall be given to each member, whether or not entitled to consent to the liquidation plan.
- (5) Where two or more joint voluntary liquidators are appointed, whether under this Regulation or as a result of an appointment under Regulation 210, the functions and powers of the voluntary liquidator may be performed or exercised by any one of the voluntary liquidators or by any two or more of them together, except so far as the resolution of appointment otherwise provides.
- (6) An individual is eligible to be appointed and to act as the voluntary liquidator of a company if the individual is permitted to provide audit services in the UAE and is not disqualified from acting as the voluntary liquidator of a company under subsection (7).
- (7) The following individuals are disqualified from being appointed, or acting, as the voluntary liquidator of a company—
- (a) a person disqualified from acting as a voluntary liquidator under the laws applicable in RAK ICC or an individual subject to an equivalent disqualification under the laws of a jurisdiction outside RAK ICC;

- (b) a person restricted from acting as a voluntary liquidator under the laws applicable in RAK ICC or an individual subject to an equivalent restriction under the laws of a jurisdiction outside RAK ICC;
- (c) a minor;
- (d) an undischarged bankrupt;
- (e) an individual who is, or at any time in the previous two years has been, a director of the company or an affiliated company;
- (f) an individual who acts, or at any time in the previous two years has acted, in a senior management position in relation to the company or an affiliated company and whose functions or responsibilities have included functions or responsibilities in relation to the financial management of the company or an affiliated company; and
- (g) an individual who is a close family member of an individual specified in paragraph (e) or (f).

**206. Duration of liquidation**

The liquidation of a company under this Section commences at the time at which the notice of the voluntary liquidator's appointment is filed and continues until it is terminated in accordance with Regulations 218 or 219 and throughout this period, the company is referred to as being in voluntary liquidation.

**207. Circumstances in which liquidator may not be appointed**

- (1) A voluntary liquidator may not be appointed under Regulation 205 by the directors or the members of a company if—
  - (a) a creditor liquidator of the company has been appointed under Section 2 of this Part;
  - (b) an application has been made to the Court to appoint a liquidator of the company under Regulation 241 and the application has not been dismissed;
  - (c) the person to be appointed voluntary liquidator has not consented in writing to his appointment;
  - (d) the directors of the company have not made a declaration of solvency complying with Regulation 204; or
  - (e) the directors have not approved a liquidation plan under Regulation 204(1)(b).
- (2) A resolution to appoint a voluntary liquidator under this Part in the circumstances referred to in subsection (1) is void and of no effect.
- (3) Where a voluntary liquidator is appointed under this Regulation, the directors or the members, as the case may be, shall, as soon as practicable, give the liquidator notice of his appointment.
- (4) A resolution to appoint a voluntary liquidator is void and of no effect unless the voluntary liquidator files notice of his appointment within 14 days of the date of his appointment.

**208. Notice and advertisement of liquidation**

- (1) Where a voluntary liquidator is appointed under Regulation 205 the liquidator shall—
- (a) within 14 days of the date of his appointment, file the following documents—
    - (i) a notice of his appointment in the approved form;
    - (ii) the declaration of solvency made by the directors or a certified extract in the form set out in subsection (5); and
    - (iii) a copy of the liquidation plan; and
  - (b) within 30 days of commencement of the liquidation, advertise notice of his appointment in the manner set out in subsection (6).
- (2) Subsection (1)(a)(ii) does not require the liquidator to file the statement of the company's assets and liabilities required under Regulation 204(2) to be attached to the declaration of solvency, although the statement may be filed.
- (3) A copy of the declaration of solvency, with the statement of the company's assets and liabilities attached, must be kept at the office of the registered agent of the company.
- (4) A company that contravenes subsection (3) commits a contravention of these Regulations and is liable to a fine not exceeding level 4.
- (5) An extract of the declaration of solvency filed under Regulation 208(1)(a)(ii) shall—
- (a) set out the entire statutory declaration of solvency, except for the names and signatures of the directors;
  - (b) state that the names and signatures of the directors are omitted; and
  - (c) be certified by the registered agent of the company as an accurate extract of the declaration of solvency that is complete, except for the names and signatures of the directors.
- (6) For the purposes of subsection 208(1)(b) and subsection 215(2)(b), notice of the appointment of a voluntary liquidator of a company shall be advertised—
- (a) on the Website for at least 30 days; and
  - (b) unless the company's principal place of business is in the Zone—
    - (i) in at least one issue of a newspaper circulating in the place outside the Zone in which its place of business, or if it has more than one, its principal place of business, is situated; or
    - (ii) if the company does not have a place of business, or the voluntary liquidator does not know where its place of business is situated, in such manner as the liquidator considers is most likely to come to the attention of any creditors of the company.

**209. Effect of appointment of voluntary liquidator**

- (1) Subject to subsections (2) and (3), with effect from the commencement of the voluntary liquidation of a company—
  - (a) the voluntary liquidator has custody and control of the assets of the company; and
  - (b) the directors of the company remain in office but they cease to have any powers, functions or duties other than those required or permitted under this Part.
- (2) Subsection (1)(a) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest.
- (3) Notwithstanding subsection (1)(b), the directors, after the commencement of the voluntary liquidation, may—
  - (a) authorise the liquidator to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company where the liquidation plan does not give the liquidator such authorisation; and
  - (b) exercise such powers as the liquidator, by written notice, may authorise them to exercise.

**210. Appointment of additional voluntary liquidator**

The members of a company may, by resolution, appoint an eligible individual as an additional voluntary liquidator to act jointly with the voluntary liquidator or voluntary liquidators already appointed.

**211. Resignation of voluntary liquidator**

- (1) A voluntary liquidator may only resign in accordance with this Regulation.
- (2) Subject to subsection (4), the voluntary liquidator shall give not less than 14 days' notice of his intention to resign to each member and director of the company.
- (3) The notice of intention to resign shall be accompanied by a summary of the liquidation accounts and a report of the voluntary liquidator's conduct of the liquidation.
- (4) The directors and members of the company may resolve to accept less than 14 days' notice of the voluntary liquidator's resignation.
- (5) On the expiration of the notice period specified in the notice, or such shorter period of notice that may be accepted by the members and directors under subsection (4), the liquidator may send notice of his resignation to each member and director of the company.
- (6) Where a voluntary liquidator resigns, he shall file a notice of his resignation and, subject to subsection (5), his resignation takes effect from the date of filing.

**212. Removal of voluntary liquidator**

A voluntary liquidator may only be removed in accordance with Regulations 213 or 214.

**213. Removal of voluntary liquidator by resolution of members**

A voluntary liquidator may be removed by resolution of members in accordance with Regulation 82.

**214. Removal of voluntary liquidator by court**

(1) The Court may, on application by a person specified in subsection (2), remove the voluntary liquidator of a company from office if—

(a) the voluntary liquidator—

(i) was not eligible to be appointed, or is not eligible to act, as the voluntary liquidator of the company; or

(ii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court has reasonable grounds for believing that—

(i) the voluntary liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;

(ii) the voluntary liquidator has an interest that conflicts with his role as voluntary liquidator; or

(iii) for some other reason, he should be removed as voluntary liquidator.

(2) An application to the Court to remove a voluntary liquidator may be made by a director, member or creditor of the company.

(3) The Court may require an applicant specified in subsection (2) to give security for the costs to be incurred by the voluntary liquidator on the application.

(4) The voluntary liquidator shall be given no less than 14 days' notice of an application under this Regulation.

(5) On the hearing of an application under this Regulation, the Court may make such interim or other order it considers appropriate, including the appointment of a voluntary liquidator to replace the voluntary liquidator removed by the order.

(6) Where the Court removes a voluntary liquidator, the applicant shall file a copy of the order with the Registrar.

**215. Vacancy in office of liquidator**

(1) If a vacancy occurs in the office of voluntary liquidator, whether because of the death, resignation or removal of the liquidator, unless at least one liquidator remains in office, an eligible individual shall be appointed as replacement voluntary liquidator by resolution of the members.

(2) An individual appointed as voluntary liquidator under this Regulation shall—

(a) within seven days of his appointment, file a notice of appointment in the approved form; and

- (b) within 30 days of his appointment, advertise notice of his appointment in the manner prescribed in Regulation 208(6).

**216. Duties of voluntary liquidator**

- (1) The principal duties of a voluntary liquidator are to—
  - (a) take possession of, protect and realise the assets of the company;
  - (b) identify all creditors of and claimants against the company;
  - (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
  - (d) distribute the surplus assets of the company to the members in accordance with the memorandum and articles;
  - (e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
  - (f) send a copy of the statement of account to all members if so required by the liquidation plan required by Regulation 204(1)(b).
- (2) A transfer, including a prior transfer, described in Regulation 40(3) of all or substantially all of the assets of a company incorporated under these Regulations for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsections (1)(c) and (1)(d).

**217. Powers of voluntary liquidator**

- (1) In order to perform the duties imposed on him under Regulation 216, a voluntary liquidator has all powers of the company that are not reserved to the members under these Regulations or in the memorandum or articles, including, but not limited to, the power—
  - (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
  - (b) to sell any assets of the company at public auction or by private sale without any notice;
  - (c) to collect the debts and assets due or belonging to the company (including the power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any member of other person liable to contribute to the assets of the company);
  - (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
  - (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
  - (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
  - (g) to retain lawyers, accountants and other advisers and appoint agents;



- (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or from the directors under Regulation 209(3)(a), as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
  - (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
  - (j) to make any distribution to creditors of any class in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.
- (2) Notwithstanding subsection (1)(h), a voluntary liquidator shall not, without the permission of the Court, carry on the business of a company in voluntary liquidation for a period of more than two years.

**218. Termination of voluntary liquidation**

- (1) The Court may, at any time after the appointment of a voluntary liquidator under Regulation 205, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so.
- (2) An application for an order under subsection (1) may be made by—
- (a) the voluntary liquidator of the company; or
  - (b) a director, member or creditor of the company.
- (3) Before making an order under subsection (1), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.
- (4) If made by a person other than the voluntary liquidator, an application for an order under subsection (1) shall be served on the voluntary liquidator and the voluntary liquidator is entitled to appear and be heard on the hearing of the application.
- (5) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.
- (6) Where the Court makes an order under subsection (1), the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.
- (7) Where the Court makes an order under subsection (1), the person who applied for the order shall, within five days of the date of the order—
- (a) serve a sealed copy of the order, if that person is not the voluntary liquidator, on the voluntary liquidator; and
  - (b) file a sealed copy of the order.
- (8) A person who contravenes subsection (7) commits a contravention of these Regulations and is liable to a fine not exceeding level 4.

**219. Completion of voluntary liquidation**

- (1) A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the Registrar shall—
  - (a) strike the company off the Register of Companies; and
  - (b) issue a certificate of dissolution in the approved form certifying that the company has been dissolved.
- (2) Where the Registrar issues a certificate of dissolution under subsection (1), the dissolution of the company is effective from the date of the issue of the certificate.
- (3) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (1), the person who, immediately prior to the dissolution, was the voluntary liquidator of the company shall request the Registrar to publish on the Website for at least seven days, a notice that the company has been struck off the Register of Companies and dissolved.

**220. Section 2 of this Part to apply**

From the time that a voluntary liquidator appointed under this Section first becomes aware that the company is insolvent he shall conduct the liquidation as if he had been appointed liquidator under Section 2 of this Part and Section 2 of this Part applies to the liquidation of the company subject to such modifications as are appropriate.

*Section 2 – Liquidation Where Company Insolvent*

**221. Effect of insolvency on voluntary liquidation**

- (1) Within three days of a voluntary liquidator of a company in voluntary liquidation becoming aware that the company is insolvent, the voluntary liquidator shall send a notice of insolvency to the Registrar in the approved form.
- (2) Within three days of the directors of a company in voluntary liquidation becoming aware that the company is insolvent, the directors shall make a declaration of insolvency in the form of a resolution of directors stating that—
  - (a) the value of that company's liabilities exceeds, or will exceed, its assets; or
  - (b) that the company is, or will be, unable to pay its debts as they fall due.
- (3) Within three days of the voluntary liquidator sending the notice to the Registrar or the directors' declaration of insolvency, the company shall—
  - (a) by not less than 14 days' notice given by post to the creditors, members, voluntary liquidator and Registrar, call a meeting of the creditors of the company to be held within 28 days after the date of the liquidator's notice of insolvency or the directors' declaration of insolvency and in the notice nominate a person to be liquidator for the purpose of a creditors' liquidation (which may be the voluntary liquidator if applicable);
  - (b) not less than ten days before the day for which the meeting is called, shall request the Registrar to give notice of the meeting by advertisement on the Website;

- (c) during the period before the creditors' meeting is held, furnish any creditor or member free of charge with such information concerning the affairs of the company as may be reasonably requested; and
  - (d) prepare a balance sheet and financial statement for the company for approval by resolution of directors and provide copies of the approved balance sheet and financial statement to all persons attending the creditors' meeting at such meeting.
- (4) If there is a voluntary liquidator, he may elect to preside at the creditors' meeting and, if the liquidator opts to not preside, a director nominated by the directors shall preside.
  - (5) As from the day on which the creditors' meeting under this Regulation is held the voluntary liquidation becomes a creditors' liquidation and this Section shall have effect as if that meeting was the meeting of creditors referred to in Regulation 225.
  - (6) A person who contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 4.
  - (7) A director making a declaration of insolvency under this Regulation without having reasonable grounds for the opinion that the company is insolvent commits a contravention of these Regulations and is liable to a fine not exceeding level 4.

**222. Application**

An insolvent company may be liquidated under this Section if it so determines, by resolution of members or, if the memorandum or articles of association of the company permit, by resolution of directors. Where a petition of creditors is received for the company to be liquidated under this Section, the company shall make the determination of whether or not to liquidate within 30 days of receipt of such petition.

**223. Notice of creditors' liquidation**

- (1) Where there is a resolution in accordance with Regulation 222 for a creditors' liquidation, the company shall, within 14 days of the resolution, request the Registrar to give notice of the resolution by advertisement on the Website.
- (2) In the event of failure to comply with subsection (1), the company and every director and officer of it who is in default commits a contravention of these Regulations and is liable to a fine not exceeding level 4.

**224. Commencement and effects of creditors' liquidation**

- (1) A creditors' liquidation is deemed to commence on the date of the resolution in accordance with Regulation 222 for a creditors' liquidation or, where Regulation 221 applies, when the liquidation becomes a creditors' liquidation; and the company shall from the commencement of the liquidation cease to carry on its business, except so far as may be required for its beneficial liquidation.
- (2) The corporate state and capacity of the company continue until the company is dissolved.
- (3) A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any amendment to the memorandum or articles of the company made after the commencement of the liquidation is void.

- (4) After the commencement of the liquidation no action shall be taken or proceeded with against the company except by leave of the Court and subject to such terms as the Court may impose.

**225. Meeting of creditors in creditors' liquidation**

Where there is a resolution in accordance with Regulation 222 for a creditors' liquidation, the company shall, by resolution of directors—

- (a) by not less than 14 days' notice given by post to the creditors, members, voluntary liquidator and Registrar, call a meeting of the creditors of the company to be held within 28 days after the date of such resolution and in the notice nominate a person to be liquidator for the purpose of a creditors' liquidation;
- (b) not less than ten days before the day for which the meeting is called, request the Registrar to give notice of the meeting by advertisement on the Website;
- (c) during the period before the creditors' meeting is held, furnish any creditor or member free of charge with such information concerning the affairs of the company as may be reasonably requested;
- (d) approve a balance sheet and financial statement for the company to be provided to all persons attending the creditors' meeting at such meeting; and
- (e) appoint a director to preside over the meeting of creditors.

**226. Appointment of creditors' liquidator**

- (1) The creditors may nominate a person to be creditors' liquidator for the purpose of the liquidation.
- (2) The person nominated by the creditors, or if no person is nominated by the creditors, the person nominated, or deemed to have been nominated, by the company is appointed liquidator with effect from the conclusion of the creditors' meeting.
- (3) In the case of different persons being nominated, a director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Registrar for an order either—
  - (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors; or
  - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.
- (4) The Registrar's order under this Regulation shall be binding on the company and the creditors and a liquidator so appointed shall within 14 days after his appointment give notice of acceptance of the appointment to the Registrar, members and creditors of the company.

**227. Remuneration of liquidator, cessation of directors' powers, and vacancy in office of liquidator**

- (1) A liquidator in a creditors' liquidation is entitled to receive such remuneration as is agreed between him and the creditors.
- (2) On the appointment of a liquidator in a creditors' liquidation, all the powers of the directors cease, except so far as the creditors sanction their continuance.

- (3) The creditors may at any time remove a liquidator.
- (4) If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by the Court) the creditors may fill the vacancy.

**228. No creditors' liquidator appointed**

- (1) If a creditors' liquidation has commenced but no liquidator has been appointed then during the period before the appointment of a liquidator, the powers of the directors shall not be exercised except—
  - (a) with the sanction of the Court;
  - (b) to secure compliance with this Section; or
  - (c) to protect the company's assets.
- (2) A person who contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 4.

**229. Costs of creditors' liquidation**

All costs, charges and expenses properly incurred in a creditors' liquidation, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

**230. Arrangement when binding on creditors**

- (1) An arrangement entered into between a company immediately preceding the commencement of, or in the course of, a creditors' liquidation and its creditors is (subject to the right of appeal under this Regulation) binding—
  - (a) on the company, if approved by a resolution of members or directors; and
  - (b) on the creditors, if approved by three-quarters of the creditors both in number and in value of claims.
- (2) A creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it; and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

**231. Meetings of company and creditors**

- (1) If a creditors' liquidation continues for more than 12 months, the liquidator shall call a meeting of members and a meeting of the creditors to be held at the first convenient date within three months after the end of the first 12 months from the commencement of the liquidation, and of each succeeding 12 months, or such longer period as the Registrar may allow, and shall report to the meetings an account of his acts and dealings and of the conduct of the liquidation during the relevant 12 month period.
- (2) A person who contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 5.

**232. Final meeting and dissolution**

- (1) As soon as the affairs of a company in a creditors' liquidation are fully wound up, the liquidator shall make up an account of the liquidation, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.
- (2) Each such meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the liquidator's account.
- (3) Within seven days after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall make a return to the Registrar of the holding of the meetings and of their dates.
- (4) If the copy is not delivered or the return is not made in accordance with subsection (3), the liquidator commits a contravention of these Regulations and is liable to a fine not exceeding level 5.
- (5) If a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), deliver a return that the meeting was duly called and that no quorum was present; and when that return is made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.
- (6) The Registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and at the end of three months from the registration of the return the company is deemed to be dissolved; but the Registrar may, on the application of the liquidator or of another person who appears to the Registrar to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Registrar thinks fit.
- (7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Regulation he commits a contravention of these Regulations and is liable to a fine not exceeding level 5.

**233. Powers and duties of creditors' liquidator**

- (1) The liquidator in a creditors' liquidation may, with the sanction of a meeting of the creditors—
  - (a) pay a class of creditors in full; and
  - (b) compromise any claim by or against the company.
- (2) The liquidator may, without sanction, exercise any other power of the company as may be required for its liquidation.
- (3) The liquidator may call a meeting of members or circulate a written resolution of members for any purpose he may think fit.
- (4) The liquidator shall pay the company's debts.

**234. Appointment or removal of liquidator by the Registrar**

- (1) If for any reason there is, in a creditors' liquidation, no liquidator acting, the Registrar may appoint a liquidator.

- (2) The Registrar may, on reason being given, remove a liquidator appointed pursuant to subsection (1) and appoint another.

**235. Duty to co-operate with liquidator**

- (1) In a creditors' liquidation each of the persons referred to in subsection (2) shall—
- (a) give the liquidator information concerning the company and its promotion, incorporation, business, dealings, affairs or property which the liquidator may reasonably request in writing at any time after the commencement of the liquidation; and
  - (b) meet with the liquidator at reasonable times and on reasonable notice when requested in writing to do so.
- (2) The persons referred to in subsection (1) are—
- (a) those who are, or have at any time been, directors or officers of the company;
  - (b) those who have taken part in the incorporation of the company at any time within the one year period immediately prior to the commencement of the liquidation; and
  - (c) those who are in the employment of the company, or were in its employment within the one year period immediately preceding the commencement of the liquidation, and are in the liquidator's opinion in possession of information which he requires.
- (3) A person who contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 4.

**236. Distribution of company's property**

Subject to the provisions of any applicable law as to preferential payments, a company's property shall on liquidation be realised and applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles, these Regulations or applicable laws otherwise provide) be distributed among the members according to their rights and interests in the company.

**237. Qualifications of liquidator for creditors' liquidation**

- (1) A person who is not an individual permitted to provide audit services in the UAE is not qualified to act as a liquidator in a creditors' liquidation.
- (2) The Registrar may prescribe additional qualifications required for any person to act as a creditors' liquidator.
- (3) An appointment made in contravention of this Regulation is void.
- (4) A person who acts as a creditors' liquidator when not qualified to do so commits a contravention of these Regulations and is liable to a fine not exceeding level 5.
- (5) A creditors' liquidator shall vacate office if he ceases to be a person qualified to act as a creditors' liquidator.



**238. Corrupt inducement affecting appointment as liquidator**

A person who gives or agrees or offers to give to a member or creditor of a company any valuable benefit with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator, commits a contravention of these Regulations and is liable to a fine not exceeding level 5.

**239. Notification by liquidator of vacation of office**

- (1) A liquidator who resigns, is removed or for any other reason vacates office shall within 14 days after the resignation, removal or vacation of office give notice thereof, signed by him, to the Registrar and in the case of a creditors' liquidation (except where the removal is pursuant to Regulation 227(3)) to the creditors.
- (2) If a liquidator fails to comply with subsection (1) he commits a contravention of these Regulations and is liable to a fine not exceeding level 5.

**240. Notification that company is in liquidation**

- (1) When a company is being liquidated in a creditors' liquidation, every invoice, order for goods or services or business letter issued by or on behalf of the company, or a creditors' liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is in creditors' liquidation.
- (2) A person who contravenes this Regulation commits a contravention of these Regulations and is liable to a fine not exceeding level 5.

**241. Court appointed creditors' liquidator**

- (1) If a creditors' liquidation is not commenced pursuant to Regulation 221, where applicable, or pursuant to Regulation 222 after creditors have made a request in accordance with that Regulation, the Court may, on the application of a creditor of a company, appoint a liquidator of the company if the Court is satisfied that the company is insolvent.
- (2) If the Court makes an order under subsection (1), it may make such other orders as it considers necessary to give effect to the liquidation of the company.
- (3) Where a liquidator is appointed under subsection (1)—
  - (a) this Section shall apply to the liquidation of the company, subject to such modifications as are appropriate; and
  - (b) the liquidation of the company is deemed to have commenced on the date of the appointment of such liquidator.

*Section 3 – Striking Off and Dissolution*

**242. Interpretation for this Section**

In this Section, "Register" means the Register of Companies.



243. **Striking company off Register**

- (1) The Registrar may strike the name of a company off the Register if—
- (a) the company—
    - (i) does not have a registered agent; or
    - (ii) fails to make any filing required to be filed under these Regulations or has otherwise not acted in compliance with these Regulations; or
    - (iii) in the case of a company re-registered pursuant to the Transitional Provisions, has failed to make any filing required to be filed under the Former Regulations or has otherwise not acted in compliance with the Former Regulations;
  - (b) the Registrar is satisfied that—
    - (i) the company has ceased to carry on business; or
    - (ii) the company is carrying on business for which a licence, permit or authority is required under the laws of the jurisdiction of such operations without having such licence, permit or authority; or
    - (iii) it is prejudicial to the interests of RAK ICC, Ras Al Khaimah or the UAE for the company to remain on the Register, including where—
      - (A) the company or its directors or officers has committed a criminal offence; or
      - (B) the company has, or its directors or officers have, been persistently in default in relation to provisions of any law or regulation applicable to it (including any applicable international sanctions); or
  - (c) the company—
    - (i) fails to pay its annual fee or any late payment penalty by the due date; or
    - (ii) on the date three months following the Commencement Date (in the case of companies voluntarily re-registering pursuant to Schedule 6) or the Automatic Re-registration Date (in the case of companies which are automatically re-registered pursuant to Schedule 6) has had the status of inactive under the applicable Former Regulations for six months or more.
- (2) If the Registrar is of the opinion that the company is trading or has property or that there is some other reason why the company should not be struck off the Register, he may, instead of striking the company from the Register, investigate the company and its circumstances.
- (3) Before striking a company off the Register on the grounds specified in subsection (1)(a) or (1)(b), the Registrar shall—
- (a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the Register on a date specified in the notice which shall be no less than 30 days after the date of the notice; and
  - (b) publish a notice of his intention to strike the company off the Register on the Website for at least 30 days.

- (4) Before striking a company off the Register on the grounds specified in subsection (1)(c), the Registrar shall—
- (a) in the case of a company being struck off on the grounds in subsection (1)(c)(i) only, send the company a notice or notices stating that, unless the company shows cause to the contrary, its status on the Register will be changed to “inactive” six months after the date on which such payment was due and will be struck from the Register six months after the date such payment was due unless all outstanding payments to the Registrar have been received by the Registrar prior to such date; and
  - (b) publish a notice of his intention to strike the company off the Register on the Website for at least seven days.
- (5) After the expiration of the time specified in the notice(s) to a company, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.
- (6) The Registrar shall publish a notice of the striking of a company from the Register on the Website for at least 30 days.
- (7) The striking of a company off the Register is effective from the date of the notice published on the Website.
- (8) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice under subsections (3), (4) or (6).

244. **Effect of striking off**

- (1) Where a company has been struck off the Register, the company and the directors, members and any liquidator or receiver thereof, may not—
- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
  - (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
  - (c) act in any way with respect to the affairs of the company.
- (2) Notwithstanding subsection (1), where a company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may—
- (a) make application for restoration of the company to the Register;
  - (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
  - (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that a company is struck off the Register does not prevent—
- (a) the company from incurring liabilities; or
  - (b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution, and does not affect the liability of any of its members, directors, officers or agents.

- (4) In this Regulation and Regulation 246, “liquidator” means a voluntary liquidator and creditor liquidator.

**245. Dissolution of company struck off the Register of Companies**

Where a company that has been struck off the Register under Regulation 243 remains struck off continuously for a period of three years, it is dissolved with effect from the last day of that period, unless notice of commencement of liquidation proceedings in respect of that company have been filed with the Registrar in the approved form.

**246. Restoration of company to Register of Companies by Registrar**

- (1) Where a company has been struck off the Register, but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register.
- (2) Where the company has been struck off the Register under Regulation 243(1)(a)(i) or the struck off company does not have a registered agent, the Registrar shall not restore the company to the Register unless—
- (a) he is satisfied that a licensed person has agreed to act as registered agent of the company; and
- (b) he is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register.
- (3) An application to restore a company to the Register under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within three years of the date of the notice published on the Website under Regulation 243(6).
- (4) The company, or a creditor, a member or a liquidator thereof, may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the Register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.
- (5) Notice of an appeal to the Court under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.
- (6) Where the Registrar restores a company to the Register under subsection (1) or pursuant to a direction of the Court under subsection (4), he shall issue a certificate of restoration to the Register.
- (7) Where a company is restored to the Register under this Regulation, the company is deemed never to have been struck off the Register.
- (8) Where a company to which subsection (2) applies is restored to the Register, it shall forthwith appoint a registered agent under Regulation 94.

**247. Application to restore dissolved company to Register**

- (1) Application may be made to the Court to restore a dissolved company to the Register by—
- (a) a creditor, former director, former member or former liquidator of the company; or
- (b) any person who can establish an interest in having the company restored to the Register.

- (2) An application under subsection (1) may not be made more than ten years after the date that the company was dissolved.
- (3) Notice of the application shall be served on the Registrar, whom is entitled to appear and be heard on the hearing of the application.

248. **Court's powers on hearing**

- (1) Subject to subsection (2), on an application under Regulation 247, the Court may—
  - (a) restore the company to the Register subject to such conditions as it considers appropriate; and
  - (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.
- (2) Where the company was dissolved following the completion or termination of its voluntary liquidation or creditor liquidation under these Regulations, the Court shall not restore the company to the Register unless—
  - (a) the applicant nominates a person to be liquidator of the company, if it is restored to the Register;
  - (b) the person nominated as liquidator consents to act, and is eligible to act, as liquidator of the company on its restoration; and
  - (c) satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.
- (3) For the purposes of subsection (2)(b), a person is eligible to act as the liquidator of a company—
  - (a) in the case of a company that was dissolved following the completion or termination of its voluntary liquidation, if he would be eligible to be appointed voluntary liquidator of the company under these Regulations; or
  - (b) in the case of a company that was dissolved following the completion or termination of its creditor liquidation, if he would be eligible to be appointed creditors' liquidator of the company under these Regulations.
- (4) Where the Court makes an order restoring a company to which subsection (2) applies, it shall appoint as liquidator of the company—
  - (a) in the case of a company that was dissolved following the completion or termination of its voluntary liquidation, the person nominated by the applicant; or
  - (b) in the case of a company that was dissolved following the completion or termination of its creditor liquidation, the person nominated by the applicant if approved by the creditors at the time of the prior creditors' liquidation; or
  - (c) some other person who is eligible to act as liquidator of the company.

**249. Effect of restoration**

- (1) Where the Court makes an order restoring a company to the Register, a sealed copy of the order shall be filed with the Registrar—
  - (a) in the case of a company to which Regulation 248(2) applies, by the person appointed to be liquidator of the company under Regulation 248(4); and
  - (b) in any other case, by the applicant for the order.
- (2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the company to the Register with effect from the date and time that the copy of the sealed order was filed.
- (3) Where the company was dissolved following the completion or termination of its voluntary liquidation or its creditor liquidation—
  - (a) the company is restored as a company in liquidation under these Regulations; and
  - (b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the time that the company is restored to the Register.
- (4) Subject to subsection (5), and provided that the name has not been re-used in accordance with Regulation 36, a company is restored to the Register with the name that it had immediately before it was dissolved.
- (5) A company that is restored to the Register is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

**250. Appointment of liquidator of company struck off**

Where a company has been struck off the Register, the Registrar may apply to the Court for the appointment of a liquidator of the company that is eligible in accordance with Regulation 248(3); and where the Court makes such an order, the company is restored to the Register.

**251. Property of dissolved company**

- (1) Subject to subsection (2), any property of a company that has not been disposed of at the date of the company's dissolution vests in the Government of Ras Al Khaimah.
- (2) When a company is restored to the Register, any property, other than money, that was vested in the Government of Ras Al Khaimah under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

**252. Disclaimer**

- (1) In this Regulation, "onerous property" means—
  - (a) an unprofitable contract; or
  - (b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

- (2) Subject to subsection (3), the Ruler of Ras Al Khaimah may, by notice in writing published on the Website for at least seven days, disclaim the Government of Ras Al Khaimah's title to onerous property which vests in the Government of Ras Al Khaimah under Regulation 251.
- (3) A statement in a notice disclaiming property under this Regulation that the vesting of the property in the Government of Ras Al Khaimah first came to the notice of the Ruler of Ras Al Khaimah on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.
- (4) Unless the Court, on the application of the Ruler of Ras Al Khaimah, orders otherwise, the Ruler of Ras Al Khaimah is not entitled to disclaim property unless the property is disclaimed—
- (a) within 12 months of the date upon which the vesting of the property under Regulation 251 came to the notice of the Ruler of Ras Al Khaimah; or
  - (b) if any person interested in the property gives notice in writing to the Ruler of Ras Al Khaimah requiring him to decide whether he will or will not disclaim the property, within three months of the date upon which he received the notice, whichever occurs first.
- (5) Property disclaimed by the Ruler of Ras Al Khaimah under this Regulation is deemed not to have vested in the Government of Ras Al Khaimah under Regulation 251.
- (6) A disclaimer under this Regulation—
- (a) operates so as to determine, with effect from immediately prior to the dissolution of the company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
  - (b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.
- (7) A person suffering loss or damage as a result of a disclaimer under this Regulation—
- (a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
  - (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (8) The Court may, on an application made under subsection (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

### **PART XIII**

#### **INVESTIGATION OF COMPANIES**

##### **253. Definition of “inspector”**

In Regulations 254 to 259, “inspector” means an inspector appointed by an order made under Regulation 254(2) or (3).

**254. Investigation order**

- (1) A member or the Registrar may apply to the Court ex parte or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its affiliated companies.
- (2) If, upon an application under subsection (1), it appears to the Court that—
  - (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
  - (b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
  - (c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly,the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.
- (3) The Registrar may appoint an inspector to investigate the affairs of a company if it has good reason to do so or based on the application of the company or a member, officer or creditor of the company.
- (4) Inspectors appointed in accordance with this Regulation may, with the consent of the Registrar, also investigate and report on the affairs of another company that is or was related to the company in question.
- (5) If a member makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.
- (6) The costs of the inspection shall be borne by the applicant. An applicant under this Regulation shall not be required to give security for costs.

**255. Court's powers**

- (1) An order made under Regulation 254(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.
- (2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to—
  - (a) replace the inspector;
  - (b) determine the notice to be given to any interested person, or dispense with notice to any person;
  - (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
  - (d) require any person to produce documents or records to the inspector;



- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
  - (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;
  - (g) give directions to the inspector or any interested person on any matter arising in the investigation;
  - (h) require the inspector to make an interim or final report to the Court;
  - (i) determine whether a report of the inspector should be published, and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;
  - (j) require an inspector to discontinue an investigation; or
  - (k) require the company to pay the costs of the investigation in part or in full.
- (3) The inspector shall file a copy of every report he makes under this Regulation.
- (4) A report received by the Registrar under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2)(i).

256. **Inspector's powers**

An inspector—

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

257. **Hearing in camera**

- (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard in camera unless the Court orders otherwise.
- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing and has a right to be represented by a legal practitioner appointed by him for the purpose.
- (3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

258. **Incriminating evidence**

No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.



259. **Privilege**

- (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.
- (2) Nothing in these Regulations affects the legal privilege that exists in respect of a legal practitioner and his client.

**PART XIV**

**ADMINISTRATION AND GENERAL**

260. **Registrar**

- (1) The board of directors of RAK ICC may from time to time appoint and remove from office an officer known as the Registrar. The RAK ICC Chairman may appoint from time to time such officers as may be necessary to assist the Registrar in the exercise of his functions under the Regulations, including a Deputy Registrar and Assistant Registrar.
- (2) The Registrar has the power to do whatever he deems necessary for or in connection with, or reasonably incidental to, the performance of his functions, as may be conferred, or expressed to be conferred on him pursuant to—
  - (a) the Regulations; and
  - (b) any other regulations and rules issued by RAK ICC.
- (3) The Registrar shall have the power to delegate part or all of his functions or powers under these Regulations to his officers or employees and, subject to approval by the RAK ICC Chairman either generally or in relation to any particular matter, to any other person.
- (4) Without limiting the generality of subsection (2), such powers and functions of the Registrar shall be to—
  - (a) set and amend from time to time fees payable for services provided by RAK ICC, including incorporation, registration and annual renewal fees;
  - (b) based on reasonable grounds, appoint one or more competent inspectors to investigate the affairs of a company in accordance with Regulation 254, and to submit such written report as the Registrar may direct;
  - (c) maintain the registers listed in Regulation 261;
  - (d) prescribe forms to be used for any of the purposes of these Regulations or any legislation, regulations or rules administered by the Registrar;
  - (e) issue rules setting out requirements for the authentication of documents to be filed with the Registrar or RAK ICC;
  - (f) exercise the powers and perform the obligations specified in, and do all things required to give effect to, any regulations adopted, from time to time, by the board of directors of RAK ICC;
  - (g) make contracts and other agreements;

- (h) issue instruments for the incorporation and registration of individual companies, setting out the provisions of these Regulations which are applicable to such companies (with such modifications as may be appropriate in the circumstances);
- (i) prepare indicative and non-binding guidance on these Regulations and advise the board of directors of RAK ICC when any such guidance is issued; and
- (j) exercise and perform such other powers and functions as may be delegated to the Registrar by the Ruler of Ras Al Khaimah or the RAK ICC Chairman.

**261. Registers**

- (1) The Registrar shall maintain—
  - (a) a Register of Companies incorporated, or continued or re-registered under these Regulations;
  - (b) a Register of Charges registered under these Regulations; and
  - (c) companies' registers of members.
- (2) The registers maintained by the Registrar in accordance with subsection (1) and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility—
  - (a) that records or stores information magnetically, electronically or by other means; and
  - (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.
- (3) The Registrar may establish systems and facilities enabling the filing of documents and the provision of information to the Registrar, both in hard copy and electronic form and the issuance of certificates and other documents in hard copy and electronic form.
- (4) RAK ICC may—
  - (a) provide that specified qualifying documents, specified types or descriptions of qualifying documents, qualifying documents filed by specified persons or by specified types or descriptions of person or all qualifying documents may be filed in hard copy or by electronic means; and
  - (b) specify requirements concerning—
    - (i) the keeping by the Registrar of the registers, and of documents filed, in electronic or any other form;
    - (ii) the filing of documents in both hard copy and electronic form; and
    - (iii) the issuance by the Registrar of certificates and other documents in hard copy or electronic form.
- (5) Regulations shall not be made under subsection (4)(a) in relation to a qualifying document or documents to be filed in electronic form unless the Registrar has established systems and facilities that enable the specified document or documents to be filed in electronic form.

- (6) The Registrar—
- (a) shall retain copies of every qualifying document filed; and
  - (b) shall not retain any document filed that is not a qualifying document.
- (7) For the purposes of this Regulation, a document is a qualifying document if—
- (a) these Regulations, any rules made under these Regulations or another applicable law, require or expressly permit the document to be filed; and
  - (b) the document complies with the requirements of, and is filed in accordance with, these Regulations, any rules made under these Regulations or other applicable law that requires or permits the document to be filed.

**262. Incomplete or inaccurate information**

A person who fails to provide the information required under these Regulations or under any rules made under these Regulations to the Registrar, or who provides information which is incomplete or inaccurate, commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

**263. Right to request additional information**

The Registrar shall be entitled from time to time to request additional documents or information from a company or its registered agent which the Registrar deems necessary for or in connection with, or reasonably incidental to, the performance of his functions.

**264. Filing of documents**

- (1) Except as otherwise provided in these Regulations, a document required or permitted to be filed by a company under these Regulations, may only be filed—
- (a) by the registered agent of the company; or
  - (b) if a liquidator is appointed in respect of the company, by that liquidator.
- (2) The Registrar may, by notice published on the Website, provide for the filing, registration and issuing of documents, or certain specified types of documents, on a non-business day.

**265. Inspection of registers and documents filed**

- (1) Except as otherwise provided in these Regulations, the company, and any person appearing to the Registrar to be the directors, members or registered agent of a company (or authorised representative of the members or registered agent of the company) may—
- (a) inspect the registers maintained by the Registrar under Regulation 261(1);
  - (b) inspect any document retained by the Registrar in accordance with Regulation 261(4); and
  - (c) require a certified or uncertified copy or extract certificate of incorporation, restoration, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, restoration, merger, consolidation, arrangement, continuation,

discontinuance, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained therein, in each case on payment of a fee specified by the Registrar.

- (2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.
- (3) Subsection (2) applies whether the copy or extract is obtained from a document filed in paper form or is a copy of, or extract from, a document filed in electronic form or is an extract from any Register maintained by the Registrar in electronic form.
- (4) An extract certified by the Registrar as containing particulars of a registered document filed in electronic form is, in the absence of proof to the contrary, conclusive evidence of the filing and registration of those particulars.

**266. Disclosure of Information by Registrar**

Notwithstanding anything to the contrary in these Regulations, the Registrar may disclose information provided to the Registrar to—

- (a) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance, whether in the UAE or otherwise;
- (b) a civil or criminal law enforcement agency, whether in the UAE or otherwise; and
- (c) any other governmental or other regulatory body or authority, whether in the UAE or otherwise,

where—

- (i) the disclosure of such information is requested in writing pursuant to a memorandum of understanding entered into by RAK ICC;
- (ii) the disclosure of such information is required by order of a court whether situated in the United Arab Emirates or elsewhere in the world; or
- (iii) the Registrar reasonably believes that the disclosure of such information is required in order for the Registrar to comply with an obligation binding on it pursuant to applicable laws.

**267. Form of certificate**

Any certificate or other document required to be issued by the Registrar under these Regulations shall be in the approved form.

**268. Certificate of good standing**

- (1) The Registrar shall, upon request by any person, issue a certificate of good standing in the approved form certifying that a company is of good standing if the Registrar is satisfied that—
  - (a) the company is on the Register of Companies; and
  - (b) the company has paid all fees, annual fees and penalties due and payable.

- (2) The certificate of good standing issued under subsection (1) shall contain a statement—
- (a) that, as at the date of the certificate, the company—
    - (i) is on the Register of Companies; and
    - (ii) has paid all fees and penalties due under these Regulations; and
  - (b) as to whether, as at the date of the certificate—
    - (i) the company has filed articles of merger or consolidation that have not yet become effective;
    - (ii) the company has filed articles of arrangement that have not yet become effective;
    - (iii) the company is in voluntary liquidation;
    - (iv) the company is being wound up under applicable statutory provisions as amended from time to time; or
    - (v) any proceedings to strike the name of the company off the Register of Companies have been instituted.

269. **Issue of miscellaneous certificates**

The Registrar may, upon request by any person, issue a certificate confirming—

- (a) information recorded on the Register of Companies or Register of Charges in relation to a company; or
- (b) the status of a company.

270. **Fees and penalties**

- (1) The Registrar shall issue notices from time to time requiring that a fine be paid for a contravention of the Regulations or any other legislation, regulations or rules administered by the Registrar.
- (2) There shall be a scale of fines for contraventions of the rules and regulations of RAK ICC which shall be known as “the standard fines scale”.
- (3) The standard fines scale is set out in Schedule THE STANDARD FINES SCALE of these Regulations.
- (4) Where any rule or regulation of RAK ICC (whether adopted before or after these Regulations) provides—
  - (a) that a person shall be liable to a fine by reference to a specified level; or
  - (b) confers power by subordinate instrument to make a person liable to a fine or maximum fine by reference to a specified level,

it is to be construed as referring to the standard fines scale for which these Regulations provide.

- (5) Where any rule or regulation of RAK ICC (whether adopted before or after these Regulations) provides that a fine imposed may be 'up to' or 'not exceeding' a level specified on the standard fines scale, the fine imposed shall be equal to the maximum amount that may be imposed in respect of that level unless the board of directors of RAK ICC, Registrar or other person or body administering the fine decides otherwise.
- (6) The fees and penalties specified in these Regulations or any rules imposed pursuant to these Regulations shall be payable to the Registrar who shall pay them into an account of RAK ICC.
- (7) Unless these Regulations provide otherwise, the registered agent is the only person authorised to pay a fee to the Registrar on behalf of a company under this Regulation, and the Registrar shall not accept a fee paid by any other person.

**271. Recovery of penalties, etc.**

Any fee or penalty payable under these Regulations or any rules made under these Regulations that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of RAK ICC before the Court.

**272. Company struck off liable for fees, etc.**

A company continues to be liable for all fees and penalties payable under these Regulations and any rules made under these Regulations notwithstanding that the name of the company has been struck off the Register of Companies.

**273. Fees payable to Registrar**

The Registrar may refuse to take any action required of him under these Regulations for which a fee is prescribed until all fees and fines in respect of a company have been paid.

**274. Approval of forms by the Registrar**

- (1) Where these Regulations or any rules made under these Regulations require a document to be in "the approved form", the Registrar shall approve a form to be used for the document.
- (2) The Registrar may, with respect to any other document required or permitted to be filed, issued or produced under these Regulations or any rules made under these Regulations, approve a form to be used for the document.
- (3) Where, pursuant to subsection (1) or (2), RAK ICC has published an approved form with respect to a document to be filed, issued or produced under these Regulations or any rules made under these Regulations, the document shall—
- (a) be in the form of, and contain the information specified in, the approved form; and
  - (b) have attached to it such documents as may be specified by the approved form.

**275. Appeal**

- (1) Any person who is aggrieved by actions taken by the Registrar under these Regulations or any rules made under these Regulations may, within 90 days of the relevant action, appeal to the Registrar to challenge the action taken.

**276. Exemptions from tax**

- (1) Notwithstanding any provision of the laws of RAK ICC or Ras Al Khaimah—
- (a) a company;
  - (b) all distributions, interest, rents, royalties, compensations and other amounts paid by a company; and
  - (c) capital gains realised with respect to any shares, debt obligations or other securities of a company,
- shall not be subject to taxes levied by RAK ICC or Ras Al Khaimah.
- (2) No estate, inheritance, succession or gift tax levied by RAK ICC or Ras Al Khaimah is payable with respect to any shares, debt obligations or other securities of a company.
- (3) Subject to subsection (4), notwithstanding any provision of the laws of RAK ICC or Ras Al Khaimah—
- (a) all instruments relating to transfers of property to or by a company;
  - (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a company; and
  - (c) all instruments relating to other transactions relating to the business of a company,
- are exempt from the payment of stamp or other duties levied by RAK ICC or Ras Al Khaimah.
- (4) Subsection (3) does not apply to an instrument relating to—
- (a) the transfer to or by a company of an interest in land situate in the Zone; or
  - (b) transactions in respect of the shares, debt obligations or other securities of a land owning company.
- (5) For the purposes of subsection (4), a company is a land owning company if it, or any of its subsidiaries, has an interest in any land in the Zone.
- (6) Notwithstanding any provision of the laws of RAK ICC or Ras Al Khaimah, all deeds and other instruments relating to—
- (a) transfers of property to or by a company;
  - (b) transactions in respect of the shares, debt obligations or other securities of a company; and
  - (c) other transactions relating to the business of a company,
- are exempt from taxation or the payment of stamp or other duties levied by RAK ICC or Ras Al Khaimah.

**277. Contravention provisions**

Where a contravention under these Regulations or any rules made under these Regulations is committed by a body corporate, a director or officer who authorized, permitted or acquiesced

in the commission of the contravention also commits a contravention of these Regulations and is liable to a fine not exceeding level 3.

## **PART XV**

### **MISCELLANEOUS PROVISIONS**

#### **278. Jurisdiction**

For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities issued by a company is in RAK ICC.

#### **279. Declaration by Court**

- (1) A person may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of these Regulations, any rules made under these Regulations or of the memorandum or articles of the company.
- (2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

#### **280. Amendment of Schedules and Rules**

RAK ICC may by order of its board amend the Schedules and any regulations adopted by RAK ICC pursuant to these Regulations in such manner as it considers necessary.

#### **281. Certification of Translation**

- (1) This Regulation applies where a translation into the English language of any document required to be filed, submitted or provided to the Registrar, is required by these Regulations to be certified as accurate.
- (2) The person who made the translation shall certify, or verify, before a person authorised to act as a Notary Public or to administer oaths that—
  - (a) the translation is an accurate translation of the document concerned; and
  - (b) he has the necessary competence to translate the document into English.
- (3) Where a translation is certified or verified in a jurisdiction outside the UAE, the translation shall be certified or verified before a person authorised under the law of the country concerned—
  - (a) to act as a Notary Public, or equivalent; or
  - (b) administer oaths, or their equivalent.

#### **282. Transitional Provisions**

The transitional provisions set out in Schedule 6 apply.



**SCHEDULE 1**

**STANDARD MEMORANDUM & ARTICLES FOR COMPANIES LIMITED BY SHARES**

Replaced by  
2018 version

REGISTRATION NO: \_\_\_\_\_

**MEMORANDUM OF ASSOCIATION**

**AND**

**ARTICLES OF ASSOCIATION**

**OF**

**[COMPANY NAME]**

A COMPANY [INCORPORATED] ON [DATE] UNDER THE [TITLE OF RELEVANT FORMER REGULATION] AND RE-REGISTERED UNDER THE RAK ICC BUSINESS COMPANY REGULATIONS 2016 AS A COMPANY LIMITED BY SHARES

A COMPANY [INCORPORATED] ON [DATE] UNDER THE [TITLE OF FOREIGN STATUTE] OF [JURISDICTION] AND CONTINUED UNDER THE RAK ICC BUSINESS COMPANY REGULATIONS 2016 AS A COMPANY LIMITED BY SHARES

A COMPANY [INCORPORATED] ON [DATE] UNDER THE RAK ICC BUSINESS COMPANY REGULATIONS 2016 AS A COMPANY LIMITED BY SHARES

Replaced by  
2018 version

## MEMORANDUM OF ASSOCIATION

### OF

[NAME OF COMPANY]

## A COMPANY LIMITED BY SHARES

### 1. Definitions and Interpretation

- (1) In this Memorandum of Association and the attached Articles of Association, if not inconsistent with the subject or context—

“Articles” means the attached Articles of Association of the Company, as may be amended from time to time in accordance with their provisions and the Regulations;

“Chairman” has the meaning specified in Article 18;

“Memorandum” means this Memorandum of Association of the Company, as may be amended from time to time in accordance with its provisions and the Regulations;

“RAK” means the Emirate of Ras Al Khaimah, UAE;

“RAK ICC” means International Corporate Centre, a government authority of Ras Al Khaimah;

“Registrar” has the meaning given to that term in the Regulations;

“Regulations” means the RAK ICC Business Companies Regulations 2016 and includes any other rules and regulations made under the RAK ICC Business Companies Regulations 2016;

“Resolution of Directors” means either—

- (a) a resolution passed at a duly convened and constituted meeting of directors of the Company or of a committee of directors of the Company by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the votes cast by directors who are present at the meeting and entitled to vote on the resolution; or
- (b) a resolution consented to in writing by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the directors entitled to vote on the resolution;

“Resolution of Shareholders” means either—

- (a) a resolution passed at a duly convened and constituted meeting of the Shareholders by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the votes of those members entitled to vote and voting on resolutions; or
- (b) a resolution consented to in writing by that number of members required to take action at a meeting of members;

“Securities” means Shares and debt obligations of every kind of the Company, and including without limitation options, warrants and rights to acquire shares or debt obligations;

“Share” means a share issued, or that may be issued, by the Company;

“Shareholder” means a person whose name is entered in the register of members of the Company maintained by the Registrar as the holder of one or more Shares or fractional Shares;

“Treasury Share” means a Share that was previously issued but was repurchased, redeemed or otherwise acquired by the Company and not cancelled;

“UAE” means the United Arab Emirates;

“Written” or any term of like import includes information generated, sent, received or stored by electronic, electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, including electronic data interchange or electronic mail and **in writing** shall be construed accordingly; and

“Zone” has the meaning given to that term in the Regulations.

- (2) In this Memorandum and the Articles, unless the context otherwise requires a reference to—
- (a) a “Clause” is a reference to a clause of this Memorandum;
  - (b) an “Article” is a reference to an article of the Articles;
  - (c) a “Regulation” is a reference to a provision of the Regulations;
  - (d) voting by Shareholders is a reference to the casting of the votes attached to the Shares held by the Shareholder voting;
  - (e) the “Regulations”, this “Memorandum” or the “Articles” is a reference to the Regulations or those documents as may be amended from time to time;
  - (f) a reference to a person includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns; and
  - (g) the singular includes the plural and vice versa.
- (3) Any words or expressions defined in the Regulations unless otherwise defined or the context otherwise requires bear the same meaning in this Memorandum and the Articles.
- (4) Headings are inserted for convenience only and shall be disregarded in interpreting this Memorandum and the Articles.

2. **Name**

The name of the Company is [*name of Company*].

3. **Status**

The Company is a company limited by shares.

4. **Registered Office and Registered Agent**

- (1) The first registered office of the Company is at [●], *the office of the first registered agent*.
- (2) The first registered agent of the Company is [●].

- (3) The Company may by Resolution of Shareholders or by Resolution of Directors change the location of its registered office or change its registered agent.

**5. Capacity and Powers**

- (1) Subject to the Regulations and any other applicable law, the Company has, irrespective of corporate benefit—
- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, powers and privileges.
- (2) For the purposes of Regulation 9(2) (*Memorandum*), there are no limitations on the business that the Company may carry on.

**6. Number and Classes of Shares**

*[The Company is authorised to issue a maximum of [●] Shares of [●] par value each [of a single class].] OR [The Company's authority to issue Shares [of a single class] is unlimited.]*

**7. Amendment of Memorandum and Articles**

Subject to Article 4, the Company may amend this Memorandum or the Articles by a Resolution of Shareholders *[signed by each member of the Company]* or by a Resolution of Directors, save that no amendment may be made by a Resolution of Directors—

- (a) to restrict the rights or powers of the Shareholders to amend this Memorandum or the Articles;
- (b) to change the percentage of Shareholders required to pass a Resolution of Shareholders to amend this Memorandum or the Articles;
- (c) in circumstances where this Memorandum or the Articles cannot be amended by the Shareholders; or
- (d) to Articles 3, 4 or 5 or this Clause 7.

**8. Effect of Memorandum and Articles**

Subject to the provisions of the Regulations, this Memorandum and the Articles shall, upon registration by the Registrar, bind all Shareholders and the Company to observe all provisions contained herein and therein.

I/We, *[names of initial member(s)]* for the purpose of incorporating a company under the RAK ICC Business Companies Regulations 2016 hereby sign this Memorandum of Association the *[date]* day of *[Month]*, 20*[year]*.

<i>[full name of [initial] member]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of [initial] member (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>[initial] member]</i>
<i>[full name of [initial] member]</i>	)	

Signed in the presence of:

<i>[full name of registered agent]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of registered agent (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>registered agent]</i>
<i>[full name of registered agent]</i>	)	

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## ARTICLES OF ASSOCIATION

### OF

[NAME OF COMPANY]

### A COMPANY LIMITED BY SHARES

#### 1. Share Certificates

- (1) The board may authorise the issue by the Company of certificates signed by a director of the Company specifying the number of Shares held by a Shareholder.
- (2) Any Shareholder receiving a certificate for Shares shall indemnify and hold the Company, its directors and officers and the Registrar harmless from any loss or liability which it or they may incur by reason of any wrongful or fraudulent use or representation made by any person by virtue of the possession thereof. If a certificate for Shares is worn out or lost it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a Resolution of Directors.
- (3) If several persons are registered as joint holders of any Shares, any one of such persons may give an effectual receipt for any Distribution.

#### 2. Shares

- (1) Shares and other Securities may be issued at such times, to such persons, for such consideration and on such terms as the directors may by Resolution of Directors determine.
- (2) Regulation 59 (Pre-emptive rights) does not apply to the Company.
- (3) A Share may be issued for consideration in any form, including money, a promissory note, real property, personal property (including goodwill and know-how) or a contract for future services.
- (4) No Shares may be issued for a consideration other than money, unless a Resolution of Directors has been passed stating—
  - (a) the amount to be credited for the issue of the Shares;
  - (b) their determination of the reasonable present cash value of the non-money consideration for the issue; and
  - (c) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the Shares.
- (5) The Company shall ensure that the register (“register of members”) maintained by the Registrar is kept up to date, including—
  - (a) the names and addresses of the persons who hold Shares;
  - (b) the number of each class and series of Shares held by each Shareholder;
  - (c) the date on which the name of each Shareholder was entered in the register of members; and
  - (d) the date on which any person ceased to be a Shareholder.

- (6) A Share is deemed to be issued when the name of the Shareholder is entered in the register of members.

- (7) The Company may issue fractional Shares and a fractional Share shall have the corresponding fractional rights, obligations and liabilities of a whole share of the same class or series of shares.

### 3. **Designations, Powers, Preferences, etc. of Shares**

- (1) Each Share confers upon the Shareholder—

- (a) the right to one vote at a meeting of the Shareholders or on any Resolution of Shareholders;
- (b) the right to an equal share in any Distribution; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company upon its liquidation, winding up or dissolution.

- (2) The directors may at their discretion by Resolution of Directors redeem, purchase or otherwise acquire all or any of the Shares subject to Article 8.

### 4. **Variation of Rights**

The rights attached to Shares as specified in Article 3 may only, whether or not the Company is being wound up, be varied with the consent in writing of or by a resolution passed at a duly convened and constituted meeting by a majority in excess of 50% of the votes of holders of the Shares of that class entitled to vote and voting on resolutions.

### 5. **Rights Not Varied by the Issue of Shares *Pari Passu***

The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith.

### 6. **Registered Shares**

- (1) The Company shall issue registered shares only.
- (2) The Company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

### 7. **Transfer of Shares**

- (1) The Company shall, on receipt of an instrument of transfer complying with Article 11(1), approve the transfer of Shares for registration by the Registrar in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in a Resolution of Directors.
- (2) The directors may not resolve to refuse or delay the transfer of a Share unless the Shareholder has failed to pay an amount due in respect of the Share.

### 8. **Redemption of Shares and Treasury Shares**

- (1) The Company may purchase, redeem or otherwise acquire and hold its own Shares save that the Company may not purchase, redeem or otherwise acquire its own Shares without the



consent of Shareholders whose Shares are to be purchased, redeemed or otherwise acquired unless the Company is permitted by the Regulations or any other provision in the Memorandum or these Articles to purchase, redeem or otherwise acquire the Shares without their consent.

- (2) The Company may only offer to acquire Shares if at the relevant time the directors determine by Resolution of Directors that immediately after the acquisition the value of the Company's assets will exceed its liabilities and the Company will be able to pay its debts as they fall due.
- (3) Regulations 72 (*Process for purchase, redemption or other acquisition of own shares*), 73 (*Offer to one or more shareholders*) and 74 (*Shares redeemed otherwise than at option of company*) shall not apply to the Company.
- (4) Shares that the Company purchases, redeems or otherwise acquires pursuant to this Article may be cancelled or held as Treasury Shares except to the extent that such Shares are in excess of 50% of the issued Shares in which case they shall be cancelled but they shall be available for reissue.
- (5) All rights and obligations attaching to a Treasury Share are suspended and shall not be exercised by the Company while it holds the Share as a Treasury Share.
- (6) Treasury Shares may be disposed of by the Company on such terms and conditions (not otherwise inconsistent with the Memorandum and these Articles) as the Company may by Resolution of Directors determine.
- (7) Where Shares are held by another body corporate of which the Company holds, directly or indirectly, shares having more than 50% of the votes in the election of directors of the other body corporate, all rights and obligations attaching to the Shares held by the other body corporate are suspended and shall not be exercised by the other body corporate.

## **9. Mortgages and Charges of Shares**

- (1) Shareholders may mortgage or charge their Shares, in which case the Shareholder shall provide to the company—
  - (a) a statement that the Shares held by him are mortgaged or charged;
  - (b) the name of the mortgagee or chargee; and
  - (c) the date on which the particulars specified in paragraphs (a) and (b) are entered in the register of members.
- (2) The Company shall provide the information provided by the Shareholder pursuant to subsection (1) to the Registrar for entry in the register of members.
- (3) Where particulars of a mortgage or charge are entered in the register of members, such particulars may be cancelled—
  - (a) with the written consent of the named mortgagee or chargee or anyone authorised to act on his behalf; or
  - (b) upon evidence satisfactory to the directors of the discharge of the liability secured by the mortgage or charge and the issue of such indemnities as the directors shall consider necessary or desirable.

- (4) Whilst particulars of a mortgage or charge over Shares are entered in the register of members pursuant to this Article—
- (a) no transfer of any Share the subject of those particulars shall be effected;
  - (b) the Company may not purchase, redeem or otherwise acquire any such Share; and
  - (c) no certificate or replacement certificate shall be issued in respect of such Shares,
- without the written consent of the named mortgagee or chargee.

#### 10. **Forfeiture**

- (1) Shares for which all consideration payable by the Shareholder therefor upon issue is not received by the Company are subject to the forfeiture provisions set forth in this Article and for this purpose where the Company receives a promissory note or a contract for future services from such Shareholder for such issue then the Company is deemed not to have received all consideration payable by the Shareholder for such Shares.
- (2) A written notice of call specifying the date for payment to be made shall be served on the Shareholder who defaults in making payment in respect of the Shares.
- (3) The written notice of call referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the Shares, or any of them, in respect of which payment is not made will be liable to be forfeited.
- (4) Where a written notice of call has been issued pursuant to subsection (3) and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the Shares to which the notice relates.
- (5) The Company is under no obligation to refund any partial consideration received by the Company to the Shareholder whose Shares have been cancelled pursuant to subsection (4) and that Shareholder shall be discharged from any further obligation to the Company.

#### 11. **Pre-emption Rights on Transfer**

- (1) No Shareholder may transfer, assign or otherwise dispose of any interest in a Share or create a trust or Encumbrance over that Share without first complying with this Article.
- (2) A Shareholder (the “Seller”) wishing to transfer, assign or otherwise dispose of any of his Shares (the “Sale Shares”) must give notice in writing (a “Transfer Notice”) to the Company giving details of the proposed transfer including:
  - (a) the number of Sale Shares;
  - (b) the name of the proposed buyer;
  - (c) the price (which must be in cash) at which he wishes to sell the Sale Shares (the “Transfer Price”); and
  - (d) whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold to Shareholders (the “Minimum Transfer Condition”).

- (3) Once given under these Articles, a Transfer Notice may not be withdrawn by the Seller without the consent of the other Shareholders.
- (4) A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares in accordance with the provisions of these Articles.
- (5) As soon as practicable following the receipt of a Transfer Notice, the board shall offer the Sale Shares for sale in the manner set out in the remaining provisions of this Article at the Transfer Price. Each offer shall be in writing and give details of the number and Transfer Price of the Sale Shares offered.
- (6) The board shall offer the Sale Shares to all Shareholders other than the Seller (the “Continuing Shareholders”), inviting them to apply in writing within the period from the date of the offer to the date 28 days after the offer (both dates inclusive) (the “Offer Period”) for the maximum number of Sale Shares they wish to buy at the Transfer Price.
- (7) If the Sale Shares are subject to a Minimum Transfer Condition, any allocation made under Article 11(8) shall be conditional on the fulfilment of the Minimum Transfer Condition.
- (8) If:
- (a) at the end of the Offer Period, the total number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the board shall allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion which the Continuing Shareholder’s existing holding of shares bears to the total number of shares held by those Continuing Shareholders who have applied for Sale Shares. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy,
  - (b) not all Sale Shares are allocated following allocations in accordance with Article 11(8)(a), but there are applications for Sale Shares that have not been satisfied, the board shall allocate the remaining Sale Shares to such applicant(s) in accordance with the procedure set out in Article 11(8)(a). The procedure set out in this Article 11(8)(b) shall apply on any number of consecutive occasions until either all Sale Shares have been allocated or all applications for Sale Shares have been satisfied; and
  - (c) at the end of the Offer Period, the total number of Sale Shares applied for is less than the number of Sale Shares, the board shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications.
- (9) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares specified in the Minimum Transfer Condition, the board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under Article 11(8) stating that the Minimum Transfer Condition has not been met and the relevant Transfer Notice has lapsed with immediate effect.
- (10) If:
- (a) the Transfer Notice includes a Minimum Transfer Condition and such Minimum Transfer Condition has been satisfied, or the Transfer Notice does not include a Minimum Transfer Condition; and
  - (b) allocations under Article 11(8) have been made in respect of some or all of the Sale Shares,

the board shall give written notice of allocation (an “Allocation Notice”) to the Seller and each Continuing Shareholder to whom Sale Shares have been allocated (each an “Applicant”). The Allocation Notice shall specify the number of Sale Shares allocated to each Applicant, the amount payable by each Applicant for the number of Sale Shares allocated to him (the “Consideration”) and the place and time for completion of the transfer of the Sale Shares (which shall be at least five days, but not more than ten days, after the date of the Allocation Notice).

(11) On the date specified for completion in the Allocation Notice, the Seller shall, against payment of the Consideration, execute and deliver a transfer of the Sale Shares allocated to each Applicant, in accordance with the requirements specified in the Allocation Notice.

(12) If the Seller fails to comply with Article 11(11):

(a) the Chairman of the Company (or, failing him, one of the other directors, or some other person nominated by a resolution of the board) may, as agent on behalf of the Seller:

(i) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;

(ii) receive the Consideration and give a good discharge for it (and no Applicant shall be obliged to see to the distribution of the Consideration); and

(iii) enter the Applicants in the register of members as the holders of the Sale Shares purchased by them; and

(b) the Company shall pay the Consideration into a separate bank account in the Company’s name on trust (but without interest) for the Seller until he has delivered his certificate(s) for the relevant Sale Shares or an indemnity, in a form reasonably satisfactory to the board, in respect of any lost certificate, together, in either case, with such other evidence (if any) as the board may reasonably require to prove good title to those Sale Shares, to the Company.

(13) If:

(a) an Allocation Notice does not relate to all of the Sale Shares then within 60 days following service of the Allocation Notice the Seller may transfer those Sale Shares not allocated pursuant to the Allocation Notice; or

(b) a Transfer Notice lapses pursuant to Article 11(9) then within 60 days following the date of the lapse of the Transfer Notice the Seller may (subject to the Minimum Transfer Condition) transfer the Sale Shares,

to any person at a price at least equal to the Transfer Price.

(14) The restrictions imposed by this Article:

(a) may be waived in relation to any proposed transfer of Sale Shares with the consent of Shareholders who, but for the waiver, would or might have been entitled to have such Sale Shares offered to them in accordance with this Article; and

(b) do not apply to a transfer of shares to the Company.

## 12. **Transfer of Shares**

- (1) Subject to Article 11, Shares may be transferred by an instrument of transfer containing the name and address of the transferee signed by the transferor and the transferee and each other member of the Company, which shall be sent to the Company at the office of its registered agent within 30 days of signing.
- (2) The transfer of a Share is effective when the name of the transferee is entered on the register of members.
- (3) If the directors of the Company are satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, they may resolve by Resolution of Directors—
  - (a) to accept such evidence of the transfer of Shares as they consider appropriate; and
  - (b) that the transferee's name should be entered in the register of members notwithstanding the absence of the instrument of transfer.
- (4) Subject to the Memorandum and in accordance with the requirements of the Regulations, the personal representative, executor or administrator of a deceased Shareholder may transfer a Share even though such personal representative, executor or administrator is not a Shareholder at the time of the transfer.

## 13. **Meetings and Consents of Shareholders**

- (1) Any director of the Company may convene meetings of the Shareholders at such times and in such manner and places within or outside the Zone as the director considers necessary or desirable.
- (2) Upon the written request of Shareholders entitled to exercise 30% or more of the voting rights in respect of the matter for which the meeting is requested the director or directors so requested shall convene a meeting of Shareholders.
- (3) The director or directors convening a meeting shall give not less than seven days' notice of a meeting of Shareholders to—
  - (a) those Shareholders whose names on the date the notice is given appear as Shareholders in the register of members of the Company and are entitled to vote at the meeting; and
  - (b) the other directors.
- (4) The convener or conveners of a meeting of members may specify in the notice convening such meeting a date, being not earlier than 30 days before the proposed date of such meeting, as the record date for determining those members that are entitled to vote at the meeting.
- (5) A meeting of Shareholders held in contravention of the requirement to give notice is valid if Shareholders holding at least 90% of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a Shareholder at the meeting shall constitute waiver in relation to all the Shares which that Shareholder holds unless his presence at the meeting is to protest the lack of notice given in respect of such meeting.
- (6) The inadvertent failure of the director or directors who convenes a meeting to give notice of a meeting to a Shareholder or other directors, or the fact that a Shareholder or another director has not received notice, does not invalidate the meeting.

- (7) A Shareholder may be represented at a meeting of Shareholders by a proxy who may speak and vote on behalf of the Shareholder.
- (8) The instrument appointing a proxy shall be produced at the place designated for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote. The notice of the meeting may specify an alternative or additional place or time at which the proxy shall be presented.
- (9) The instrument appointing a proxy shall be in substantially the following form or such other form as the chairman of the meeting shall accept as properly evidencing the wishes of the Shareholder appointing the proxy.

*[[NAME OF COMPANY]*

*[I/We] being a Shareholder of the above Company **HEREBY APPOINT** [●] of [●] or failing him [●] of [●] to be my/our proxy to vote for [me/us] at the meeting of Shareholders to be held on the [●] day of [●], 20 [●] and at any adjournment thereof.*

*(Any restrictions on voting to be inserted here.)*

*Signed this [date] day of [Month], 20 [year]*

\_\_\_\_\_  
*Shareholder]*

- (10) The following applies where Shares are jointly owned—
  - (a) if two or more persons hold Shares jointly each of them may be present in person or by proxy at a meeting of Shareholders and may speak as a Shareholder;
  - (b) if only one of the joint owners is present in person or by proxy he may vote on behalf of all joint owners; and
  - (c) if two or more of the joint owners are present in person or by proxy they must vote as one.
- (11) A Shareholder shall be deemed to be present at a meeting of Shareholders if he participates by telephone or other electronic means and all Shareholders participating in the meeting are able to hear each other.
- (12) A meeting of Shareholders is duly constituted if, at the commencement of the meeting, there are present in person or by proxy not less than 50% of the votes of the Shares or class or series of Shares entitled to vote on Resolutions of Shareholders to be considered at the meeting. A quorum may comprise a single Shareholder or proxy and then such person may pass a Resolution of Shareholders and a certificate signed by such person accompanied where such person be a proxy by a copy of the proxy instrument shall constitute a valid Resolution of Shareholders.
- (13) If within two hours from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved; in any other case it shall stand adjourned to the next business day in the jurisdiction in which the meeting was to have been held at the same time and place or to such other time and place as the directors may determine, and if at the adjourned meeting there are present within one hour from the time appointed for the meeting in person or by proxy not less than one-third of the votes of the Shares



or each class or series of Shares entitled to vote on the matters to be considered by the meeting, those present shall constitute a quorum but otherwise the meeting shall be dissolved.

- (14) At every meeting of Shareholders, the Chairman shall preside as chairman of the meeting. If there is no Chairman or if the Chairman is not present at the meeting, the Shareholders present shall choose one of their number to be the chairman of the meeting. If the Shareholders are unable to choose a chairman of the meeting for any reason, then the person representing the greatest number of voting Shares present in person or by proxy at the meeting shall preside as chairman of the meeting failing which the oldest individual Shareholder or representative of a Shareholder present shall take the chair of the meeting.
- (15) The chairman of the meeting may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (16) At any meeting of the Shareholders the chairman of the meeting is responsible for deciding in such manner as he considers appropriate whether any resolution proposed has been carried or not and the result of his decision shall be announced to the meeting and recorded in the minutes of the meeting. If the chairman of the meeting has any doubt as to the outcome of the vote on a proposed resolution, he shall cause a poll to be taken of all votes cast upon such resolution. If the chairman of the meeting fails to take a poll then any Shareholder present in person or by proxy who disputes the announcement by the chairman of the meeting of the result of any vote may immediately following such announcement demand that a poll be taken and the chairman of the meeting shall cause a poll to be taken. If a poll is taken at any meeting, the result shall be announced to the meeting and recorded in the minutes of the meeting.
- (17) Subject to the specific provisions contained in this Article for the appointment of representatives of persons other than individuals, the right of any individual to speak for or represent a Shareholder shall be determined by the law of the jurisdiction where, and by the documents by which, the person is constituted or derives its existence. In case of doubt, the directors may in good faith seek legal advice from any qualified person and unless and until a court of competent jurisdiction shall otherwise rule, the directors may rely and act upon such advice without incurring any liability to any Shareholder or the Company.
- (18) Any person other than an individual which is a Shareholder may by resolution of its directors or other governing body authorise such individual as it thinks fit to act as its representative at any meeting of Shareholders or of any class of Shareholders, and the individual so authorised shall be entitled to exercise the same rights on behalf of the person which he represents as that person could exercise if it were an individual.
- (19) The chairman of any meeting at which a vote is cast by proxy or on behalf of any person other than an individual may call for a notarially certified copy of such proxy or authority which shall be produced within seven days of being so requested or the votes cast by such proxy or on behalf of such person shall be disregarded.
- (20) Directors of the Company may attend and speak at any meeting of Shareholders and at any separate meeting of the holders of any class or series of Shares.
- (21) An action that may be taken by the Shareholders at a meeting may also be taken by a Resolution of Shareholders consented to in writing, without the need for any notice, but if any Resolution of Shareholders is adopted otherwise than by the unanimous written consent of all Shareholders, a copy of such resolution shall forthwith be sent to all Shareholders not consenting to such resolution. The consent may be in the form of counterparts, each counterpart being signed by one or more Shareholders. If the consent is in one or more counterparts, and the counterparts

bear different dates, then the resolution shall take effect on the earliest date upon which persons holding a sufficient number of votes of Shares to constitute a Resolution of Shareholders have consented to the resolution by signed counterparts.

**14. Directors**

- (1) The initial Shareholder(s) of the Company shall appoint one or more persons as the first director(s) of the Company pursuant to a Resolution of Shareholders.
- (2) A vacancy in the board or as an addition to the existing directors may be filled by the appointment of a new director pursuant to a Resolution of Shareholders or a majority of the remaining directors of the Company. The remaining directors may continue to act notwithstanding any vacancy on the board.
- (3) No person shall be appointed as a director of the Company unless he has consented in writing to act as a director.
- (4) The minimum number of directors shall be one.
- (5) Each director holds office for the term, if any, fixed by the Resolution of Shareholders or Resolution of Directors appointing him, or until his earlier death, resignation or removal. If no term is fixed on the appointment of a director, the director serves indefinitely until his earlier death, resignation or removal.
- (6) A director may be removed from office—
  - (a) with or without cause, by a Resolution of Shareholders passed at a meeting of Shareholders called for the purposes of removing the director or for purposes including the removal of the director or by a written resolution passed by at least 75% of the votes of the Shares entitled to vote; or
  - (b) with cause, by a Resolution of Directors passed at a meeting of directors called for the purpose of removing the director or for purposes including the removal of the director.
- (7) A director may resign his office by giving written notice of his resignation to the Company and the resignation has effect from the date the notice is received by the Company at the office of its registered agent or from such later date as may be specified in the notice. A director shall resign forthwith as a director if he is, or becomes, disqualified from acting as a director under the Regulations.
- (8) A vacancy in relation to directors occurs if a director dies or otherwise ceases to hold office prior to the expiration of his term of office.
- (9) Where the remaining directors appoint a person as director to fill a vacancy, the term shall not exceed the term that remained when the person who has ceased to be a director ceased to hold office.
- (10) The Company shall keep, or procure that its registered agent keeps, a register of directors containing—
  - (a) the names and addresses of the persons who are directors of the Company;
  - (b) the date on which each person whose name is entered in the register of directors was appointed as a director of the Company;



- (c) the date on which each person named as a director ceased to be a director of the Company; and
  - (d) such other information as may be prescribed by the Regulations.
- (11) The register of directors may be kept in any such form as the directors may approve, but if it is in magnetic, electronic or other data storage form, the Company must be able to produce legible evidence of its contents. Unless a Resolution of Directors determining otherwise is passed, the magnetic, electronic or other data storage shall be the original register of directors.
  - (12) The Company will file with the Registrar a copy of its register of directors within 14 days of the appointment of its first director.
  - (13) The Company will file any changes in its register of directors by filing a copy of the register containing the changes within 14 days of such change.
  - (14) The directors may, by a Resolution of Directors, fix the emoluments of directors with respect to services to be rendered in any capacity to the Company.
  - (15) A director is not required to hold a Share as a qualification to office.

#### **15. Powers of Directors**

- (1) The business and affairs of the Company shall be managed by, or under the direction or supervision of, the directors of the Company. The directors of the Company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the Company. The directors may pay all expenses incurred preliminary to and in connection with the incorporation of the Company and may exercise all such powers of the Company as are not by the Regulations or by the Memorandum or these Articles required to be exercised by the Shareholders.
- (2) Each director shall exercise his powers for a proper purpose and shall not act or agree to the Company acting in a manner that contravenes the Memorandum, these Articles or the Regulations. Each director, in exercising his powers or performing his duties, shall act honestly and in good faith in what the director believes to be the best interests of the Company.
- (3) If the Company is the wholly owned subsidiary of a holding company, a director of the Company may, when exercising powers or performing duties as a director, act in a manner which he believes is in the best interests of the holding company even though it may not be in the best interests of the Company.
- (4) Any director which is a body corporate may appoint any individual as its duly authorised representative for the purpose of representing it at meetings of the directors, with respect to the signing of consents or otherwise.
- (5) The directors may by Resolution of Directors exercise all the powers of the Company to incur indebtedness, liabilities or obligations and to guarantee and/or secure indebtedness, liabilities or obligations whether of the Company or of any third party.
- (6) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as shall from time to time be determined by Resolution of Directors.

- (7) For the purposes of Regulation 180 (*Disposition of assets*), the directors may by Resolution of Directors determine that any sale, transfer, lease, exchange or other disposition is in the usual or regular course of the business carried on by the Company and such determination is, in the absence of fraud, conclusive.

**16. Proceedings of Directors**

- (1) Any one director of the Company may call a meeting of the directors by sending a written notice to each other director.
- (2) The directors of the Company or any committee thereof may meet at such times and in such manner and places within or outside the Zone as the directors may determine to be necessary or desirable.
- (3) A director is deemed to be present at a meeting of directors if he participates by telephone or other electronic means and all directors participating in the meeting are able to hear each other.
- (4) A director shall be given not less than three days' notice of meetings of directors, but a meeting of directors held without three days' notice having been given to all directors shall be valid if all the directors entitled to vote at the meeting who do not attend waive notice of the meeting, and for this purpose the presence of a director at a meeting shall constitute waiver by that director unless his presence at the meeting is to protest the lack of notice given in respect of such meeting. The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.
- (5) A director may by a written instrument appoint an alternate who need not be a director and the alternate shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in place of the director until the appointment lapses or is terminated.
- (6) A meeting of directors is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate not less than 50% of the total number of directors.
- (7) If the Company has only one director the provisions herein contained for meetings of directors do not apply and such sole director has full power to represent and act for the Company in all matters as are not by the Regulations, the Memorandum or these Articles required to be exercised by the Shareholders. In lieu of minutes of a meeting the sole director shall record in writing and sign a note or memorandum of all matters requiring a Resolution of Directors. Such a note or memorandum constitutes sufficient evidence of such resolution for all purposes.
- (8) At meetings of directors at which the Chairman is present, he shall preside as chairman of the meeting. If there is no Chairman or if the Chairman is not present, the directors present shall choose one of their number to be chairman of the meeting.
- (9) An action that may be taken by the directors or a committee of directors at a meeting may also be taken by a Resolution of Directors or a resolution of a committee of directors consented to in writing by a majority in excess of 50% (or, if a higher majority is required by the Memorandum or Articles, such higher majority) of directors or members of the committee, as the case may be, without the need for any notice. The consent may be in the form of counterparts each counterpart being signed by one or more directors. If the consent is in one or more counterparts, and the counterparts bear different dates, then the resolution shall take effect on the date upon which the last director has consented to the resolution by signed counterparts.

## 17. Committees

- (1) The directors may, by Resolution of Directors, designate one or more committees, each consisting of one or more directors, and delegate one or more of their powers to the committee.
- (2) The directors have no power to delegate to a committee of directors any of the following powers—
  - (a) to amend the Memorandum or these Articles;
  - (b) to designate committees of directors;
  - (c) to delegate powers to a committee of directors;
  - (d) to appoint directors;
  - (e) to appoint an agent;
  - (f) to approve a plan of merger, consolidation or arrangement; or
  - (g) to make a declaration of solvency or to approve a liquidation plan.
- (3) Subsections (2)(b) and (2)(c) do not prevent a committee of directors, where authorised by the Resolution of Directors appointing such committee or by a subsequent Resolution of Directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.
- (4) The meetings and proceedings of each committee of directors consisting of two or more directors shall be governed *mutatis mutandis* by the provisions of these Articles regulating the proceedings of directors so far as the same are not superseded by any provisions in the Resolution of Directors establishing the committee.
- (5) Where the directors delegate their powers to a committee of directors they remain responsible for the exercise of those powers by the committee, unless they believed on reasonable grounds at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the Company under the Regulations.

## 18. Officers and Agents

- (1) The Company may by Resolution of Directors appoint officers of the Company at such times as may be considered necessary or expedient. Such officers may consist of a chairman of the board of directors (the “Chairman”), a president and one or more vice presidents, secretaries and treasurers and such other officers as may from time to time be considered necessary or expedient. Any number of offices may be held by the same person.
- (2) The officers shall perform such duties as are prescribed at the time of their appointment subject to any modification in such duties as may be prescribed thereafter by Resolution of Directors. In the absence of any specific prescription of duties it shall be the responsibility of the Chairman to preside at meetings of directors and Shareholders, the president to manage the day to day affairs of the Company, the vice presidents to act in order of seniority in the absence of the president but otherwise to perform such duties as may be delegated to them by the president, the secretaries to maintain the register of members, minute books and records (other than financial records) of the Company and to ensure compliance with all procedural requirements imposed on the Company by applicable law, and the treasurer to be responsible for the financial affairs of the Company.

- (3) The emoluments of all officers shall be fixed by Resolution of Directors.
- (4) The officers of the Company shall hold office until their successors are duly appointed, but any officer elected or appointed by the directors may be removed at any time, with or without cause, by Resolution of Directors. Any vacancy occurring in any office of the Company may be filled by Resolution of Directors.

19. **Conflict of Interests**

- (1) A director of the Company shall, forthwith after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the Company, disclose the interest to all other directors of the Company.
- (2) For the purposes of subsection (1), a disclosure to all other directors to the effect that a director is a member, director or officer of another named entity or has a fiduciary relationship with respect to the entity or a named individual and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that entity or individual, is a sufficient disclosure of interest in relation to that transaction.
- (3) A director of the Company who is interested in a transaction entered into or to be entered into by the Company may—
  - (a) vote on a matter relating to the transaction;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
  - (c) sign a document on behalf of the Company, or do any other thing in his capacity as a director, that relates to the transaction,

and, subject to compliance with the Regulations shall not, by reason of his office be accountable to the Company for any benefit which he derives from such transaction and no such transaction shall be liable to be avoided on the grounds of any such interest or benefit.

20. **Indemnification**

- (1) Subject to the limitations hereinafter provided the Company shall indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who—
  - (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the Company; or
  - (b) is or was, at the request of the Company, serving as a director of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.
- (2) The indemnity in subsection (1) only applies if the person acted honestly and in good faith with a view to the best interests of the Company and, in the case of criminal proceedings, the person had no reasonable cause to believe that their conduct was unlawful.
- (3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the Company and as to whether the person had no reasonable

cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of these Articles, unless a question of law is involved.

- (4) The termination of any proceedings by any judgment, order, settlement, conviction or voluntary dismissal does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the Company or that the person had reasonable cause to believe that his conduct was unlawful.
- (5) The Company may purchase and maintain insurance in relation to any person who is or was a director, officer or liquidator of the Company, or who at the request of the Company is or was serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the Company has or would have had the power to indemnify the person against the liability as provided in the Articles.

## 21. **Records**

- (1) The Company shall keep the following documents at the office of its registered agent—
  - (a) the Memorandum and these Articles;
  - (b) a copy of the register of members;
  - (c) the register of directors, or a copy of the register of directors;
  - (d) a copy of the register of charges; and
  - (e) copies of all notices and other documents filed by the Company in the previous five years.
- (2) If the Company maintains only a copy of the register of directors at the office of its registered agent, it shall—
  - (a) within 14 days of any change in the original register of directors, notify the registered agent in writing of the change; and
  - (b) provide the registered agent with a written record of the physical address of the place or places at which the original register of directors is kept.
- (3) The Company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the Zone, as the directors may determine—
  - (a) minutes of meetings and Resolutions of Shareholders and classes of Shareholders; and
  - (b) minutes of meetings and Resolutions of Directors and committees of directors.
- (4) Where any original records referred to in this Article are maintained other than at the office of the registered agent of the Company, and the place at which the original records is changed, the Company shall provide the registered agent with the physical address of the new location of the records of the Company within 14 days of the change of location.
- (5) The records kept by the Company under this Article shall be in written form or either wholly or partly as electronic records complying with the requirements of Law No. 1 of 2006 concerning Electronic Transactions and Commerce.

22. **Registers of Charges**

- (1) The Company shall keep, or procure that its registered agent keeps, a copy of the register of charges (“register of charges”) in which there shall be entered the following particulars regarding each mortgage, charge and other encumbrance created by the Company or existing on property acquired by the Company—
- (a) if the charge is a charge created by the Company, the date of its creation or, if the charge is a charge existing on property acquired by the Company, the date on which the property was acquired;
  - (b) a short description of the liability secured by the charge;
  - (c) a short description of the property charged;
  - (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;
  - (e) unless the charge is a security to bearer, the name and address of the holder of the charge; and
  - (f) details of any prohibition or restriction contained in the instrument creating the charge on the power of the Company to create any future charge ranking in priority to or equally with the charge.

23. **Continuation**

The Company may by Resolution of Shareholders or by a resolution passed unanimously by all directors of the Company continue as a company incorporated under the laws of a jurisdiction outside RAK ICC in the manner provided under those laws.

24. **Distributions**

- (1) The directors of the Company may, by Resolution of Directors, authorise a Distribution at a time and of an amount they think fit if they are satisfied, on reasonable grounds, that, immediately after the Distribution, the value of the Company’s assets will exceed its liabilities and the Company will be able to pay its debts as they fall due.
- (2) Distributions may be paid in money, shares, or other property.
- (3) Notice of any Distribution that may have been declared shall be given to each Shareholder as specified in Article 26(1) and all Distributions unclaimed for three years after having been declared may be forfeited by Resolution of Directors for the benefit of the Company.
- (4) No Distribution shall bear interest as against the Company and no Distribution shall be paid on Treasury Shares.

25. **Accounts and Audit**

- (1) The Company shall keep records that are sufficient to show and explain the Company’s transactions and that will, at any time, enable the financial position of the Company to be determined with reasonable accuracy.
- (2) The Company may by Resolution of Shareholders call for the directors to prepare periodically and make available a profit and loss account and a balance sheet. The profit and loss account and balance sheet shall be drawn up so as to give respectively a true and fair view of the profit



and loss of the Company for a financial period and a true and fair view of the assets and liabilities of the Company as at the end of a financial period.

- (3) The Company may by Resolution of Shareholders call for the accounts to be examined by auditors.
- (4) The first auditors shall be appointed by Resolution of Directors; subsequent auditors shall be appointed by a Resolution of Shareholders.
- (5) No director or other officer shall be eligible to be an auditor of the Company during their continuance in office.
- (6) The remuneration of the auditors of the Company—
  - (a) in the case of auditors appointed by the directors, may be fixed by Resolution of Directors; and
  - (b) subject to the foregoing, shall be fixed by Resolution of Shareholders or in such manner as the Company may by Resolution of Shareholders determine.
- (7) The auditors shall examine each profit and loss account and balance sheet required to be laid before a meeting of the Shareholders or otherwise given to Shareholders and shall state in a written report whether or not—
  - (a) in their opinion the profit and loss account and balance sheet give a true and fair view respectively of the profit and loss for the period covered by the accounts, and of the assets and liabilities of the Company at the end of that period; and
  - (b) all the information and explanations required by the auditors have been obtained.
- (8) The report of the auditors shall be annexed to the accounts and shall be read at the meeting of Shareholders at which the accounts are laid before the Company or shall be otherwise given to the Shareholders.
- (9) Every auditor of the Company shall have a right of access at all times to the books of account and vouchers of the Company, and shall be entitled to require from the directors and officers of the Company such information and explanations as he thinks necessary for the performance of the duties of the auditors.
- (10) The auditors of the Company shall be entitled to receive notice of, and to attend any meetings of Shareholders at which the Company's profit and loss account and balance sheet are to be presented.

## 26. Notices

- (1) Any notice, information or written statement to be given by the Company to Shareholders may be given by personal service or by mail addressed to each Shareholder at the address shown in the register of members.
- (2) Any summons, notice, order, document, process, information or written statement to be served on the Company may be served by leaving it, or by sending it by registered mail addressed to the Company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the Company.

- (3) Service of any summons, notice, order, document, process, information or written statement to be served on the Company may be proved by showing that the summons, notice, order, document, process, information or written statement was delivered to the registered office or the registered agent of the Company or that it was mailed in such time as to admit to its being delivered to the registered office or the registered agent of the Company in the normal course of delivery within the period prescribed for service and was correctly addressed and the postage was prepaid.

27. **Voluntary Winding Up and Dissolution**

The Company may by a Resolution of Shareholders or by a Resolution of Directors appoint a voluntary liquidator.

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I/We, *[name of initial member(s)]* for the purpose of incorporating a company under the RAK ICC Business Companies Regulations 2016 hereby sign these Articles of Association the *[date]* day of *[Month]*, 20*[year]*.

<i>[full name of [initial] member]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of [initial] member (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>[initial] member]</i>
<i>[full name of [initial] member]</i>	)	

Signed in the presence of:

<i>[full name of registered agent]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of registered agent (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>registered agent]</i>
<i>[full name of registered agent]</i>	)	

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**SCHEDULE 2**

STANDARD MEMORANDUM & ARTICLES FOR COMPANIES LIMITED BY GUARANTEE

Replaced by  
2018 version

REGISTRATION NO: \_\_\_\_\_

**MEMORANDUM OF ASSOCIATION**

**AND**

**ARTICLES OF ASSOCIATION**

**OF**

**[*COMPANY NAME*]**

A COMPANY [INCORPORATED] ON [DATE] UNDER THE [TITLE OF FOREIGN STATUTE]  
OF [JURISDICTION] AND CONTINUED UNDER THE RAK ICC BUSINESS COMPANY  
REGULATIONS 2016 AS A COMPANY LIMITED BY GUARANTEE THAT IS NOT  
AUTHORISED TO ISSUE SHARES

A COMPANY [INCORPORATED] ON [DATE] UNDER THE RAK ICC BUSINESS COMPANY  
REGULATIONS 2016 AS A COMPANY LIMITED BY GUARANTEE THAT IS NOT  
AUTHORISED TO ISSUE SHARES

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## MEMORANDUM OF ASSOCIATION

OF

[NAME OF COMPANY]

### A COMPANY LIMITED BY GUARANTEE NOT AUTHORISED TO ISSUE SHARES

#### 1. Definitions and Interpretation

- (1) In this Memorandum of Association and the attached Articles of Association, if not inconsistent with the subject or context—

“Articles” means the attached Articles of Association of the Company, as may be amended from time to time in accordance with their provisions and the Regulations;

“Chairman” has the meaning specified in Article 8;

“Member” means a person whose name is entered in the register of members as a member of the Company;

“Memorandum” means this Memorandum of Association of the Company, as may be amended from time to time in accordance with its provisions and the Regulations;

“RAK” means the Emirate of Ras Al Khaimah, UAE;

“RAK ICC” means International Corporate Centre, a government authority of Ras Al Khaimah;

“Registrar” has the meaning given to that term in the Regulations;

“Regulations” means the RAK ICC Business Companies Regulations 2016 and includes any other rules and regulations made under the RAK ICC Business Companies Regulations 2016;

“Resolution of Directors” means either—

- (a) a resolution passed at a duly convened and constituted meeting of directors of the Company or of a committee of directors of the Company by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the votes cast by directors who are present at the meeting and entitled to vote on the resolution; or
- (b) a resolution consented to in writing by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the directors entitled to vote on the resolution;

“Resolution of Members” means either—

- (a) a resolution passed at a duly convened and constituted meeting of the Members by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the votes of those Members entitled to vote and voting on resolutions; or
- (b) a resolution consented to in writing by that number of Members required to take action at a meeting of Members;

“UAE” means the United Arab Emirates;

“Written” or any term of like import includes information generated, sent, received or stored by electronic, electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, including electronic data interchange or electronic mail and **in writing** shall be construed accordingly; and

“Zone” has the meaning given to that term in the Regulations.

- (2) In this Memorandum and the Articles, unless the context otherwise requires a reference to—
- (a) a “Clause” is a reference to a clause of this Memorandum;
  - (b) an “Article” is a reference to an article of the Articles;
  - (c) a “Regulation” is a reference to a provision of the Regulations;
  - (d) voting by Members is a reference to the casting of the votes attached to their membership of the Company;
  - (e) the “Regulations”, this “Memorandum” or the “Articles” is a reference to the Regulations or those documents as may be amended from time to time;
  - (f) a reference to a person includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns; and
  - (g) the singular includes the plural and vice versa.
- (3) Any words or expressions defined in the Regulations unless otherwise defined or the context otherwise requires bear the same meaning in this Memorandum and the Articles.
- (4) Headings are inserted for convenience only and shall be disregarded in interpreting this Memorandum and the Articles.

2. **Name**

The name of the Company is [*name of Company*].

3. **Status**

The Company is a company limited by guarantee that is not authorised to issue shares.

4. **Limit of Liability**

In the event of a winding up of the Company, each Member and any person who was a Member in the period of one year prior to the commencement of the winding up (for the purpose of this Clause only, “Members and Past Members”) shall be liable to contribute US\$[●] to the assets of the Company for the payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the contributions of Members and Past Members among themselves.

5. **Registered Office and Registered Agent**

- (1) The first registered office of the Company is at [●], *the office of the first registered agent*.
- (2) The first registered agent of the Company is [●].

- (3) The Company may by Resolution of Members or by Resolution of Directors change the location of its registered office or change its registered agent.

**6. Capacity and Powers**

- (1) Subject to the Regulations and any other applicable law, the Company has, irrespective of corporate benefit—
- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, powers and privileges.
- (2) For the purposes of Regulation 9(2) (*Memorandum*), there are no limitations on the business that the Company may carry on.

**7. Amendment of Memorandum and Articles**

The Company may amend this Memorandum or the Articles by a Resolution of Members signed by each Member of the Company or by a Resolution of Directors, save that no amendment may be made by a Resolution of Directors—

- (a) to restrict the rights or powers of the Members to amend this Memorandum or the Articles;
- (b) to change the percentage of Members required to pass a Resolution of Members to amend this Memorandum or the Articles;
- (c) in circumstances where this Memorandum or the Articles cannot be amended by the Members; or
- (d) to this Clause 7.

**8. Effect of Memorandum and Articles**

Subject to the provisions of the Regulations, this Memorandum and the Articles shall, upon registration by the Registrar, bind all Members and the Company to observe all provisions contained herein and therein.

I/We, *[names of initial Member(s)]* for the purpose of incorporating a company under the RAK ICC Business Companies Regulations 2016 hereby sign this Memorandum of Association the *[date]* day of *[Month]*, 20*[year]*.

<i>[full name of [initial] member]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of [initial] member (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>[initial] member]</i>
<i>[full name of [initial] member]</i>	)	

Signed in the presence of:

<i>[full name of registered agent]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of registered agent (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>registered agent]</i>
<i>[full name of registered agent]</i>	)	

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## ARTICLES OF ASSOCIATION

### OF

[NAME OF COMPANY]

#### A COMPANY LIMITED BY GUARANTEE NOT AUTHORISED TO ISSUE SHARES

##### 1. Applications for Membership

- (1) No person shall become a Member of the Company unless—
  - (a) that person has completed an application for membership in a form approved by the directors; and
  - (b) the directors have approved the application.

##### 2. Termination of Membership

- (1) Subject to Article 2(4), a Member may withdraw from membership of the Company by giving seven days' notice to the company in writing.
- (2) Membership of the Company is not transferable.
- (3) A person's membership terminates when that person dies or ceases to exist.
- (4) A Member may not withdraw if that person is the sole Member of the Company.
- (5) Membership of the Company may be withdrawn from any Member, who in the opinion of the board, has acted or has threatened to act in a manner which is contrary to the interests of the Company. If at a meeting of the board a resolution is passed to remove a Member, the board must serve a notice on the Member stating the reasons for the board's decision. The notice to the Member must also give the Member the opportunity to make representations to the board in writing or in person at a mutually convenient time as to why that Member should not be removed as a Member. After the board meeting at which the representations are considered, the board must serve a notice on the Member informing the Member of whether membership of the Company has been withdrawn.
- (6) A person who ceases to be a Member shall not be entitled to a refund of any amount paid by him for his membership of the Company.
- (7) The Company shall inform the Registrar as soon as reasonably practicable following any person ceasing to be a Member.

##### 3. Meetings and Consents of Members

- (1) Any director of the Company may convene meetings of the Members at such times and in such manner and places within or outside the Zone as the director considers necessary or desirable.
- (2) Upon the written request of Members entitled to exercise 30% or more of the voting rights in respect of the matter for which the meeting is requested the director or directors so requested shall convene a meeting of Members.



- (3) The director or directors convening a meeting shall give not less than seven days' notice of a meeting of Members to—
- (a) those Members whose names on the date the notice is given appear as Members in the register of Members of the Company and are entitled to vote at the meeting; and
  - (b) the other directors.
- (4) The convener or conveners of a meeting of Members may specify in the notice convening such meeting a date, being not earlier than 30 days before the proposed date of such meeting, as the record date for determining those Members that are entitled to vote at the meeting.
- (5) A meeting of Members held in contravention of the requirement to give notice is valid if at least 90% of the Members that are entitled to vote on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a Member at the meeting shall constitute such waiver unless his presence at the meeting is to protest the lack of notice given in respect of such meeting.
- (6) The inadvertent failure of the director or directors who convenes a meeting to give notice of a meeting to a Member or other directors, or the fact that a Member or another director has not received notice, does not invalidate the meeting.
- (7) A Member may be represented at a meeting of Members by a proxy who may speak and vote on behalf of the Member.
- (8) The instrument appointing a proxy shall be produced at the place designated for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote. The notice of the meeting may specify an alternative or additional place or time at which the proxy shall be presented.
- (9) The instrument appointing a proxy shall be in substantially the following form or such other form as the chairman of the meeting shall accept as properly evidencing the wishes of the Member appointing the proxy.

[[NAME OF COMPANY]

*[I/We] being a Member of the above Company **HEREBY APPOINT** [●] of [●] or failing him [●] of [●] to be my/our proxy to vote for [me/us] at the meeting of Members to be held on the [●] day of [●], 20 [●] and at any adjournment thereof.*

*(Any restrictions on voting to be inserted here.)*

*Signed this [date] day of [Month], 20 [year]*

---

*Member]*

- (10) A Member shall be deemed to be present at a meeting of Members if he participates by telephone or other electronic means and all Members participating in the meeting are able to hear each other.
- (11) A meeting of Members is duly constituted if, at the commencement of the meeting, there are present in person or by proxy not less than 50% of the Members entitled to vote on Resolutions of Members to be considered at the meeting. A quorum may comprise a single Member or proxy and then such person may pass a Resolution of Members and a certificate signed by such

person accompanied where such person be a proxy by a copy of the proxy instrument shall constitute a valid Resolution of Members.

- (12) If within two hours from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the next business day in the jurisdiction in which the meeting was to have been held at the same time and place or to such other time and place as the directors may determine, and if at the adjourned meeting there are present within one hour from the time appointed for the meeting in person or by proxy not less than one-third of the Members entitled to vote on the matters to be considered by the meeting, those present shall constitute a quorum but otherwise the meeting shall be dissolved.
- (13) At every meeting of Members, the Chairman shall preside as chairman of the meeting. If there is no Chairman or if the Chairman is not present at the meeting, the Members present shall choose one of their number to be the chairman of the meeting. If the Members are unable to choose a chairman of the meeting for any reason, then the oldest individual Member or representative of a Member present shall take the chair of the meeting.
- (14) The chairman of the meeting may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (15) At any meeting of the Members the chairman of the meeting is responsible for deciding in such manner as he considers appropriate whether any resolution proposed has been carried or not and the result of his decision shall be announced to the meeting and recorded in the minutes of the meeting. If the chairman of the meeting has any doubt as to the outcome of the vote on a proposed resolution, he shall cause a poll to be taken of all votes cast upon such resolution. If the chairman of the meeting fails to take a poll then any Member present in person or by proxy who disputes the announcement by the chairman of the meeting of the result of any vote may immediately following such announcement demand that a poll be taken and the chairman of the meeting shall cause a poll to be taken. If a poll is taken at any meeting, the result shall be announced to the meeting and recorded in the minutes of the meeting.
- (16) Subject to the specific provisions contained in this Article for the appointment of representatives of persons other than individuals, the right of any individual to speak for or represent a Member shall be determined by the law of the jurisdiction where, and by the documents by which, the person is constituted or derives its existence. In case of doubt, the directors may in good faith seek legal advice from any qualified person and unless and until a court of competent jurisdiction shall otherwise rule, the directors may rely and act upon such advice without incurring any liability to any Member or the Company.
- (17) Any person other than an individual which is a Member may by resolution of its directors or other governing body authorise such individual as it thinks fit to act as its representative at any meeting of Members, and the individual so authorised shall be entitled to exercise the same rights on behalf of the person which he represents as that person could exercise if it were an individual.
- (18) The chairman of any meeting at which a vote is cast by proxy or on behalf of any person other than an individual may call for a notarially certified copy of such proxy or authority which shall be produced within seven days of being so requested or the votes cast by such proxy or on behalf of such person shall be disregarded.
- (19) Directors of the Company may attend and speak at any meeting of Members.

- (20) An action that may be taken by the Members at a meeting may also be taken by a Resolution of Members consented to in writing, without the need for any notice, but if any Resolution of Members is adopted otherwise than by the unanimous written consent of all Members, a copy of such resolution shall forthwith be sent to all Members not consenting to such resolution. The consent may be in the form of counterparts, each counterpart being signed by one or more Members. If the consent is in one or more counterparts, and the counterparts bear different dates, then the resolution shall take effect on the earliest date upon which a sufficient number of Members to constitute a Resolution of Members have consented to the resolution by signed counterparts.

#### 4. **Directors**

- (1) The initial Member(s) of the Company shall appoint one or more persons as the first director(s) of the Company pursuant to a Resolution of Members.
- (2) A vacancy in the board or as an addition to the existing directors may be filled by the appointment of a new director pursuant to a Resolution of Members or a majority of the remaining directors of the Company. The remaining directors may continue to act notwithstanding any vacancy on the board.
- (3) No person shall be appointed as a director of the Company unless he has consented in writing to act as a director.
- (4) The minimum number of directors shall be one.
- (5) Each director holds office for the term, if any, fixed by the Resolution of Members or Resolution of Directors appointing him, or until his earlier death, resignation or removal. If no term is fixed on the appointment of a director, the director serves indefinitely until his earlier death, resignation or removal.
- (6) A director may be removed from office—
- (a) with or without cause, by a Resolution of Members passed at a meeting of Members called for the purposes of removing the director or for purposes including the removal of the director or by a written resolution passed by at least 75% of the Members entitled to vote; or
  - (b) with cause, by a Resolution of Directors passed at a meeting of directors called for the purpose of removing the director or for purposes including the removal of the director.
- (7) A director may resign his office by giving written notice of his resignation to the Company and the resignation has effect from the date the notice is received by the Company at the office of its registered agent or from such later date as may be specified in the notice. A director shall resign forthwith as a director if he is, or becomes, disqualified from acting as a director under the Regulations.
- (8) A vacancy in relation to directors occurs if a director dies or otherwise ceases to hold office prior to the expiration of his term of office.
- (9) Where the remaining directors appoint a person as director to fill a vacancy, the term shall not exceed the term that remained when the person who has ceased to be a director ceased to hold office.

- (10) The Company shall keep, or procure that its registered agent keeps, a register of directors containing—
- (a) the names and addresses of the persons who are directors of the Company;
  - (b) the date on which each person whose name is entered in the register of directors was appointed as a director of the Company;
  - (c) the date on which each person named as a director ceased to be a director of the Company; and
  - (d) such other information as may be prescribed by the Regulations.
- (11) The register of directors may be kept in any such form as the directors may approve, but if it is in magnetic, electronic or other data storage form, the Company must be able to produce legible evidence of its contents. Unless a Resolution of Directors determining otherwise is passed, the magnetic, electronic or other data storage shall be the original register of directors.
- (12) The Company will file with the Registrar a copy of its register of directors within 14 days of the appointment of its first director.
- (13) The Company will file any changes in its register of directors by filing a copy of the register containing the changes within 14 days of such change.
- (14) The directors may, by a Resolution of Directors, fix the emoluments of directors with respect to services to be rendered in any capacity to the Company.
- (15) A director is not required to be a Member as a qualification to office.

## **5. Powers of Directors**

- (1) The business and affairs of the Company shall be managed by, or under the direction or supervision of, the directors of the Company. The directors of the Company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the Company. The directors may pay all expenses incurred preliminary to and in connection with the incorporation of the Company and may exercise all such powers of the Company as are not by the Regulations or by the Memorandum or these Articles required to be exercised by the Members.
- (2) Each director shall exercise his powers for a proper purpose and shall not act or agree to the Company acting in a manner that contravenes the Memorandum, these Articles or the Regulations. Each director, in exercising his powers or performing his duties, shall act honestly and in good faith in what the director believes to be the best interests of the Company.
- (3) If the Company is the wholly owned subsidiary of a holding company, a director of the Company may, when exercising powers or performing duties as a director, act in a manner which he believes is in the best interests of the holding company even though it may not be in the best interests of the Company.
- (4) Any director which is a body corporate may appoint any individual as its duly authorised representative for the purpose of representing it at meetings of the directors, with respect to the signing of consents or otherwise.

- (5) The directors may by Resolution of Directors exercise all the powers of the Company to incur indebtedness, liabilities or obligations and to guarantee and/or secure indebtedness, liabilities or obligations whether of the Company or of any third party.
- (6) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as shall from time to time be determined by Resolution of Directors.
- (7) For the purposes of Regulation 180 (*Disposition of assets*), the directors may by Resolution of Directors determine that any sale, transfer, lease, exchange or other disposition is in the usual or regular course of the business carried on by the Company and such determination is, in the absence of fraud, conclusive.

#### 6. **Proceedings of Directors**

- (1) Any one director of the Company may call a meeting of the directors by sending a written notice to each other director.
- (2) The directors of the Company or any committee thereof may meet at such times and in such manner and places within or outside the Zone as the directors may determine to be necessary or desirable.
- (3) A director is deemed to be present at a meeting of directors if he participates by telephone or other electronic means and all directors participating in the meeting are able to hear each other.
- (4) A director shall be given not less than three days' notice of meetings of directors, but a meeting of directors held without three days' notice having been given to all directors shall be valid if all the directors entitled to vote at the meeting who do not attend waive notice of the meeting, and for this purpose the presence of a director at a meeting shall constitute waiver by that director unless his presence at the meeting is to protest the lack of notice given in respect of such meeting. The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.
- (5) A director may by a written instrument appoint an alternate who need not be a director and the alternate shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in place of the director until the appointment lapses or is terminated.
- (6) A meeting of directors is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate not less than 50% of the total number of directors.
- (7) If the Company has only one director the provisions herein contained for meetings of directors do not apply and such sole director has full power to represent and act for the Company in all matters as are not by the Regulations, the Memorandum or these Articles required to be exercised by the Members. In lieu of minutes of a meeting the sole director shall record in writing and sign a note or memorandum of all matters requiring a Resolution of Directors. Such a note or memorandum constitutes sufficient evidence of such resolution for all purposes.
- (8) At meetings of directors at which the Chairman is present, he shall preside as chairman of the meeting. If there is no Chairman or if the Chairman is not present, the directors present shall choose one of their number to be chairman of the meeting.
- (9) An action that may be taken by the directors or a committee of directors at a meeting may also be taken by a Resolution of Directors or a resolution of a committee of directors consented to

in writing by a majority in excess of 50% (or, if a higher majority is required by the Memorandum or Articles, such higher majority) of directors or members of the committee, as the case may be, without the need for any notice. The consent may be in the form of counterparts each counterpart being signed by one or more directors. If the consent is in one or more counterparts, and the counterparts bear different dates, then the resolution shall take effect on the date upon which the last director has consented to the resolution by signed counterparts.

## **7. Committees**

- (1) The directors may, by Resolution of Directors, designate one or more committees, each consisting of one or more directors, and delegate one or more of their powers to the committee.
- (2) The directors have no power to delegate to a committee of directors any of the following powers—
  - (a) to amend the Memorandum or these Articles;
  - (b) to designate committees of directors;
  - (c) to delegate powers to a committee of directors;
  - (d) to appoint directors;
  - (e) to appoint an agent;
  - (f) to approve a plan of merger, consolidation or arrangement; or
  - (g) to make a declaration of solvency or to approve a liquidation plan.
- (3) Subsections (2)(b) and (2)(c) do not prevent a committee of directors, where authorised by the Resolution of Directors appointing such committee or by a subsequent Resolution of Directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.
- (4) The meetings and proceedings of each committee of directors consisting of two or more directors shall be governed *mutatis mutandis* by the provisions of these Articles regulating the proceedings of directors so far as the same are not superseded by any provisions in the Resolution of Directors establishing the committee.
- (5) Where the directors delegate their powers to a committee of directors they remain responsible for the exercise of those powers by the committee, unless they believed on reasonable grounds at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the Company under the Regulations.

## **8. Officers and Agents**

- (1) The Company may by Resolution of Directors appoint officers of the Company at such times as may be considered necessary or expedient. Such officers may consist of a chairman of the board of directors (the “Chairman”), a president and one or more vice-presidents, secretaries and treasurers and such other officers as may from time to time be considered necessary or expedient. Any number of offices may be held by the same person.
- (2) The officers shall perform such duties as are prescribed at the time of their appointment subject to any modification in such duties as may be prescribed thereafter by Resolution of Directors.



In the absence of any specific prescription of duties it shall be the responsibility of the Chairman to preside at meetings of directors and Members, the president to manage the day to day affairs of the Company, the vice-presidents to act in order of seniority in the absence of the president but otherwise to perform such duties as may be delegated to them by the president, the secretaries to maintain the register of Members, minute books and records (other than financial records) of the Company and to ensure compliance with all procedural requirements imposed on the Company by applicable law, and the treasurer to be responsible for the financial affairs of the Company.

- (3) The emoluments of all officers shall be fixed by Resolution of Directors.
- (4) The officers of the Company shall hold office until their successors are duly appointed, but any officer elected or appointed by the directors may be removed at any time, with or without cause, by Resolution of Directors. Any vacancy occurring in any office of the Company may be filled by Resolution of Directors.

#### **9. Conflict of Interests**

- (1) A director of the Company shall, forthwith after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the Company, disclose the interest to all other directors of the Company.
- (2) For the purposes of subsection (1), a disclosure to all other directors to the effect that a director is a member, director or officer of another named entity or has a fiduciary relationship with respect to the entity or a named individual and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that entity or individual, is a sufficient disclosure of interest in relation to that transaction.
- (3) A director of the Company who is interested in a transaction entered into or to be entered into by the Company may—
  - (a) vote on a matter relating to the transaction;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
  - (c) sign a document on behalf of the Company, or do any other thing in his capacity as a director, that relates to the transaction,

and, subject to compliance with the Regulations shall not, by reason of his office be accountable to the Company for any benefit which he derives from such transaction and no such transaction shall be liable to be avoided on the grounds of any such interest or benefit.

#### **10. Indemnification**

- (1) Subject to the limitations hereinafter provided the Company shall indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who—
  - (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the Company; or

- (b) is or was, at the request of the Company, serving as a director of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.
- (2) The indemnity in subsection (1) only applies if the person acted honestly and in good faith with a view to the best interests of the Company and, in the case of criminal proceedings, the person had no reasonable cause to believe that their conduct was unlawful.
- (3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the Company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of these Articles, unless a question of law is involved.
- (4) The termination of any proceedings by any judgment, order, settlement, conviction or voluntary dismissal does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the Company or that the person had reasonable cause to believe that his conduct was unlawful.
- (5) The Company may purchase and maintain insurance in relation to any person who is or was a director, officer or liquidator of the Company, or who at the request of the Company is or was serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the Company has or would have had the power to indemnify the person against the liability as provided in the Articles.

## 11. **Records**

- (1) The Company shall keep the following documents at the office of its registered agent—
  - (a) the Memorandum and these Articles;
  - (b) a copy of the register of Members;
  - (c) the register of directors, or a copy of the register of directors;
  - (d) a copy of the register of charges; and
  - (e) copies of all notices and other documents filed by the Company in the previous five years.
- (2) If the Company maintains only a copy of the register of directors at the office of its registered agent, it shall—
  - (a) within 14 days of any change in the original register of directors, notify the registered agent in writing of the change; and
  - (b) provide the registered agent with a written record of the physical address of the place or places at which the original register of directors is kept.
- (3) The Company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the Zone, as the directors may determine—
  - (a) minutes of meetings and Resolutions of Members; and
  - (b) minutes of meetings and Resolutions of Directors and committees of directors.



- (4) Where any original records referred to in this Article are maintained other than at the office of the registered agent of the Company, and the place at which the original records is changed, the Company shall provide the registered agent with the physical address of the new location of the records of the Company within 14 days of the change of location.
- (5) The records kept by the Company under this Article shall be in written form or either wholly or partly as electronic records complying with the requirements of Law No. 1 of 2006 concerning Electronic Transactions and Commerce.

## 12. **Registers of Charges**

The Company shall keep, or procure that its registered agent keeps, a copy of the register of charges (“register of charges”) in which there shall be entered the following particulars regarding each mortgage, charge and other encumbrance created by the Company or existing on property acquired by the Company—

- (a) if the charge is a charge created by the Company, the date of its creation or, if the charge is a charge existing on property acquired by the Company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;
- (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;
- (e) unless the charge is a security to bearer, the name and address of the holder of the charge; and
- (f) details of any prohibition or restriction contained in the instrument creating the charge on the power of the Company to create any future charge ranking in priority to or equally with the charge.

## 13. **Continuation**

The Company may by Resolution of Members or by a resolution passed unanimously by all directors of the Company continue as a company incorporated under the laws of a jurisdiction outside RAK ICC in the manner provided under those laws.

## 14. **Accounts and Audit**

- (1) The Company shall keep records that are sufficient to show and explain the Company’s transactions and that will, at any time, enable the financial position of the Company to be determined with reasonable accuracy.
- (2) The Company may by Resolution of Members call for the directors to prepare periodically and make available a profit and loss account and a balance sheet. The profit and loss account and balance sheet shall be drawn up so as to give respectively a true and fair view of the profit and loss of the Company for a financial period and a true and fair view of the assets and liabilities of the Company as at the end of a financial period.
- (3) The Company may by Resolution of Members call for the accounts to be examined by auditors.

- (4) The first auditors shall be appointed by Resolution of Directors; subsequent auditors shall be appointed by a Resolution of Members.
- (5) No director or other officer shall be eligible to be an auditor of the Company during their continuance in office.
- (6) The remuneration of the auditors of the Company—
  - (a) in the case of auditors appointed by the directors, may be fixed by Resolution of Directors; and
  - (b) subject to the foregoing, shall be fixed by Resolution of Members or in such manner as the Company may by Resolution of Members determine.
- (7) The auditors shall examine each profit and loss account and balance sheet required to be laid before a meeting of the Members or otherwise given to Members and shall state in a written report whether or not—
  - (a) in their opinion the profit and loss account and balance sheet give a true and fair view respectively of the profit and loss for the period covered by the accounts, and of the assets and liabilities of the Company at the end of that period; and
  - (b) all the information and explanations required by the auditors have been obtained.
- (8) The report of the auditors shall be annexed to the accounts and shall be read at the meeting of Members at which the accounts are laid before the Company or shall be otherwise given to the Members.
- (9) Every auditor of the Company shall have a right of access at all times to the books of account and vouchers of the Company, and shall be entitled to require from the directors and officers of the Company such information and explanations as he thinks necessary for the performance of the duties of the auditors.
- (10) The auditors of the Company shall be entitled to receive notice of, and to attend any meetings of Members at which the Company's profit and loss account and balance sheet are to be presented.

## 15. Notices

- (1) Any notice, information or written statement to be given by the Company to Members may be given by personal service or by mail addressed to each Member at the address shown in the register of Members.
- (2) Any summons, notice, order, document, process, information or written statement to be served on the Company may be served by leaving it, or by sending it by registered mail addressed to the Company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the Company.
- (3) Service of any summons, notice, order, document, process, information or written statement to be served on the Company may be proved by showing that the summons, notice, order, document, process, information or written statement was delivered to the registered office or the registered agent of the Company or that it was mailed in such time as to admit to its being delivered to the registered office or the registered agent of the Company in the normal course of delivery within the period prescribed for service and was correctly addressed and the postage was prepaid.

16. **Voluntary Winding Up and Dissolution**

The Company may by a Resolution of Members or by a Resolution of Directors appoint a voluntary liquidator.

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2018 version

I/We, [*name of initial Member(s)*] for the purpose of incorporating a company under the RAK ICC Business Companies Regulations 2016 hereby sign these Articles of Association the [*date*] day of [*Month*], 20[*year*].

[ <i>full name of [initial] member</i> ] acting by	)	
[ <i>full name of authorised signatory</i> ], being a	)	[ <i>Signature of [initial] member (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>[initial] member</i> ]
[ <i>full name of [initial] member</i> ]	)	

Signed in the presence of:

[ <i>full name of registered agent</i> ] acting by	)	
[ <i>full name of authorised signatory</i> ], being a	)	[ <i>Signature of registered agent (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>registered agent</i> ]
[ <i>full name of registered agent</i> ]	)	

Replaced by  
2018 version

**SCHEDULE 3**

**STANDARD MEMORANDUM & ARTICLES FOR UNLIMITED COMPANIES AUTHORISED  
TO ISSUE SHARES**

Replaced by  
2018 version

REGISTRATION NO: \_\_\_\_\_

**MEMORANDUM OF ASSOCIATION**

**AND**

**ARTICLES OF ASSOCIATION**

**OF**

**[COMPANY NAME]**

A COMPANY [INCORPORATED] ON [DATE] UNDER THE [TITLE OF FOREIGN STATUTE]  
OF [JURISDICTION] AND CONTINUED UNDER THE RAK ICC BUSINESS COMPANY  
REGULATIONS 2016 AS AN UNLIMITED COMPANY AUTHORISED TO ISSUE SHARES

A COMPANY [INCORPORATED] ON [DATE] UNDER THE RAK ICC BUSINESS COMPANY  
REGULATIONS 2016 AS AN UNLIMITED COMPANY AUTHORISED TO ISSUE SHARES

Replaced by  
2018 version

## MEMORANDUM OF ASSOCIATION

OF

[NAME OF COMPANY]

### AN UNLIMITED COMPANY AUTHORISED TO ISSUE SHARES

#### 1. Definitions and Interpretation

- (1) In this Memorandum of Association and the attached Articles of Association, if not inconsistent with the subject or context—

“Articles” means the attached Articles of Association of the Company, as may be amended from time to time in accordance with their provisions and the Regulations;

“Chairman” has the meaning specified in Article 18;

“Memorandum” means this Memorandum of Association of the Company, as may be amended from time to time in accordance with its provisions and the Regulations;

“RAK” means the Emirate of Ras Al Khaimah, UAE;

“RAK ICC” means International Corporate Centre, a government authority of Ras Al Khaimah;

“Registrar” has the meaning given to that term in the Regulations;

“Regulations” means the RAK ICC Business Companies Regulations 2016 and includes any other rules and regulations made under the RAK ICC Business Companies Regulations 2016;

“Resolution of Directors” means either—

- (a) a resolution passed at a duly convened and constituted meeting of directors of the Company or of a committee of directors of the Company by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the votes cast by directors who are present at the meeting and entitled to vote on the resolution; or
- (b) a resolution consented to in writing by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the directors entitled to vote on the resolution;

“Resolution of Shareholders” means either—

- (a) a resolution passed at a duly convened and constituted meeting of the Shareholders by a majority in excess of 50% (or, if a higher majority is required by this Memorandum or the Articles, such higher majority) of the votes of those members entitled to vote and voting on resolutions; or
- (b) a resolution consented to in writing by that number of members required to take action at a meeting of members;

“Securities” means Shares and debt obligations of every kind of the Company, and including without limitation options, warrants and rights to acquire shares or debt obligations;

“Share” means a share issued, or that may be issued, by the Company;

“Shareholder” means a person whose name is entered in the register of members of the Company maintained by the Registrar as the holder of one or more Shares or fractional Shares;

“Treasury Share” means a Share that was previously issued but was repurchased, redeemed or otherwise acquired by the Company and not cancelled;

“UAE” means the United Arab Emirates;

“Written” or any term of like import includes information generated, sent, received or stored by electronic, electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, including electronic data interchange or electronic mail and **in writing** shall be construed accordingly; and

“Zone” has the meaning given to that term in the Regulations.

- (2) In this Memorandum and the Articles, unless the context otherwise requires a reference to—
- (a) a “Clause” is a reference to a clause of this Memorandum;
  - (b) an “Article” is a reference to an article of the Articles;
  - (c) a “Regulation” is a reference to a provision of the Regulations;
  - (d) voting by Shareholders is a reference to the casting of the votes attached to the Shares held by the Shareholder voting;
  - (e) the “Regulations”, this “Memorandum” or the “Articles” is a reference to the Regulations or those documents as may be amended from time to time;
  - (f) a reference to a person includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns; and
  - (g) the singular includes the plural and vice versa.
- (3) Any words or expressions defined in the Regulations unless otherwise defined or the context otherwise requires bear the same meaning in this Memorandum and the Articles.
- (4) Headings are inserted for convenience only and shall be disregarded in interpreting this Memorandum and the Articles.

## 2. **Name**

The name of the Company is [*name of Company*].

## 3. **Status**

The Company is an unlimited company authorised to issue shares.

## 4. **Registered Office and Registered Agent**

- (1) The first registered office of the Company is at [●], *the office of the first registered agent*.
- (2) The first registered agent of the Company is [●].



- (3) The Company may by Resolution of Shareholders or by Resolution of Directors change the location of its registered office or change its registered agent.

**5. Capacity and Powers**

- (1) Subject to the Regulations and any other applicable law, the Company has, irrespective of corporate benefit—
- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, powers and privileges.
- (2) For the purposes of Regulation 9(2) (*Memorandum*), there are no limitations on the business that the Company may carry on.

**6. Number and Classes of Shares**

*[The Company is authorised to issue a maximum of [●] Shares of [●] par value each [of a single class].] OR [The Company's authority to issue Shares [of a single class] is unlimited.]*

**7. Amendment of Memorandum and Articles**

Subject to Article 4, the Company may amend this Memorandum or the Articles by a Resolution of Shareholders signed by each member of the Company or by a Resolution of Directors, save that no amendment may be made by a Resolution of Directors—

- (a) to restrict the rights or powers of the Shareholders to amend this Memorandum or the Articles;
- (b) to change the percentage of Shareholders required to pass a Resolution of Shareholders to amend this Memorandum or the Articles;
- (c) in circumstances where this Memorandum or the Articles cannot be amended by the Shareholders; or
- (d) to Articles 3, 4 or 5 or this Clause 7.

**8. Effect of Memorandum and Articles**

Subject to the provisions of the Regulations, this Memorandum and the Articles shall, upon registration by the Registrar, bind all Shareholders and the Company to observe all provisions contained herein and therein.

I/We, *[names of initial member(s)]* for the purpose of incorporating a company under the RAK ICC Business Companies Regulations 2016 hereby sign this Memorandum of Association the *[date]* day of *[Month]*, 20*[year]*.

<i>[full name of [initial] member]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of [initial] member (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>[initial] member]</i>
<i>[full name of [initial] member]</i>	)	

Signed in the presence of:

<i>[full name of registered agent]</i> acting by	)	
<i>[full name of authorised signatory]</i> , being a	)	<i>[Signature of registered agent (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>registered agent]</i>
<i>[full name of registered agent]</i>	)	

Replaced by  
2018 version

## ARTICLES OF ASSOCIATION

### OF

[NAME OF COMPANY]

#### AN UNLIMITED COMPANY AUTHORISED TO ISSUE SHARES

##### 1. Share certificates

- (1) The board may authorise the issue by the Company of certificates signed by a director of the Company specifying the number of Shares held by a Shareholder.
- (2) Any Shareholder receiving a certificate for Shares shall indemnify and hold the Company, its directors and officers and the Registrar harmless from any loss or liability which it or they may incur by reason of any wrongful or fraudulent use or representation made by any person by virtue of the possession thereof. If a certificate for Shares is worn out or lost it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a Resolution of Directors.
- (3) If several persons are registered as joint holders of any Shares, any one of such persons may give an effectual receipt for any Distribution.

##### 2. Shares

- (1) Shares and other Securities may be issued at such times, to such persons, for such consideration and on such terms as the directors may by Resolution of Directors determine.
- (2) Regulation 59 (Pre-emptive rights) does not apply to the Company.
- (3) A Share may be issued for consideration in any form, including money, a promissory note, real property, personal property (including goodwill and know-how) or a contract for future services.
- (4) No Shares may be issued for a consideration other than money, unless a Resolution of Directors has been passed stating—
  - (a) the amount to be credited for the issue of the Shares;
  - (b) their determination of the reasonable present cash value of the non-money consideration for the issue; and
  - (c) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the Shares.
- (5) The Company shall ensure that the register (“register of members”) maintained by the Registrar is kept up to date, including—
  - (a) the names and addresses of the persons who hold Shares;
  - (b) the number of each class and series of Shares held by each Shareholder;
  - (c) the date on which the name of each Shareholder was entered in the register of members; and
  - (d) the date on which any person ceased to be a Shareholder.

- (6) A Share is deemed to be issued when the name of the Shareholder is entered in the register of members.

- (7) The Company may issue fractional Shares and a fractional Share shall have the corresponding fractional rights, obligations and liabilities of a whole share of the same class or series of shares.

**3. Designations, Powers, Preferences, etc. of Shares**

- (1) Each Share confers upon the Shareholder—

- (a) the right to one vote at a meeting of the Shareholders or on any Resolution of Shareholders;
- (b) the right to an equal share in any Distribution; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company upon its liquidation, winding up or dissolution.

- (2) The directors may at their discretion by Resolution of Directors redeem, purchase or otherwise acquire all or any of the Shares subject to Article 8.

**4. Variation of Rights**

The rights attached to Shares as specified in Article 3 may only, whether or not the Company is being wound up, be varied with the consent in writing of or by a resolution passed at a duly convened and constituted meeting by a majority in excess of 50% of the votes of holders of the Shares of that class entitled to vote and voting on resolutions.

**5. Rights Not Varied by the Issue of Shares *Pari Passu***

The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith.

**6. Registered Shares**

- (1) The Company shall issue registered shares only.
- (2) The Company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

**7. Transfer of Shares**

- (1) The Company shall, on receipt of an instrument of transfer complying with Article 11(1), approve the transfer of Shares for registration by the Registrar in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in a Resolution of Directors.
- (2) The directors may not resolve to refuse or delay the transfer of a Share unless the Shareholder has failed to pay an amount due in respect of the Share.

**8. Redemption of Shares and Treasury Shares**

- (1) The Company may purchase, redeem or otherwise acquire and hold its own Shares save that the Company may not purchase, redeem or otherwise acquire its own Shares without the

consent of Shareholders whose Shares are to be purchased, redeemed or otherwise acquired unless the Company is permitted by the Regulations or any other provision in the Memorandum or these Articles to purchase, redeem or otherwise acquire the Shares without their consent.

- (2) The Company may only offer to acquire Shares if at the relevant time the directors determine by Resolution of Directors that immediately after the acquisition the value of the Company's assets will exceed its liabilities and the Company will be able to pay its debts as they fall due.
- (3) Shares that the Company purchases, redeems or otherwise acquires pursuant to this Article may be cancelled or held as Treasury Shares except to the extent that such Shares are in excess of 50% of the issued Shares in which case they shall be cancelled but they shall be available for reissue.
- (4) All rights and obligations attaching to a Treasury Share are suspended and shall not be exercised by the Company while it holds the Share as a Treasury Share.
- (5) Treasury Shares may be disposed of by the Company on such terms and conditions (not otherwise inconsistent with the Memorandum and these Articles) as the Company may by Resolution of Directors determine.
- (6) Where Shares are held by another body corporate of which the Company holds, directly or indirectly, shares having more than 50% of the votes in the election of directors of the other body corporate, all rights and obligations attaching to the Shares held by the other body corporate are suspended and shall not be exercised by the other body corporate.

## **9. Mortgages and Charges of Shares**

- (1) Shareholders may mortgage or charge their Shares, in which case the Shareholder shall provide to the company—
  - (a) a statement that the Shares held by him are mortgaged or charged;
  - (b) the name of the mortgagee or chargee; and
  - (c) the date on which the particulars specified in paragraphs (a) and (b) are entered in the register of members.
- (2) The Company shall provide the information provided by the Shareholder pursuant to subsection (1) to the Registrar for entry in the register of members.
- (3) Where particulars of a mortgage or charge are entered in the register of members, such particulars may be cancelled—
  - (a) with the written consent of the named mortgagee or chargee or anyone authorised to act on his behalf; or
  - (b) upon evidence satisfactory to the directors of the discharge of the liability secured by the mortgage or charge and the issue of such indemnities as the directors shall consider necessary or desirable.
- (4) Whilst particulars of a mortgage or charge over Shares are entered in the register of members pursuant to this Article—
  - (a) no transfer of any Share the subject of those particulars shall be effected;
  - (b) the Company may not purchase, redeem or otherwise acquire any such Share; and

(c) no certificate or replacement certificate shall be issued in respect of such Shares, without the written consent of the named mortgagee or chargee.

**10. Forfeiture**

- (1) Shares for which all consideration payable by the Shareholder therefor upon issue is not received by the Company are subject to the forfeiture provisions set forth in this Article and for this purpose where the Company receives a promissory note or a contract for future services from such Shareholder for such issue then the Company is deemed not to have received all consideration payable by the Shareholder for such Shares.
- (2) A written notice of call specifying the date for payment to be made shall be served on the Shareholder who defaults in making payment in respect of the Shares.
- (3) The written notice of call referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the Shares, or any of them, in respect of which payment is not made will be liable to be forfeited.
- (4) Where a written notice of call has been issued pursuant to subsection (3) and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the Shares to which the notice relates.
- (5) The Company is under no obligation to refund any partial consideration received by the Company to the Shareholder whose Shares have been cancelled pursuant to subsection (4) and that Shareholder shall be discharged from any further obligation to the Company.

**11. Pre-emption Rights on Transfer**

- (1) No Shareholder may transfer, assign or otherwise dispose of any interest in a Share or create a trust or Encumbrance over that Share without first complying with this Article.
- (2) A Shareholder (the "Seller") wishing to transfer, assign or otherwise dispose of any of his Shares (the "Sale Shares") must give notice in writing (a "Transfer Notice") to the Company giving details of the proposed transfer including:
  - (a) the number of Sale Shares;
  - (b) the name of the proposed buyer;
  - (c) the price (which must be in cash) at which he wishes to sell the Sale Shares (the "Transfer Price"); and
  - (d) whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold to Shareholders (the "Minimum Transfer Condition").
- (3) Once given under these Articles, a Transfer Notice may not be withdrawn by the Seller without the consent of the other Shareholders.
- (4) A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares in accordance with the provisions of these Articles.
- (5) As soon as practicable following the receipt of a Transfer Notice, the board shall offer the Sale Shares for sale in the manner set out in the remaining provisions of this Article at the Transfer

Price. Each offer shall be in writing and give details of the number and Transfer Price of the Sale Shares offered.

- (6) The board shall offer the Sale Shares to all Shareholders other than the Seller (the “Continuing Shareholders”), inviting them to apply in writing within the period from the date of the offer to the date 28 days after the offer (both dates inclusive) (the “Offer Period”) for the maximum number of Sale Shares they wish to buy at the Transfer Price.
- (7) If the Sale Shares are subject to a Minimum Transfer Condition, any allocation made under Article 11(8) shall be conditional on the fulfilment of the Minimum Transfer Condition.
- (8) If:
  - (a) at the end of the Offer Period, the total number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the board shall allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion which that Continuing Shareholder’s existing holding of shares bears to the total number of shares held by those Continuing Shareholders who have applied for Sale Shares. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy,
  - (b) not all Sale Shares are allocated following allocations in accordance with Article 11(8)(a), but there are applications for Sale Shares that have not been satisfied, the board shall allocate the remaining Sale Shares to such applicant(s) in accordance with the procedure set out in Article 11(8)(a). The procedure set out in this Article 11(8)(b) shall apply on any number of consecutive occasions until either all Sale Shares have been allocated or all applications for Sale Shares have been satisfied; and
  - (c) at the end of the Offer Period, the total number of Sale Shares applied for is less than the number of Sale Shares, the board shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications.
- (9) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares specified in the Minimum Transfer Condition, the board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under Article 11(8) stating that the Minimum Transfer Condition has not been met and the relevant Transfer Notice has lapsed with immediate effect.
- (10) If:
  - (a) the Transfer Notice includes a Minimum Transfer Condition and such Minimum Transfer Condition has been satisfied, or the Transfer Notice does not include a Minimum Transfer Condition; and
  - (b) allocations under Article 11(8) have been made in respect of some or all of the Sale Shares,

the board shall give written notice of allocation (an “Allocation Notice”) to the Seller and each Continuing Shareholder to whom Sale Shares have been allocated (each an “Applicant”). The Allocation Notice shall specify the number of Sale Shares allocated to each Applicant, the amount payable by each Applicant for the number of Sale Shares allocated to him (the “Consideration”) and the place and time for completion of the transfer of the Sale Shares (which shall be at least 5 days, but not more than 10 days, after the date of the Allocation Notice).

- (11) On the date specified for completion in the Allocation Notice, the Seller shall, against payment of the Consideration, execute and deliver a transfer of the Sale Shares allocated to each Applicant, in accordance with the requirements specified in the Allocation Notice.
- (12) If the Seller fails to comply with Article 11(11):
- (a) the Chairman of the Company (or, failing him, one of the other directors, or some other person nominated by a resolution of the board) may, as agent on behalf of the Seller:
  - (b) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
  - (c) receive the Consideration and give a good discharge for it (and no Applicant shall be obliged to see to the distribution of the Consideration); and
  - (d) enter the Applicants in the register of members as the holders of the Sale Shares purchased by them; and
  - (e) the Company shall pay the Consideration into a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered his certificate(s) for the relevant Sale Shares or an indemnity, in a form reasonably satisfactory to the board, in respect of any lost certificate, together, in either case, with such other evidence (if any) as the board may reasonably require to prove good title to those Sale Shares, to the Company.
- (13) If:
- (a) an Allocation Notice does not relate to all of the Sale Shares then within 60 days following service of the Allocation Notice the Seller may transfer those Sale Shares not allocated pursuant to the Allocation Notice; or
  - (b) a Transfer Notice lapses pursuant to Article 11(9) then within 60 days following the date of the lapse of the Transfer Notice the Seller may (subject to the Minimum Transfer Condition) transfer the Sale Shares,
- to any person at a price at least equal to the Transfer Price.
- (14) The restrictions imposed by this Article may be waived in relation to any proposed transfer of Sale Shares with the consent of Shareholders who, but for the waiver, would or might have been entitled to have such Sale Shares offered to them in accordance with this Article. The restrictions imposed by this Article do not apply to a transfer of shares to the Company.

## 12. **Transfer of Shares**

- (1) Subject to Article 11, Shares may be transferred by an instrument of transfer containing the name and address of the transferee signed by the transferor and the transferee and each other member of the Company, which shall be sent to the Company at the office of its registered agent within 30 days of signing.
- (2) The board may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless the board suspects that the proposed transfer may be fraudulent.
- (3) The transfer of a Share is effective when the name of the transferee is entered on the register of members.



- (4) If the directors of the Company are satisfied that an instrument of transfer has been signed but that the instrument has been lost or destroyed, they may resolve by Resolution of Directors—
  - (a) to accept such evidence of the transfer of Shares as they consider appropriate; and
  - (b) that the transferee's name should be entered in the register of members notwithstanding the absence of the instrument of transfer.
- (5) Subject to the Memorandum and in accordance with the requirements of the Regulations, the personal representative, executor or administrator of a deceased Shareholder may transfer a Share even though such personal representative, executor or administrator is not a Shareholder at the time of the transfer.

### **13. Meetings and Consents of Shareholders**

- (1) Any director of the Company may convene meetings of the Shareholders at such times and in such manner and places within or outside the Zone as the director considers necessary or desirable.
- (2) Upon the written request of Shareholders entitled to exercise 30% or more of the voting rights in respect of the matter for which the meeting is requested the director or directors so requested shall convene a meeting of Shareholders.
- (3) The director or directors convening a meeting shall give not less than seven days' notice of a meeting of Shareholders to—
  - (a) those Shareholders whose names on the date the notice is given appear as Shareholders in the register of members of the Company and are entitled to vote at the meeting; and
  - (b) the other directors.
- (4) The convener or conveners of a meeting of members may specify in the notice convening such meeting a date, being not earlier than 30 days before the proposed date of such meeting, as the record date for determining those members that are entitled to vote at the meeting.
- (5) A meeting of Shareholders held in contravention of the requirement to give notice is valid if Shareholders holding at least 90% of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a Shareholder at the meeting shall constitute waiver in relation to all the Shares which that Shareholder holds unless his presence at the meeting is to protest the lack of notice given in respect of such meeting.
- (6) The inadvertent failure of the director or directors who convenes a meeting to give notice of a meeting to a Shareholder or other directors, or the fact that a Shareholder or another director has not received notice, does not invalidate the meeting.
- (7) A Shareholder may be represented at a meeting of Shareholders by a proxy who may speak and vote on behalf of the Shareholder.
- (8) The instrument appointing a proxy shall be produced at the place designated for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote. The notice of the meeting may specify an alternative or additional place or time at which the proxy shall be presented.

- (9) The instrument appointing a proxy shall be in substantially the following form or such other form as the chairman of the meeting shall accept as properly evidencing the wishes of the Shareholder appointing the proxy.

*[[NAME OF COMPANY]*

*[I/We] being a Shareholder of the above Company **HEREBY APPOINT** [●] of [●] or failing him [●] of [●] to be my/our proxy to vote for [me/us] at the meeting of Shareholders to be held on the [●] day of [●], 20 [●] and at any adjournment thereof.*

*(Any restrictions on voting to be inserted here.)*

*Signed this [date] day of [Month], 20 [year]*

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*Shareholder]*

- (10) The following applies where Shares are jointly owned—
- (a) if two or more persons hold Shares jointly each of them may be present in person or by proxy at a meeting of Shareholders and may speak as a Shareholder;
  - (b) if only one of the joint owners is present in person or by proxy he may vote on behalf of all joint owners; and
  - (c) if two or more of the joint owners are present in person or by proxy they must vote as one.
- (11) A Shareholder shall be deemed to be present at a meeting of Shareholders if he participates by telephone or other electronic means and all Shareholders participating in the meeting are able to hear each other.
- (12) A meeting of Shareholders is duly constituted if, at the commencement of the meeting, there are present in person or by proxy not less than 50% of the votes of the Shares or class or series of Shares entitled to vote on Resolutions of Shareholders to be considered at the meeting. A quorum may comprise a single Shareholder or proxy and then such person may pass a Resolution of Shareholders and a certificate signed by such person accompanied where such person be a proxy by a copy of the proxy instrument shall constitute a valid Resolution of Shareholders.
- (13) If within two hours from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved; in any other case it shall stand adjourned to the next business day in the jurisdiction in which the meeting was to have been held at the same time and place or to such other time and place as the directors may determine, and if at the adjourned meeting there are present within one hour from the time appointed for the meeting in person or by proxy not less than one-third of the votes of the Shares or each class or series of Shares entitled to vote on the matters to be considered by the meeting, those present shall constitute a quorum but otherwise the meeting shall be dissolved.
- (14) At every meeting of Shareholders, the Chairman shall preside as chairman of the meeting. If there is no Chairman or if the Chairman is not present at the meeting, the Shareholders present shall choose one of their number to be the chairman of the meeting. If the Shareholders are unable to choose a chairman of the meeting for any reason, then the person representing the greatest number of voting Shares present in person or by proxy at the meeting shall preside as

chairman of the meeting failing which the oldest individual Shareholder or representative of a Shareholder present shall take the chair of the meeting.

- (15) The chairman of the meeting may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (16) At any meeting of the Shareholders the chairman of the meeting is responsible for deciding in such manner as he considers appropriate whether any resolution proposed has been carried or not and the result of his decision shall be announced to the meeting and recorded in the minutes of the meeting. If the chairman of the meeting has any doubt as to the outcome of the vote on a proposed resolution, he shall cause a poll to be taken of all votes cast upon such resolution. If the chairman of the meeting fails to take a poll then any Shareholder present in person or by proxy who disputes the announcement by the chairman of the meeting of the result of any vote may immediately following such announcement demand that a poll be taken and the chairman of the meeting shall cause a poll to be taken. If a poll is taken at any meeting, the result shall be announced to the meeting and recorded in the minutes of the meeting.
- (17) Subject to the specific provisions contained in this Article for the appointment of representatives of persons other than individuals, the right of any individual to speak for or represent a Shareholder shall be determined by the law of the jurisdiction where, and by the documents by which, the person is constituted or derives its existence. In case of doubt, the directors may in good faith seek legal advice from any qualified person and unless and until a court of competent jurisdiction shall otherwise rule, the directors may rely and act upon such advice without incurring any liability to any Shareholder or the Company.
- (18) Any person other than an individual which is a Shareholder may by resolution of its directors or other governing body authorise such individual as it thinks fit to act as its representative at any meeting of Shareholders or of any class of Shareholders, and the individual so authorised shall be entitled to exercise the same rights on behalf of the person which he represents as that person could exercise if it were an individual.
- (19) The chairman of any meeting at which a vote is cast by proxy or on behalf of any person other than an individual may call for a notarially certified copy of such proxy or authority which shall be produced within seven days of being so requested or the votes cast by such proxy or on behalf of such person shall be disregarded.
- (20) Directors of the Company may attend and speak at any meeting of Shareholders and at any separate meeting of the holders of any class or series of Shares.
- (21) An action that may be taken by the Shareholders at a meeting may also be taken by a Resolution of Shareholders consented to in writing, without the need for any notice, but if any Resolution of Shareholders is adopted otherwise than by the unanimous written consent of all Shareholders, a copy of such resolution shall forthwith be sent to all Shareholders not consenting to such resolution. The consent may be in the form of counterparts, each counterpart being signed by one or more Shareholders. If the consent is in one or more counterparts, and the counterparts bear different dates, then the resolution shall take effect on the earliest date upon which persons holding a sufficient number of votes of Shares to constitute a Resolution of Shareholders have consented to the resolution by signed counterparts.

#### 14. **Directors**

- (1) The initial Shareholder(s) of the Company shall appoint one or more persons as the first director(s) of the Company pursuant to a Resolution of Shareholders.

- (2) A vacancy in the board or as an addition to the existing directors may be filled by the appointment of a new director pursuant to a Resolution of Shareholders or a majority of the remaining directors of the Company. The remaining directors may continue to act notwithstanding any vacancy on the board.
- (3) No person shall be appointed as a director of the Company unless he has consented in writing to act as a director.
- (4) The minimum number of directors shall be one.
- (5) Each director holds office for the term, if any, fixed by the Resolution of Shareholders or Resolution of Directors appointing him, or until his earlier death, resignation or removal. If no term is fixed on the appointment of a director, the director serves indefinitely until his earlier death, resignation or removal.
- (6) A director may be removed from office—
- (a) with or without cause, by a Resolution of Shareholders passed at a meeting of Shareholders called for the purposes of removing the director or for purposes including the removal of the director or by a written resolution passed by at least 75% of the votes of the Shares entitled to vote; or
  - (b) with cause, by a Resolution of Directors passed at a meeting of directors called for the purpose of removing the director or for purposes including the removal of the director.
- (7) A director may resign his office by giving written notice of his resignation to the Company and the resignation has effect from the date the notice is received by the Company at the office of its registered agent or from such later date as may be specified in the notice. A director shall resign forthwith as a director if he is, or becomes, disqualified from acting as a director under the Regulations.
- (8) A vacancy in relation to directors occurs if a director dies or otherwise ceases to hold office prior to the expiration of his term of office.
- (9) Where the remaining directors appoint a person as director to fill a vacancy, the term shall not exceed the term that remained when the person who has ceased to be a director ceased to hold office.
- (10) The Company shall keep, or procure that its registered agent keeps, a register of directors containing—
- (a) the names and addresses of the persons who are directors of the Company;
  - (b) the date on which each person whose name is entered in the register of directors was appointed as a director of the Company;
  - (c) the date on which each person named as a director ceased to be a director of the Company; and
  - (d) such other information as may be prescribed by the Regulations.
- (11) The register of directors may be kept in any such form as the directors may approve, but if it is in magnetic, electronic or other data storage form, the Company must be able to produce legible evidence of its contents. Unless a Resolution of Directors determining otherwise is passed, the magnetic, electronic or other data storage shall be the original register of directors.

- (12) The Company will file with the Registrar a copy of its register of directors within 14 days of the appointment of its first director.
- (13) The Company will file any changes in its register of directors by filing a copy of the register containing the changes within 14 days of such change.
- (14) The directors may, by a Resolution of Directors, fix the emoluments of directors with respect to services to be rendered in any capacity to the Company.
- (15) A director is not required to hold a Share as a qualification to office.

#### **15. Powers of Directors**

- (1) The business and affairs of the Company shall be managed by, or under the direction or supervision of, the directors of the Company. The directors of the Company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the Company. The directors may pay all expenses incurred preliminary to and in connection with the incorporation of the Company and may exercise all such powers of the Company as are not by the Regulations or by the Memorandum or these Articles required to be exercised by the Shareholders.
- (2) Each director shall exercise his powers for a proper purpose and shall not act or agree to the Company acting in a manner that contravenes the Memorandum, these Articles or the Regulations. Each director, in exercising his powers or performing his duties, shall act honestly and in good faith in what the director believes to be the best interests of the Company.
- (3) Any director which is a body corporate may appoint any individual as its duly authorised representative for the purpose of representing it at meetings of the directors, with respect to the signing of consents or otherwise.
- (4) The directors may by Resolution of Directors exercise all the powers of the Company to incur indebtedness, liabilities or obligations and to guarantee and/or secure indebtedness, liabilities or obligations whether of the Company or of any third party.
- (5) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as shall from time to time be determined by Resolution of Directors.
- (6) For the purposes of Regulation 180 (*Disposition of assets*), the directors may by Resolution of Directors determine that any sale, transfer, lease, exchange or other disposition is in the usual or regular course of the business carried on by the Company and such determination is, in the absence of fraud, conclusive.

#### **16. Proceedings of Directors**

- (1) Any one director of the Company may call a meeting of the directors by sending a written notice to each other director.
- (2) The directors of the Company or any committee thereof may meet at such times and in such manner and places within or outside the Zone as the directors may determine to be necessary or desirable.
- (3) A director is deemed to be present at a meeting of directors if he participates by telephone or other electronic means and all directors participating in the meeting are able to hear each other.

- (4) A director shall be given not less than three days' notice of meetings of directors, but a meeting of directors held without three days' notice having been given to all directors shall be valid if all the directors entitled to vote at the meeting who do not attend waive notice of the meeting, and for this purpose the presence of a director at a meeting shall constitute waiver by that director unless his presence at the meeting is to protest the lack of notice given in respect of such meeting. The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.
- (5) A director may by a written instrument appoint an alternate who need not be a director and the alternate shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in place of the director until the appointment lapses or is terminated.
- (6) A meeting of directors is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate not less than 50% of the total number of directors.
- (7) If the Company has only one director the provisions herein contained for meetings of directors do not apply and such sole director has full power to represent and act for the Company in all matters as are not by the Regulations, the Memorandum or these Articles required to be exercised by the Shareholders. In lieu of minutes of a meeting the sole director shall record in writing and sign a note or memorandum of all matters requiring a Resolution of Directors. Such a note or memorandum constitutes sufficient evidence of such resolution for all purposes.
- (8) At meetings of directors at which the Chairman is present, he shall preside as chairman of the meeting. If there is no Chairman or if the Chairman is not present, the directors present shall choose one of their number to be chairman of the meeting.
- (9) An action that may be taken by the directors or a committee of directors at a meeting may also be taken by a Resolution of Directors or a resolution of a committee of directors consented to in writing by a majority in excess of 50% (or, if a higher majority is required by the Memorandum or Articles, such higher majority) of directors or members of the committee, as the case may be, without the need for any notice. The consent may be in the form of counterparts each counterpart being signed by one or more directors. If the consent is in one or more counterparts, and the counterparts bear different dates, then the resolution shall take effect on the date upon which the last director has consented to the resolution by signed counterparts.

## 17. **Committees**

- (1) The directors may, by Resolution of Directors, designate one or more committees, each consisting of one or more directors, and delegate one or more of their powers to the committee.
- (2) The directors have no power to delegate to a committee of directors any of the following powers—
  - (a) to amend the Memorandum or these Articles;
  - (b) to designate committees of directors;
  - (c) to delegate powers to a committee of directors;
  - (d) to appoint directors;
  - (e) to appoint an agent;



- (f) to approve a plan of merger, consolidation or arrangement; or
  - (g) to make a declaration of solvency or to approve a liquidation plan.
- (3) Subsections (2)(b) and (2)(c) do not prevent a committee of directors, where authorised by the Resolution of Directors appointing such committee or by a subsequent Resolution of Directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.
  - (4) The meetings and proceedings of each committee of directors consisting of two or more directors shall be governed *mutatis mutandis* by the provisions of these Articles regulating the proceedings of directors so far as the same are not superseded by any provisions in the Resolution of Directors establishing the committee.
  - (5) Where the directors delegate their powers to a committee of directors they remain responsible for the exercise of those powers by the committee, unless they believed on reasonable grounds at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the Company under the Regulations.

## 18. **Officers and Agents**

- (1) The Company may by Resolution of Directors appoint officers of the Company at such times as may be considered necessary or expedient. Such officers may consist of a chairman of the board of directors (the "Chairman"), a president and one or more vice-presidents, secretaries and treasurers and such other officers as may from time to time be considered necessary or expedient. Any number of offices may be held by the same person.
- (2) The officers shall perform such duties as are prescribed at the time of their appointment subject to any modification in such duties as may be prescribed thereafter by Resolution of Directors. In the absence of any specific prescription of duties it shall be the responsibility of the Chairman to preside at meetings of directors and Shareholders, the president to manage the day to day affairs of the Company, the vice-presidents to act in order of seniority in the absence of the president but otherwise to perform such duties as may be delegated to them by the president, the secretaries to maintain the register of members, minute books and records (other than financial records) of the Company and to ensure compliance with all procedural requirements imposed on the Company by applicable law, and the treasurer to be responsible for the financial affairs of the Company.
- (3) The emoluments of all officers shall be fixed by Resolution of Directors.
- (4) The officers of the Company shall hold office until their successors are duly appointed, but any officer elected or appointed by the directors may be removed at any time, with or without cause, by Resolution of Directors. Any vacancy occurring in any office of the Company may be filled by Resolution of Directors.

## 19. **Conflict of Interests**

- (1) A director of the Company shall, forthwith after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the Company, disclose the interest to all other directors of the Company.
- (2) For the purposes of subsection (1), a disclosure to all other directors to the effect that a director is a member, director or officer of another named entity or has a fiduciary relationship with respect to the entity or a named individual and is to be regarded as interested in any transaction

which may, after the date of the entry or disclosure, be entered into with that entity or individual, is a sufficient disclosure of interest in relation to that transaction.

- (3) A director of the Company who is interested in a transaction entered into or to be entered into by the Company may—
- (a) vote on a matter relating to the transaction;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
  - (c) sign a document on behalf of the Company, or do any other thing in his capacity as a director, that relates to the transaction,

and, subject to compliance with the Regulations shall not, by reason of his office be accountable to the Company for any benefit which he derives from such transaction and no such transaction shall be liable to be avoided on the grounds of any such interest or benefit.

## 20. **Indemnification**

- (1) Subject to the limitations hereinafter provided the Company shall indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who—
- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the Company; or
  - (b) is or was, at the request of the Company, serving as a director of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.
- (2) The indemnity in subsection (1) only applies if the person acted honestly and in good faith with a view to the best interests of the Company and, in the case of criminal proceedings, the person had no reasonable cause to believe that their conduct was unlawful.
- (3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the Company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of these Articles, unless a question of law is involved.
- (4) The termination of any proceedings by any judgment, order, settlement, conviction or voluntary dismissal does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the Company or that the person had reasonable cause to believe that his conduct was unlawful.
- (5) The Company may purchase and maintain insurance in relation to any person who is or was a director, officer or liquidator of the Company, or who at the request of the Company is or was serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the Company has or would have had the power to indemnify the person against the liability as provided in the Articles.



## 21. **Records**

- (1) The Company shall keep the following documents at the office of its registered agent—
  - (a) the Memorandum and these Articles;
  - (b) a copy of the register of members;
  - (c) the register of directors, or a copy of the register of directors;
  - (d) a copy of the register of charges; and
  - (e) copies of all notices and other documents filed by the Company in the previous five years.
- (2) If the Company maintains only a copy of the register of directors at the office of its registered agent, it shall—
  - (a) within 14 days of any change in the original register of directors, notify the registered agent in writing of the change; and
  - (b) provide the registered agent with a written record of the physical address of the place or places at which the original register of directors is kept.
- (3) The Company shall keep the following records at the office of its registered agent or at such other place or places, within or outside the Zone, as the directors may determine—
  - (a) minutes of meetings and Resolutions of Shareholders and classes of Shareholders; and
  - (b) minutes of meetings and Resolutions of Directors and committees of directors.
- (4) Where any original records referred to in this Article are maintained other than at the office of the registered agent of the Company, and the place at which the original records is changed, the Company shall provide the registered agent with the physical address of the new location of the records of the Company within 14 days of the change of location.
- (5) The records kept by the Company under this Article shall be in written form or either wholly or partly as electronic records complying with the requirements of Law No. 1 of 2006 concerning Electronic Transactions and Commerce.

## 22. **Registers of Charges**

The Company shall keep, or procure that its registered agent keeps, a copy of the register of charges (“register of charges”) in which there shall be entered the following particulars regarding each mortgage, charge and other encumbrance created by the Company or existing on property acquired by the Company—

- (a) if the charge is a charge created by the Company, the date of its creation or, if the charge is a charge existing on property acquired by the Company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;

- (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;
- (e) unless the charge is a security to bearer, the name and address of the holder of the charge; and
- (f) details of any prohibition or restriction contained in the instrument creating the charge on the power of the Company to create any future charge ranking in priority to or equally with the charge.

## 23. **Continuation**

The Company may by Resolution of Shareholders or by a resolution passed unanimously by all directors of the Company continue as a company incorporated under the laws of a jurisdiction outside RAK ICC in the manner provided under those laws.

## 24. **Distributions**

- (1) The directors of the Company may, by Resolution of Directors, authorise a Distribution at a time and of an amount they think fit if they are satisfied, on reasonable grounds, that, immediately after the Distribution, the value of the Company's assets will exceed its liabilities and the Company will be able to pay its debts as they fall due.
- (2) Distributions may be paid in money, shares, or other property.
- (3) Notice of any Distribution that may have been declared shall be given to each Shareholder as specified in Article 15(1) and all Distributions unclaimed for three years after having been declared may be forfeited by Resolution of Directors for the benefit of the Company.
- (4) No Distribution shall bear interest as against the Company and no Distribution shall be paid on Treasury Shares.

## 25. **Accounts and Audit**

- (1) The Company shall keep records that are sufficient to show and explain the Company's transactions and that will, at any time, enable the financial position of the Company to be determined with reasonable accuracy.
- (2) The Company may by Resolution of Shareholders call for the directors to prepare periodically and make available a profit and loss account and a balance sheet. The profit and loss account and balance sheet shall be drawn up so as to give respectively a true and fair view of the profit and loss of the Company for a financial period and a true and fair view of the assets and liabilities of the Company as at the end of a financial period.
- (3) The Company may by Resolution of Shareholders call for the accounts to be examined by auditors.
- (4) The first auditors shall be appointed by Resolution of Directors; subsequent auditors shall be appointed by a Resolution of Shareholders.
- (5) No director or other officer shall be eligible to be an auditor of the Company during their continuance in office.

- (6) The remuneration of the auditors of the Company—
- (a) in the case of auditors appointed by the directors, may be fixed by Resolution of Directors; and
  - (b) subject to the foregoing, shall be fixed by Resolution of Shareholders or in such manner as the Company may by Resolution of Shareholders determine.
- (7) The auditors shall examine each profit and loss account and balance sheet required to be laid before a meeting of the Shareholders or otherwise given to Shareholders and shall state in a written report whether or not—
- (a) in their opinion the profit and loss account and balance sheet give a true and fair view respectively of the profit and loss for the period covered by the accounts, and of the assets and liabilities of the Company at the end of that period; and
  - (b) all the information and explanations required by the auditors have been obtained.
- (8) The report of the auditors shall be annexed to the accounts and shall be read at the meeting of Shareholders at which the accounts are laid before the Company or shall be otherwise given to the Shareholders.
- (9) Every auditor of the Company shall have a right of access at all times to the books of account and vouchers of the Company, and shall be entitled to require from the directors and officers of the Company such information and explanations as he thinks necessary for the performance of the duties of the auditors.
- (10) The auditors of the Company shall be entitled to receive notice of, and to attend any meetings of Shareholders at which the Company's profit and loss account and balance sheet are to be presented.

## 26. Notices

- (1) Any notice, information or written statement to be given by the Company to Shareholders may be given by personal service or by mail addressed to each Shareholder at the address shown in the register of members.
- (2) Any summons, notice, order, document, process, information or written statement to be served on the Company may be served by leaving it, or by sending it by registered mail addressed to the Company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the Company.
- (3) Service of any summons, notice, order, document, process, information or written statement to be served on the Company may be proved by showing that the summons, notice, order, document, process, information or written statement was delivered to the registered office or the registered agent of the Company or that it was mailed in such time as to admit to its being delivered to the registered office or the registered agent of the Company in the normal course of delivery within the period prescribed for service and was correctly addressed and the postage was prepaid.

## 27. Liability of Members

In the event of a winding up of the Company, any Shareholder and any person who was a Shareholder in the period of one year prior to the commencement of the winding up (for the purpose of this Article only, "Members and Past Members") shall have an unlimited liability to

contribute to the assets of the Company an amount sufficient for the payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the contributions of Members and Past Members among themselves.

28. **Voluntary Winding Up and Dissolution**

The Company may by a Resolution of Shareholders or by a Resolution of Directors appoint a voluntary liquidator.

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I/We, [*name of initial member(s)*] for the purpose of incorporating a company under the RAK ICC Business Companies Regulations 2016 hereby sign these Articles of Association the [*date*] day of [*Month*], 20[*year*].

[ <i>full name of [initial] member</i> ] acting by	)	
[ <i>full name of authorised signatory</i> ], being a	)	[ <i>Signature of [initial] member (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>[initial] member</i> ]
[ <i>full name of [initial] member</i> ]	)	

Signed in the presence of:

[ <i>full name of registered agent</i> ] acting by	)	
[ <i>full name of authorised signatory</i> ], being a	)	[ <i>Signature of registered agent (if an</i>
person who is authorised to sign on behalf	)	<i>individual) or of authorised signatory of</i>
of	)	<i>registered agent</i> ]
[ <i>full name of registered agent</i> ]	)	

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## SCHEDULE 4

### RESTRICTED COMPANY NAMES

- (1) No name shall be permitted to be registered—
- (a) that in the opinion of RAK ICC is unacceptable or unsuitable;
  - (b) that, except with the express approval of the Registrar—
    - (i) is identical, either phonetically or descriptively, to the name by which another company is registered or incorporated under RAK IC regulations or so nearly resembles that name as to be likely to deceive unless such other company provides consent in such manner as RAK ICC may require;
    - (ii) contains a word or words that in the opinion of RAK ICC suggest or is likely to suggest the patronage of prominent local persons with no real connection, or connection with any government or authority whether in the Zone, the UAE or elsewhere;
    - (iii) contains words or phrases which RAK ICC may from time to time prescribe as “sensitive”;
    - (iv) does not contain “Limited”, “Incorporated” or “Unlimited” or, where applicable, “Segregated Portfolio Company” or any acceptable abbreviation of the foregoing;
    - (v) contains one or more of the words and phrases listed in subsection (2) below (as may be amended or revised by the Registrar from time to time by notice published on the Website), including any derivative or cognate term of the words or phrases and whether or not the words or phrases are spaced, in brackets or punctuated or are in the singular or plural are specified as restricted words or phrases;
    - (vi) contains a restricted word or phrase;
    - (vii) is generic e.g. Food Trading Limited, Engineering Consultancy Incorporated, International Export Import Incorporated;
    - (viii) contains another person’s intellectual property rights;
    - (ix) is misleading compared to the activity or business of such company;
    - (x) contains words that are not in keeping with regional sensibilities/culture; or
    - (xi) is similar to a known company, brand or other trademark or product;
  - (c) the use of which would constitute a violation of the laws of the UAE from time to time, including those applicable to intellectual property rights; or
  - (d) specifies words or expressions for which approval is required from the authority for use by a licensee in the Zone without obtaining such approval.

(2) The relevant words and phrases for the purposes of subsection (1) are—

Accredited	Council
Adjudicator	Credit
Ajman	Currency
Al Ain	Decree
Annuity	Dubai
Anonyme	e-bank
Arab	E-change
Arbitrage	e-commerce
Association	e-gaming
Assurance	Emirate/s
Assurer	e-savings
Authorized Representative	Exchange
Banc	Federation
Banco	Fidelity
Bancorp	Fiduciaire
Bank	Fiduciare
Banker	Fiduciary
Bankrupt	Financing
Bankruptcy	Financing Business
Banque	Forex
Betting	Foundation
Bingo	Fujairah
Building Society	Fund
Bureau	Funding
Captive	Gambling
Casualty	Gaming
Chamber of Commerce	Government
Change	Governor
Charity / Charitable	Guarantee
Chartered	Guaranteed
Church	Gulf
College	Hedge
Commission	Hedge Fund
Companies Registry	HMS
Cooperative	i-bank
Cooperative Society	IBC

ICC	Official Trustee
i-financing	Partnership
i-fund	Pharmacy
i-gaming	Protected Cell
i-insurance	Provident
i-investment	Qasimi
i-money services	RAK
Indemnity	RAK ICC
Insolvency	Ras Al Khaimah
Insolvent	Reassurance
Inspectorate	Reassurer
Insurance	Receiver
Insurer	Receivership
Int	Registrar
Intl	Registry
i-trust	Regulator
Khalifa	Reinsurance
Law	Re-insurance
Lease	Reinsurer
Leasing	Risk
Life	Saving
Limited Partnership	Savings and Loans
Liquidation	School
Liquidator	Sharjah
LLC	Sheik
LLP	Sovereign
Loan	Surety
Lottery	Transmission
LP	Tribunal
Money	Trust
Money Services	Trust Company
Mutual	Trust Corporation
Mutual Fund	Trustee
National	Trustee Company
NTL	UAE
Official Liquidator	Um Al Quwain
Official Receiver	Underwrite



Underwriter  
Underwriting  
United  
United Arab Emirates

University  
Zayed

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## SCHEDULE 5

### PERMITTED CHARACTERS AND NAME FORMAT

1. The letters A to Z, in lower case.
2. The numerals 0 to 9; provided that a company name, other than a company number name, may only contain one or more numerals if the Registrar is satisfied that it is clear from the context that the name is not a company number name.
3. Any roman numerals.
4. The symbol ‘&’. (No other symbols will be permitted).
5. The Registrar may, generally or on a case-by-case basis, permit the use of—
  - (a) accents with one or more letters; and
  - (b) symbols that indicate a particular currency.
6. The name should end with the extension term “Limited”, “Incorporated” or “Unlimited” or the abbreviations “Ltd”, “Inc” or “Unltd” (whichever is applicable).
7. Where applicable, the name should contain the term “Segregated Portfolio Company” or the abbreviation “SPC”.
8. All letters of the name in the Certificate of Incorporation including the extension shall be written in capital letters.
9. The initials in the names will be separated by periods (.). The last letter of the initials will not be followed by a period.
10. Usage of space between individual characters (e.g. A B C Limited) will not be permitted.

## SCHEDULE 6

### TRANSITIONAL PROVISIONS

1. **Application by Former Regulations Company to re-register under these Regulations**
- (1) A Former Regulations Company that, at the date of the application, is registered under the Former Regulations may, at any time during the relevant period, apply to the Registrar to re-register as a company limited by shares under these Regulations.
- (2) For the purposes of this Schedule:
  - (a) the “Automatic Re-registration Date” means 31 December 2017; and
  - (b) the “relevant period” means the period from the Commencement Date to 16:00 hours on the Automatic Re-registration Date.
- (3) An application for the re-registration of a Former Regulations Company as a company under these Regulations shall be filed by the registered agent and shall—
  - (a) be, and contain the information specified, in the approved form; and
  - (b) be accompanied by—
    - (i) either:
      - (A) a memorandum that, subject to subsections (4), (5), and (6), complies with Regulation 9 and by articles complying with these Regulations (the “new memorandum and articles”) either signed by each member of the company or the registered agent, as applicant to re-register; or
      - (B) an addendum to the memorandum and articles of the Former Regulations Company in effect at the date of the application (the “original memorandum and articles”), the adoption of which has been approved by the Former Regulations Company’s shareholders;
    - (ii) if the memorandum and articles are signed by the registered agent, evidence of his authority to re-register the company;
    - (iii) a document in the approved form signed by the registered agent signifying his consent to act as the registered agent of the company on its re-registration; and
    - (iv) such other documents as may be prescribed by the Registrar from time to time.
- (4) In subsection (3), “registered agent” means the registered agent of the Former Regulations Company as at the date of the application.
- (5) In addition to the matters required under Regulation 9, the new memorandum or addendum to the original memorandum shall state the date that the company was first incorporated or, if appropriate, the date with effect from which it was continued or registered under the Former Regulations.
- (6) The new memorandum or addendum to the original memorandum shall state the name of the registered agent and the address of the registered agent’s principal place of business as at the time of the application to re-register under this Paragraph.

- (7) Subject to subsection (8), an application to re-register under this Paragraph shall be authorised, and the new memorandum and articles or addendum to the original memorandum and articles shall be approved, by a resolution of the members of the company or, if the original memorandum or articles or Former Regulations permit, by a resolution of directors.
- (8) The directors of a Former Regulations Company shall not have any power to approve the new memorandum and articles or addendum to the original memorandum and articles to the extent that they amend the original memorandum and articles, unless the directors would otherwise be authorised to make amendments having the same effect to the original memorandum and articles.
- (9) The new memorandum or addendum to the original memorandum shall not—
- (a) reduce the number of shares in issue;
  - (b) authorise a maximum number of shares that the company is authorised to issue that is less than the number of shares into which the capital is divided under the Former Regulations;
  - (c) change the par value of the shares that the company is authorised to issue under the original memorandum; or
  - (d) allow bearer shares.

## 2. **Re-registration by the Registrar**

- (1) If he is satisfied that the requirements of these Regulations in respect of re-registration have been complied with, subject to subsection (2), the Registrar shall, upon receipt of an application and the other documents specified in Paragraph 1—
- (a) register the documents;
  - (b) allot a unique number to the company; and
  - (c) issue a certificate of re-registration to the company as a company limited by shares pursuant to these Regulations in the approved form.
- (2) The Registrar may refuse to re-register a Former Regulations Company under this Schedule if the company is in default of any obligation under the Former Regulations under which it is incorporated, registered or continued, including where its registration is not up to date or where it has an outstanding obligation to pay any fee or penalty due on or before the date of its re-registration.
- (3) A certificate of re-registration is conclusive evidence that—
- (a) all the requirements of this Schedule as to re-registration have been complied with; and
  - (b) the company is re-registered under these Regulations on the date specified in the certificate of re-registration.
- (4) The unique number allotted to a company under subsection (1) may be the number previously allocated to the company as a Former Regulations Company.
- (5) Except as otherwise provided in these Regulations, a company that is re-registered in accordance with this Schedule shall be subject to these Regulations as if it was a company limited by shares incorporated under these Regulations.

3. **Former Regulations companies automatically re-registered under these Regulations**

- (1) Subject to the provisions of this Paragraph every Former Regulations Company that, at midnight on the Automatic Re-registration Date, is registered under the Former Regulations but has not been re-registered pursuant to Paragraph 1 shall be deemed to be automatically re-registered under these Regulations with effect from the day immediately following the Automatic Re-registration Date.
- (2) Companies automatically re-registered pursuant to this schedule shall be deemed to retain—
  - (a) the same registered agent and registered office as set out in its original memorandum and articles; and
  - (b) subject to subsection (3), their existing memorandum and articles.
- (3) References in a company's existing memorandum and articles shall be construed, as far as possible, as references to the corresponding provisions of the Regulations. In the event of any conflict between a company's existing memorandum and articles and the provisions of these Regulations, the provisions of these Regulations shall prevail.
- (4) Where a company is automatically re-registered under this Paragraph, the Registrar shall, as soon as is practicable, enter the name of the company on the Register of Companies and allot a unique number to the company which may, at the discretion of the Registrar, be the number previously allocated to the company as a Former Regulations Company.
- (5) Where a company that has bearer shares in issue is automatically re-registered under this Paragraph, such bearer shares shall be cancelled and the Registrar shall enter into the register of members of the company the names of the persons holding the bearer shares on the Automatic Re-registration Date.

4. **Companies re-registered as company limited by shares**

- (1) A Former Regulations Company that is re-registered under this Schedule shall be re-registered as a company limited by shares and shall from the date of its re-registration be subject to these Regulations.
- (2) The company number allotted to a Former Regulations Company that is re-registered automatically may, where possible and unless the Registrar is of the opinion that there are good reasons to the contrary, be the number under which the company was registered under the Former Regulations immediately prior to its re-registration under these Regulations.
- (3) The company name adopted by a Former Regulations Company that is re-registered automatically shall be the name with which the Former Regulations Company will be re-registered on the Register of Companies unless—
  - (a) there is an existing company on the Register of Companies with an identical name;
  - (b) the proposed name does not otherwise comply with the provisions of Part II, Section 3; or
  - (c) the Registrar is of the opinion that there are good reasons to the contrary,in which case the name of any such company shall contain the unique number granted to such company by the Registrar.

5. **Repeal of Former Regulations**

The Former Regulations shall be repealed on 1 January 2018.

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## **SCHEDULE 7**

### **THE STANDARD FINES SCALE**

The standard fines scale is shown below—

<b>Level on the scale</b>	<b>Amount of fine</b>
1	AED 500
2	AED 1,000
3	AED 2,000
4	AED 5,000
5	AED 10,000

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