



**AIFC TRUST REGULATIONS
AIFC REGULATIONS No. 31 OF 2019**

Approval Date: 6 August 2019

Commencement Date: 7 August 2019



CONTENTS

PART 1: GENERAL	6
1. Name	6
2. Commencement	6
3. Legislative authority	6
4. Application of these Regulations	6
5. Interpretation	6
6. Default and mandatory rules	6
7. Common Law and Principles of Equity	7
PART 2: CHOICE OF GOVERNING LAW; PLACE OF ADMINISTRATION	8
8. Governing Law	8
9. Provision for change of Governing Law	8
10. Matters determined by Governing Law	9
11. Limitations in Foreign Law	10
12. Heirship Rights	10
13. Foreign Judgments	11
14. Place of Administration	11
PART 3: JUDICIAL AND NON JUDICIAL PROCEEDINGS	12
15. Role of the Court in administration of Trust	12
16. Jurisdiction of the Court	12
17. Application to and certain powers of the Court	12
18. Payment of costs	13
19. Sections 20 to 25: Interpretation	13
20. Application of powers under sections 21 to 25	14
21. Power to set aside a transfer or disposition of Property to a Trust due to mistake	14
22. Power to set aside a transfer or disposition of Property to a Trust exercised by fiduciary power ...	14
23. Power to set aside the exercise of powers in relation to a Trust or Trust Property due to mistake .	15
24. Power to set aside the exercise of fiduciary powers in relation to a Trust or Trust Property	15
25. Applications and orders under sections 21 to 24	16
26. Savings in respect of applications made under sections 21 to 24	17
27. Sections 28, 29 and Schedule 2: Interpretation	17
28. Arbitration of Trust disputes	17
29. Powers of the arbitral tribunal	18
PART 4: CREATION, VALIDITY AND MODIFICATION OF AN AIFC TRUST	19
30. Creation of a Trust	19
31. Requirements for creation	19
32. Trust purposes	19



33. Duration of a Trust	20
34. Validity and invalidity of a Trust	20
35. Charitable Trusts.....	20
36. Non-Charitable Trusts or Purpose Trusts	21
37. Variation and revocation of a Trust.....	22
38. Power of Court to authorise dealings with Trust Property	24
39. Failure or lapse of interest	24
40. Termination of a Trust	24
41. Distribution of Property	25
PART 5: THE BENEFICIARIES OF AN AIFC TRUST	26
42. Beneficiaries of a Trust	26
43. Disclaimer.....	26
44. Interest of Beneficiary and dealings thereof	26
45. Termination of interest of Beneficiary upon Trust being challenged	26
PART 6: PROTECTIVE TRUSTS AND CREDITORS' CLAIMS.....	28
46. Protective Trusts	28
47. Creditors claims in relation to a Discretionary Trust	28
PART 7: OFFICE OF TRUSTEE	29
48. Accepting or declining trusteeship	29
49. Vacancy in trusteeship; appointment of a new Trustee.....	29
50. Resignation of Trustee	30
51. Removal of Trustee by Court or under the terms of a Trust.....	30
52. Position of outgoing Trustee	31
53. Remuneration of a Trustee	31
54. Advisory Trustees	32
PART 8: DUTIES AND POWERS OF TRUSTEES.....	34
CHAPTER 1 – DUTIES OF TRUSTEES	34
55. Duty to administer a Trust.....	34
56. Duties of Trustees	34
57. Duties of co-Trustees to act together.....	36
58. Impartiality of a Trustee	36
59. Cost of administration	37
60. Enforcement and defence of claims	37
61. Collecting Trust Property	37
62. Duty to inform and report	37
CHAPTER 2 – GENERAL POWERS OF TRUSTEES.....	37
63. Powers of Trustees	37



64. Specific powers of Trustees	38
65. Power of accumulation and advancement.....	40
66. Corporate Trustee may act by resolution.....	41
67. Combination and division of Trusts.....	41
PART 9: LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH A TRUSTEE.....	42
68. Liability for Breach of Trust	42
69. Remedies for Breach of Trust.....	43
70. Damages in absence of a breach	43
71. Legal fees and costs	43
72. Limitation of action against Trustee	43
73. Reliance on Trust Instrument.....	44
74. Exculpation or insurance of Trustee	44
75. Beneficiary's consent, release or ratification	45
76. Limitation on personal liability of Trustee.....	45
77. Protection of persons dealing with Trustees.....	45
78. Trustees of more than one Trust	46
PART 10: AGENTS, NOMINEES AND CUSTODIANS	47
79. Application of this Part	47
80. Power to appoint agents	47
81. Persons who may act as agents	48
82. Linked functions, etc.	48
83. Terms of agency	48
84. Asset management — special restrictions	48
85. Power to appoint nominees	49
86. Power to appoint custodians.....	49
87. Investment in bearer securities	50
88. Persons who may be appointed as nominees or custodians	50
89. Terms of appointment of nominees and custodians.....	51
90. Application of sections 91 and 92	51
91. Review of agents, nominees and custodians, etc.	52
92. Liability for agents, nominees and custodians, etc.	52
93. Effect of Trustees exceeding their powers	53
94. Remuneration and expenses of agents, nominees and custodians.....	53
PART 11: RESERVED AND RESTRICTED POWERS, EXPRESSIONS OF WISHES, AND INCAPACITATION.....	54
95. Reserved and restricted powers	54
96. Expressions of wishes	55
97. Incapacitation of Protector or Settlor	56



AIFC TRUST REGULATIONS

PART 12: PROVISIONS APPLICABLE TO A FOREIGN TRUST	57
98. Enforceability of a Foreign Trust.....	57
SCHEDULE 1 - Interpretation	57
SCHEDULE 2 - Application of the Arbitration Regulations.....	63



PART 1: GENERAL

1. Name

These Regulations are the *AIFC Trust Regulations 2019*.

2. Commencement

These Regulations commence on 7 August 2019.

3. Legislative authority

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

4. Application of these Regulations

- (1) These Regulations apply within the jurisdiction of the AIFC.
- (2) These Regulations apply to all AIFC Trusts, other than Trusts to which the Collective Investment Scheme Rules apply, and to Foreign Trusts in respect of all acts, omissions or transactions occurring in the AIFC, whenever the Trust was created.

5. Interpretation

Schedule 1 contains:

- (a) interpretative provisions which apply to these Regulations; and
- (b) a list of defined terms used in these Regulations.

6. Default and mandatory rules

- (1) Except as otherwise provided in the terms of an AIFC Trust, these Regulations govern the duties and powers of the Trustee, relations among Trustees and the rights and interests of a Beneficiary.
- (2) The terms of an AIFC Trust prevail over any provision of these Regulations, except:
 - (a) the requirements for creating a Trust;
 - (b) the duty of a Trustee to act in good faith and in accordance with the purposes of the Trust;
 - (c) the requirement that a Trust and its terms be for the benefit of its Beneficiaries, and that the Trust have a purpose that is lawful, not contrary to public policy in the AIFC, and possible to achieve;
 - (d) the power of the Court to modify or terminate a Trust in accordance with these Regulations;
 - (e) the effect of a Protective Trust as provided in Part 6;



AIFC TRUST REGULATIONS

- (f) the power of the Court under section 53 (Remuneration of a Trustee) to adjust a Trustee's compensation specified in the terms of the Trust which is unreasonably low or high;
- (g) the effect of an exculpatory term under section 74 (Exculpation or insurance of Trustee);
- (h) the rights under section 77 (Protection of persons dealing with Trustees) of a person other than a Trustee or Beneficiary;
- (i) periods of limitation for commencing a judicial proceeding;
- (j) the power of the Court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
- (k) the jurisdiction and powers of the Court under sections 16 (Jurisdiction of the Court) and 17 (Application to and certain powers of the Court).

7. Common Law and Principles of Equity

- (1) The common law of Trusts and principles of equity applicable in England and Wales supplement these Regulations, except to the extent modified by these Regulations or any other AIFC Act or by the Court.
- (2) The statute law of England and Wales applicable to Trusts does not, except to the extent it is replicated in these Regulations, apply in the AIFC.



PART 2: CHOICE OF GOVERNING LAW; PLACE OF ADMINISTRATION

8. Governing Law

- (1) The meaning and effect of the terms of a Trust are:
 - (a) determined by the law of the jurisdiction expressed by the terms of the Trust as the Governing Law; failing that
 - (b) to be implied from the terms of the Trust; or failing either
 - (c) to be determined by the law with which the Trust at the time it was created had the closest connection.
- (2) The references in subsection 8(1)(a) and (b) to “failing that” or “failing either” include references to cases:
 - (a) where no law is expressed or implied under subsection 8(1)(a) or (b); and
 - (b) where a law is so expressed or implied, but that law does not provide for Trusts or the category of Trusts concerned.
- (3) In ascertaining, for the purpose of subsection 8(1)(c), the law with which a Trust had the closest connection, reference shall be made in particular to:
 - (a) the place of administration of the Trust designated by the Settlor;
 - (b) the situs of the assets of the Trust;
 - (c) the place of residence or business of the Trustee; and
 - (d) the objects of the Trust and the places where they are to be fulfilled.
- (4) A Settlor may, whether or not it is an AIFC Participant, expressly declare in the Trust Instrument that the laws of the AIFC shall be the Governing Law of the Trust.
- (5) A term of the Trust expressly declaring that the laws of the AIFC shall govern the Trust is valid, effective and conclusive regardless of any other circumstance.

9. Provision for change of Governing Law

- (1) Where a term of a Trust so provides, the Governing Law may be changed to or from the laws of the AIFC, in the manner prescribed by the terms of the Trust, if:
 - (a) in the case of a change to the laws of the AIFC by a Foreign Trust, such change is recognised by the Governing Law previously in effect; or
 - (b) in the case of a change from the laws of the AIFC, the new Governing Law would recognise the validity of the Trust and either all the Trusts, powers and provisions of the Trust remain enforceable, capable of being exercised and so taking effect or, prior to the change, the Trustee obtains the approval of the Court to the change.
- (2) Where the Governing Law of the Trust changes to the laws of the AIFC, that Trust shall be for all purposes an AIFC Trust.



AIFC TRUST REGULATIONS

- (3) A change in the Governing Law shall not affect the legality or validity of, or render any person liable for, anything done before the change.
- (4) If a Foreign Trust becomes a AIFC Trust, notwithstanding subsection 6(2) (Default and mandatory rules) the Trustee may:
 - (a) Exercise any power conferred upon the Trustee to postpone the date of termination of the Trust without reference to any limitations expressed upon that power by reference to a perpetuity period of any other jurisdiction; and
 - (b) If no power is conferred upon the Trustee to postpone the date of termination of the Trust, apply to the Court for an order conferring such power which application the Court may grant absolutely or subject to such conditions as to the Court seem fit.

10. Matters determined by Governing Law

- (1) Subject to subsection 10(2), all matters arising in regard to a AIFC Trust or in regard to any disposition of Property held upon the Trust thereof including questions as to:
 - (a) the capacity of any Settlor;
 - (b) any aspect of the validity of the Trust or disposition or the interpretation or effect thereof;
 - (c) the administration of the Trust, whether the administration be conducted in the AIFC or elsewhere, including questions as to the powers, obligations, liabilities and rights of Trustees and their appointment and removal; or
 - (d) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the Trust and powers of appointment, and the validity of any exercise thereof,

shall be determined in accordance with these Regulations and the other laws of the AIFC without reference to the laws of any other jurisdiction with which the Trust or disposition may be connected.

- (2) Subject to sections 11 (Limitations in Foreign Law), 12 (Heirship Rights) and 13 (Foreign Judgments), subsection 10(1) shall:
 - (a) not validate any disposition of Property which is neither owned by the Settlor nor is the subject of a power in that behalf vested in the Settlor;
 - (b) not validate any Trust or disposition of immovable Property situated in a jurisdiction other than AIFC in which such Trust or disposition is invalid according to the laws of such jurisdiction;
 - (c) not validate any testamentary Trust or disposition which is invalid according to the laws applicable to succession to the testator's estate;
 - (d) not affect the recognition of Foreign Laws in determining whether the Settlor is or was the owner of the settled Property or is or was the holder of a power to dispose of such Property;
 - (e) not affect the recognition of the laws of its place of incorporation in relation to the capacity of a corporation; and



- (f) not affect the recognition of Foreign Laws prescribing generally, without reference to the existence or terms of the Trust, the formalities for the disposition of Property.

11. Limitations in Foreign Law

- (1) Without limiting the generality of subsection 10(1) (Matters determined by Governing Law), no AIFC Trust and no disposition of Property to be held in Trust that is valid under the laws of the AIFC is void, voidable, liable to be set aside or defective in any manner by reference to a Foreign Law; nor is the capacity of any Settlor in relation to the Trust or disposition to be questioned nor is the Trustee or any Beneficiary or any other person to be subjected to any liability or deprived of any power or right, by reason that:
 - (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a Trust;
 - (b) the Trust or disposition voids or defeats any rights, claims or interest conferred by Foreign Law upon any person by reason of a Personal Relationship to the Settlor or any Beneficiary or by way of Heirship Rights or contravenes any rule of Foreign Law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, Enforce or give effect to any such rights, claims or interest; or
 - (c) the Foreign Law or foreign judicial or administrative order or arbitration award imposes any obligation or liability on the Settlor, Trustee, Enforcer, Protector, Beneficiary or any other party in relation to the Trust or the Trust Property.
- (2) Subject to subsection 11(3), a transfer of Property to a Trust shall not be void, voidable or liable to be set aside by reason of a Settlor's bankruptcy, the liquidation of a Settlor, or any action or claims made against a Settlor by any creditor, notwithstanding any foreign statute providing otherwise.
- (3) Notwithstanding subsection 11(2), where the Court determines that, at the time when the Property was transferred to a Trust, a Settlor was insolvent or intended to defraud any creditor of the Settlor it may declare that the transfer of Property was void.
- (4) In making claims to set aside transfers of Property to a Trust under subsection 11(3), the burden of proof shall rest with the creditor.
- (5) Where a husband and wife transfer Property to a Trust and, immediately before being transferred, such Property or any part or any accumulation thereto is, pursuant to the law of its situs or the law applicable to the property of the parties to the marriage or other recognised personal relationship, determined to be community Property, then, notwithstanding such transfer, that Property and any accumulation thereto shall, for the purpose of giving effect to that law, be deemed to be community Property and be dealt with in a manner consistent with that law but in every other respect shall be dealt with in accordance with the terms of the Trust.
- (6) Nothing contained in subsection 11(5) shall be construed so as to cause the Trust or any Trustee to be liable or obliged to pay for any debt or responsibility of the Settlor.

12. Heirship Rights

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



AIFC TRUST REGULATIONS

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

13. Foreign Judgments

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

14. Place of Administration

- (1) Without precluding other means for establishing a close connection with the designated jurisdiction, terms of a Trust designating the place of administration are valid and conclusive if:
 - (a) a Trustee's principal place of business is located in or a Trustee is resident of the designated jurisdiction; or
 - (b) all or part of the administration occurs in the designated jurisdiction.
- (2) A Trustee is under a continuing duty to administer the Trust at a place appropriate to its purposes, its administration, and the interests of the Beneficiaries or in furtherance of its purposes and in accordance with the terms of the Trust.
- (3) Without precluding the right of the Court to order, approve, or disapprove a transfer in furtherance of the duty prescribed in subsection 14(2), the Trustee may transfer the Trust's place of administration to another jurisdiction outside the AIFC.
- (4) In connection with a transfer of the Trust's place of administration, the Trustee may transfer some or all of the Trust Property to a successor Trustee selected in accordance with or designated in the terms of the Trust.



PART 3: JUDICIAL AND NON-JUDICIAL PROCEEDINGS

15. Role of the Court in administration of Trust

- (1) The Court may intervene in the administration of a Trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
- (2) A Trust is not subject to continuing judicial supervision unless so ordered by the Court.
- (3) A judicial proceeding involving a Trust may relate to any matter involving the Trust's administration, including a request for instructions and an action to declare rights.

16. Jurisdiction of the Court

The Court has jurisdiction where:

- (a) the Trust is an AIFC Trust;
- (b) a Trustee of a Foreign Trust is an AIFC Participant;
- (c) any Trust Property of a Foreign Trust is situated in the AIFC but only in respect of Property so situated; or
- (d) administration of any Trust Property of a Foreign Trust is carried out in the AIFC.

17. Application to and certain powers of the Court

- (1) A Trustee may make an application to the Court for direction or order concerning the manner in which he may or should act in connection with any matter concerning the Trust and the Court may make such direction or order, if any, as it thinks fit.
- (2) The Court may if it thinks fit:
 - (a) make an order concerning:
 - (i) the execution or the administration of any Trust;
 - (ii) the Trustee of any Trust, including an order relating to the exercise of any power, discretion or duty of the Trustee, the appointment or removal of a Trustee, the remuneration of a Trustee, the submission of accounts, the conduct of the Trustee and payments, whether payments into Court or otherwise;
 - (iii) the vesting of Trust Property;
 - (iv) a Beneficiary or any person having a connection with the Trust as the Court may determine; or
 - (v) the appointment or removal of an Enforcer in relation to any non-charitable purposes of the Trust;
 - (b) make a declaration as to the validity or the enforceability of a Trust;
 - (c) rescind or vary any order or declaration made under these Regulations, or make any new or further order or declaration; or



AIFC TRUST REGULATIONS

- (d) rectify the terms on an instrument creating or governing a Trust so that it conforms to the actual intentions of the party or parties to the instrument at the time of its execution as to either:
 - (i) its legal effect; or
 - (ii) its intended operation in the circumstances of the case.
- (3) The Court may in any proceeding under this Part by order appoint a person to represent the interests of a person who the Court is satisfied is, or may become, a Beneficiary under a Trust, where:
 - (a) the person is unborn; or
 - (b) the Court is satisfied that the person is unable to act on his, her or its own behalf;and may by order remove such person and give directions as to service of such person.
- (4) A person so appointed may represent the person whose interests he has been appointed to protect in any dealing with the Trust or in any proceeding under this Part.
- (5) Where a representative has been appointed under subsection 17(3), no settlement affecting a person to whom subsection 17(3)(b) applies or the rights of Beneficiaries not yet in existence shall be valid without the approval of the Court.
- (6) Subsections 17(4) and 17(5) shall apply irrespective of any provision in the Trust Instrument.

18. Payment of costs

The costs and expenses of and incidental to an application to the Court under these Regulations shall be paid out of the Trust Property or be borne and paid in such other manner or by such other person as the Court may order.

19. Sections 20 to 25: Interpretation

- (1) In sections 20 (Application of powers under sections 21 to 25) to 25 (Applications and orders under sections 21 to 24):
 - (a) references to a transfer or other disposition of Property to a Trust, do not include a testamentary disposition; and
 - (b) 'power' includes a discretion as to the way in which an obligation is performed.
- (2) In sections 21 (Power to set aside a transfer or disposition of Property to a Trust due to mistake) and 23 (Power to set aside the exercise of powers in relation to a Trust or Trust Property due to mistake), 'mistake' includes (but is not limited to):
 - (a) a mistake as to:
 - (i) the effect of,
 - (ii) any consequences of, or
 - (iii) any of the advantages to be gained by,



a transfer or other disposition of Property to a Trust, or the exercise of a power over or in relation to a Trust or Trust Property;

- (b) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of Property to a Trust, or the exercise of a power over or in relation to a Trust or Trust Property; or
- (c) a mistake of law including a law of a foreign jurisdiction.

20. Application of powers under sections 21 to 25

Sections 21 (Power to set aside a transfer or disposition of Property to a Trust due to mistake) to 25 (Applications and orders under sections 21 to 24) apply in relation to the transfer or other disposition of Property to a Trust, or the exercise of any power over or in relation to a Trust or Trust Property that occurs either before or after the coming into force of these Regulations.

21. Power to set aside a transfer or disposition of Property to a Trust due to mistake

- (1) In this section, 'person exercising a power' means a person who exercises a power to transfer or make other disposition of Property to a Trust on behalf of a Settlor.
- (2) The Court may on the application of any person specified in subsection 25(1) (Applications and orders under sections 21 to 24), and in the circumstances set out in subsection 21(3), declare that a transfer or other disposition of Property to a Trust:
 - (a) by a Settlor acting in person (whether alone or with any other Settlor); or
 - (b) through a person exercising a power,is voidable and:
 - (i) has such effect as the Court may determine; or
 - (ii) is of no effect from the time of its exercise.
- (3) The circumstances are where the Settlor or person exercising a power:
 - (a) made a mistake in relation to the transfer or other disposition of Property to a Trust;
 - (b) would not have made that transfer or other disposition but for that mistake; and
 - (c) the mistake is of so serious a character as to render it just for the Court to make a declaration under this section.

22. Power to set aside a transfer or disposition of Property to a Trust exercised by fiduciary power

- (1) In this section, 'person exercising a power' means a person who exercises a power to transfer or make other disposition of Property to a Trust on behalf of a Settlor and who owes a fiduciary duty to the Settlor in relation to the exercise of his or her power.
- (2) The Court may on the application of any person specified in subsection 25(1) (Applications and orders under sections 21 to 24), and in the circumstances set out in subsection 22(3) (Power to set aside a transfer or disposition of Property to a Trust exercised by fiduciary power), declare that a transfer or other disposition of Property to a



Trust by a Settlor (whether alone or with any other Settlor) through a person exercising a power, is voidable and:

- (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances are where, in relation to the exercise of his or her power, the person exercising a power:
- (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that failure to take into account relevant considerations or that taking into account of irrelevant considerations.
- (4) This section applies whether or not the circumstances set out in subsection 22(3) occurred as a result of any lack of care or other fault on the part of the person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

23. Power to set aside the exercise of powers in relation to a Trust or Trust Property due to mistake

- (1) In this section, 'person exercising a power' means a person who, otherwise than in the capacity of Trustee, exercises a power over, or in relation to a Trust, or Trust Property.
- (2) The Court may on the application of any person specified in subsection 25(2) (Applications and orders under sections 21 to 24), and in the circumstances set out in subsection 23(3), declare that the exercise of a power by a Trustee or a person exercising a power over, or in relation to a Trust, or Trust Property, is voidable and:
 - (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances are where the Trustee or person exercising a power:
 - (a) made a mistake in relation to the exercise of his or her power;
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that mistake; and
 - (c) the mistake is of so serious a character as to render it just for the Court to make a declaration under this section.

24. Power to set aside the exercise of fiduciary powers in relation to a Trust or Trust Property

- (1) In this section, 'person exercising a power' means a person who, otherwise than in the capacity of Trustee, exercises a power over, or in relation to a Trust, or Trust Property and who owes a fiduciary duty to a Beneficiary in relation to the exercise of that power.
- (2) The Court may on the application of any person specified in subsection 25(2) (Applications and orders under sections 21 to 24), and in the circumstances set out in subsection 24(3), declare that the exercise of a power by a Trustee or a person exercising a power over, or in relation to a Trust, or Trust Property, is voidable and:



- (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances are where, in relation to the exercise of his or her power, the Trustee or person exercising a power:
- (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for that failure to take into account relevant considerations, or that taking into account of irrelevant considerations.
- (4) This section applies whether or not the circumstances set out in section 24(3) occurred as a result of any lack of care or other fault on the part of the Trustee or person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

25. Applications and orders under sections 21 to 24

- (1) An application under subsection 21(2) (Power to set aside a transfer or disposition of Property to a Trust due to mistake) or 22(2) (Power to set aside a transfer or disposition of Property to a Trust exercised by fiduciary power) may be made by any Settlor or any of his or her personal representatives or successors in title.
- (2) An application under subsection 23(2) (Power to set aside the exercise of powers in relation to a Trust or Trust Property due to mistake) or 24(2) (Power to set aside the exercise of fiduciary powers in relation to a Trust or Trust Property) may be made by:
 - (a) the Trustee who exercised the power concerned, or the person exercising a power (as the case may be);
 - (b) any other Trustee;
 - (c) a Beneficiary or Enforcer;
 - (d) the Settlor, his heirs, or AFSA in relation to a Trust containing Charitable Trusts, powers or provisions; or
 - (e) any other person with leave of the Court.
- (3) Without prejudice to section 17 (Application to and certain powers of the Court) and subject to subsection 25(4), the Court may, consequential upon a declaration made under any of sections 21 (Power to set aside a transfer or disposition of Property to a Trust due to mistake) to 24 (Power to set aside the exercise of fiduciary powers in relation to a Trust or Trust Property), make such order as it thinks fit.
- (4) No order may be made under subsection 25(3) which would prejudice any purchaser in good faith for value of any Trust Property without notice of the matters which render the transfer or other disposition of Property to a Trust, or the exercise of any power over or in relation to a Trust or Trust Property, voidable.



26. Savings in respect of applications made under sections 21 to 24

Nothing in sections 21 (Power to set aside a transfer or disposition of Property to a Trust due to mistake) to 24 (Power to set aside the exercise of fiduciary powers in relation to a Trust or Trust Property) shall prejudice:

- (a) any application for a declaration that a transfer or other disposition of Property to a Trust, or the exercise of any power over or in relation to a Trust or Trust Property, is void or voidable on grounds other than those specified in sections 21 (Power to set aside a transfer or disposition of Property to a Trust due to mistake) to 24 (Power to set aside the exercise of fiduciary powers in relation to a Trust or Trust Property); or
- (b) any personal remedy which may be available against a Trustee or any other person.

27. Sections 28, 29 and Schedule 1: Interpretation

For the purposes of sections 28 (Arbitration of Trust disputes) and 29 (Powers of the arbitral tribunal) and Schedule 1:

"administration question" means any relief or question in respect of which an action, application or other reference to the court could be brought or made under these Regulations;

"Beneficiary" includes an object of a power, whether or not ascertained or in existence and a charity;

"dispute" includes a difference;

"power holder" means any person holding a power in relation to a Trust (including any power of appointment, consent, direction, revocation or variation, and any power to appoint or remove Trustee or power holders) and includes a person in the position of a Protector;

"the parties in relation to the Trust" means any Trustee, Beneficiary or power holder of or under the Trust, in their capacity as such.

28. Arbitration of Trust disputes

- (1) Where a Trust Instrument provides that any dispute or administration question arising between any of the parties in relation to the Trust shall be submitted to arbitration ("**Trust arbitration**"), that provision shall, for all purposes under the Arbitration Regulations have effect as between those parties as if it were an arbitration agreement and as if those parties were parties to that agreement.
- (2) Where a Trust Instrument does not provide that any dispute or administration question arising between any of the parties in relation to the Trust shall be submitted to arbitration but the parties to that dispute agree in writing to have it resolved by a Trust arbitration, that agreement shall, for all purposes under the Arbitration Regulations, have effect as between those parties as if it were an arbitration agreement.
- (3) The Arbitration Regulations shall apply to a Trust arbitration in accordance with the provisions of Schedule 1.
- (4) The Court may make such orders in relation to an arbitration or possible arbitration which supplement or vary the application of Schedule 1 as may in the opinion of the Court be appropriate in the circumstances of the case.



29. Powers of the arbitral tribunal

- (1) This section shall apply except to the extent otherwise provided in the Trust Instrument.
- (2) The arbitral tribunal (hereinafter referred to as "the tribunal") may, in addition to all other powers of the tribunal, at any stage in a Trust arbitration, exercise all the powers of the Court (whether arising by law (including these Regulations), under the inherent jurisdiction of the Court or otherwise) in relation to the administration, execution or variation of a Trust or the exercise of any power arising under a Trust.



PART 4: CREATION, VALIDITY AND MODIFICATION OF AN AIFC TRUST

30. Creation of a Trust

- (1) A Trust may be created by:
 - (a) transfer of Property owned by the Settlor to another person as Trustee, and, if the Settlor is a natural person, during the Settlor's lifetime or by will or other disposition taking effect upon the Settlor's death;
 - (b) the transfer of Property from one Trust in order to settle such Property in a new Trust;
 - (c) declaration by the owner of identifiable Property that thereupon the owner will hold the Property as Trustee; or
 - (d) exercise of a power of appointment in favour of a Trustee.
- (2) A Trust shall come into existence by an instrument in writing including a will or codicil.

31. Requirements for creation

- (1) A Trust is created if:
 - (a) the Settlor has the capacity to create a Trust;
 - (b) the Settlor indicates an intention to create the Trust;
 - (c) the Trust either:
 - (i) has a definite Beneficiary;
 - (ii) is a Charitable Trust, as provided for in section 35 (Charitable Trusts); or
 - (iii) is a non-charitable Purpose Trust, as provided for in section 36 (Non-Charitable Trusts or Purpose Trusts);
 - (d) the Trustee holds or has vested in him or it Property for the benefit of a Beneficiary or for a purpose;
 - (e) the Trustee has duties to perform; and
 - (f) the same person is not the sole Trustee and sole Beneficiary.
- (2) A Beneficiary is definite if the Beneficiary can be ascertained now or in the future.
- (3) A Trust may have at the same time a definite Beneficiary and a purpose.

32. Trust purposes

- (1) A Trust may only be created to the extent its purposes are sufficiently certain to allow the Trust to be carried out, lawful and not contrary to public policy in the AIFC.
- (2) A Trust and its terms shall be for the benefit of its Beneficiaries or in furtherance and support of its purposes.



33. Duration of a Trust

- (1) A Trust may continue indefinitely or terminate in accordance with these Regulations or with the terms of the Trust.
- (2) No rule against perpetuities or excessive accumulations shall apply to a Trust or to any advancement, appointment, payment or application of assets from a Trust.
- (3) Except where the terms of a Trust provide to the contrary, any advancement, appointment, payment or application of assets from that Trust to another Trust shall be valid even if that other Trust may continue after the date by which the first Trust must terminate.

34. Validity and invalidity of a Trust

- (1) Subject to subsections 34(2), (3) and (4), a Trust shall be valid and enforceable in accordance with its terms.
- (2) A Trust shall be invalid to the extent that:
 - (a) it purports to do anything which is contrary to AIFC Law;
 - (b) it is created for a purpose other than a charitable purpose in relation to which there is no Beneficiary, unless it complies with section 36 (Non-Charitable Trusts or Purpose Trusts);
 - (c) its creation was induced by fraud, duress, undue influence or misrepresentation;
 - (d) the Trust is contrary to public policy in the AIFC; or
 - (e) the terms of the Trust are so uncertain that its performance is rendered impossible.
- (3) Where a Trust is created for two or more purposes of which some are lawful and others are unlawful:
 - (a) if those purposes cannot be separated the Trust shall be invalid; or
 - (b) where those purposes can be separated the Court may declare that the Trust is valid as to the purposes which are lawful.
- (4) A Trust may be validly created which has Beneficiaries, charitable purposes and purposes which are not charitable, in which case section 35 (Charitable Trusts) shall apply in relation to the charitable purposes and sections 35 (Charitable Trusts) and 36 (Non-Charitable Trusts or Purpose Trusts) shall apply in relation to the purposes which are not charitable.

35. Charitable Trusts

- (1) A Charitable Trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health or art, the protection of the environment, or any other purposes which are beneficial to the general public.
- (2) If the terms of a Charitable Trust do not indicate a particular charitable purpose or Beneficiary or a means by which a particular charitable purpose or Beneficiary may be



AIFC TRUST REGULATIONS

selected, the Court may select one or more charitable purposes or Beneficiaries in accordance with the Settlor's intention to the extent it can be ascertained.

- (3) Subject to subsection 35(4) if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, contrary to public policy in the AIFC, or obsolete in that, by reason of changed circumstances, it fails to achieve the purpose of the Trust:
 - (a) the Trust does not fail, in whole or in part;
 - (b) the Trust Property does not revert to the Settlor or the Settlor's successors in interest; and
 - (c) the Court may apply *cy-près* to vary or terminate the Trust by directing that the Trust Property be applied or distributed, in whole or in part, to one or more charitable purposes or Beneficiaries in accordance with the Settlor's intention to the extent it can be ascertained and otherwise as the Court may direct.
- (4) A provision in the terms of a Charitable Trust that would result in distribution of the Trust Property to a non-charitable Beneficiary prevails over the power of the Court under subsection 35(3) to apply *cy-près* to vary or terminate the Trust only if, when the provision takes effect, the Trust Property is to revert to the Settlor and the Settlor is still living.
- (5) A Charitable Trust may be enforced by the Settlor of the Trust, if the Settlor is still living, maintaining a proceeding to Enforce such Trust or by the Court on the application of any of the Settlor's heirs or the AFSA or a person designated by it.

36. Non-Charitable Trusts or Purpose Trusts

- (1) A Trust shall not be invalid by reason of subsection 34(2)(b) (Validity and invalidity of a Trust) if the terms of the Trust provide for the appointment of an Enforcer in relation to its non-charitable purposes and for the appointment of a new Enforcer at any time when there is none.
- (2) Subject to subsection 36(1), a Trust may be declared by Trust Instrument for a non-charitable purpose, including the purpose of holding or investing in shares in a company or juridical person or any other assets constituting the Trust Property if:
 - (a) the purpose is possible and sufficiently certain to allow the Trust to be carried out;
 - (b) the purpose is not contrary to public policy in the AIFC or unlawful under the laws of the AIFC; or
 - (c) the Trust Instrument specifies the event upon the happening of which the Trust terminates and provides for the disposition of surplus assets of the Trust upon its termination.
- (3) It shall be the duty of an Enforcer to Enforce the Trust in relation to its non-charitable purposes.
- (4) The appointment of a person as Enforcer of a Trust in relation to its non-charitable purposes shall not have effect if he is also a Trustee of the Trust or has a conflict of interest.
- (5) The terms of the Trust may provide, or the Court may order, that some or all of the costs incurred by the Enforcer in performing his duties shall be reimbursed to him out of the Trust fund.



AIFC TRUST REGULATIONS

- (6) Except as permitted by these Regulations or expressly provided by the terms of the Trust, or with the approval of the Court an Enforcer shall not:
 - (a) directly or indirectly profit from his appointment;
 - (b) cause or permit any other person to profit directly or indirectly from such appointment; or
 - (c) on his own account enter into any transaction with the Trustees or relating to the Trust Property which may result in profit to him or the Trustee.
- (7) Subject to subsection 36(8), an Enforcer may resign his office by notice in writing delivered to the Trustee. Such resignation shall take effect upon delivery of notice.
- (8) A resignation given in order to facilitate a Breach of Trust shall be of no effect.
- (9) An Enforcer shall cease to be an Enforcer of the Trust in relation to its non- charitable purposes immediately upon:
 - (a) the Enforcer's removal from office by the Court;
 - (b) the Enforcer's resignation becoming effective;
 - (c) the coming into effect of a provision in the terms of a Trust under which the Enforcer is removed from office or otherwise ceases to hold office; or
 - (d) the Enforcer's appointment as a Trustee of the Trust.
- (10) A Trustee of a Trust for non-charitable purposes shall, at any time when there is no Enforcer in relation to them, take such steps as may be necessary to secure the appointment of a new Enforcer.
- (11) Where the Trustee of a Trust for non-charitable purposes has reason to believe that the Enforcer in relation to such purposes is unwilling or refuses to act, or is unfit to act or incapable of acting, he shall apply to the Court for the removal of the Enforcer and the appointment of a replacement.
- (12) The Trustee shall apply to the Court for the appointment of a new Enforcer where there is no provision for the appointment of a new Enforcer in the Trust Instrument or the provisions in the Trust Instrument are not effective to secure the appointment of a new Enforcer, or the Enforcer is unwilling or refuses to act within 30 days of becoming aware that there is no Enforcer willing and able to act.
- (13) If the Trustee does not make an application in accordance with subsection 36(12), the Court may impose a fine on the Trustee not exceeding 10 per centum of the value of the Trust Property.

37. Variation and revocation of a Trust

- (1) A Trust may expressly provide that:
 - (a) its terms are capable of variation; or
 - (b) the Trust itself or a power exercisable under the Trust is revocable either in whole or in part.



AIFC TRUST REGULATIONS

- (2) Unless the terms of a Trust expressly provide that the Trust is revocable, it shall be irrevocable.
- (3) Where a Trust provides that the terms of the Trust may be varied, such power to vary shall be without prejudice to the power vested in the Court by these Regulations for the variation of the terms of the Trust.
- (4) No variation of the terms of the Trust or revocation of a Trust or a power exercisable under a Trust shall prejudice anything lawfully done by a Trustee in relation to a Trust prior to his receiving a notice of such variation or revocation.
- (5) Subject to the terms of the Trust, where a Trust is revoked, either in whole or in part, the Trustee shall hold the Trust Property affected by the revocation for the Settlor absolutely or if the Settlor is dead, for the Settlor's personal representative or estate.
- (6) Where a power to revoke, a general power of appointment or the present Beneficial Interest in respect of all or part of the Trust Property is reserved or granted to a person, the Trust Instrument may provide that for so long as the Settlor, Beneficiary or other holder of the power is not the sole Trustee, the Trustee shall owe no duty to any other person in relation to all or such part of the Trust Property and accordingly shall have no responsibility to any other person for acts or omissions occurring during that person's lifetime in respect of that Property.
- (7) For the purposes of this section, the "Settlor" is the particular person who provided the Property which is the subject of revocation.
- (8) The Court may vary the terms of a Trust:
 - (a) even if unambiguous, to conform the terms to the Settlor's intention if it is provided by clear and convincing evidence that both the Settlor's intent and the terms of the Trust were affected by a mistake of fact or law, whether in expression or inducement;
 - (b) if, because of circumstances not anticipated by the Settlor, modification will further the purpose of the Trust; or
 - (c) if continuation of the Trust on its existing terms would be impractical or wasteful or impair the administration of the Trust;with effect from either the date the order for variation of the Trust was made or such earlier date as to the Court seems fit.
- (9) To achieve the Settlor's tax objectives in relation to any jurisdiction to which the Trust or Settlor may be subject, the Court may vary the terms of a Trust in a manner that is not contrary to the Settlor's probable intention. The Court may provide that the variation has retroactive effect.
- (10) An application under subsection 37(8) may be made by the Settlor, the Trustee, a Beneficiary or the guardian or representative of a Beneficiary who is a Minor, incapacitated, unascertained or unborn.
- (11) The terms of a Trust may provide that if at any time the Trust Property includes any Property which by reason of the law of the Republic of Kazakhstan or any other specified jurisdiction may be held only by a national of that country the only persons who may be a Trustee, Protector or Beneficiary under the Trust are nationals of that jurisdiction at that time, and may further provide that such provision may not be varied or revoked.



- (12) If the terms of a Trust contain an irrevocable provision of the type referred to in subsection 37(11), notwithstanding any other provision of these Regulations (including subsection 6(1)), that provision may not be varied or revoked.

38. Power of Court to authorise dealings with Trust Property

- (1) Where any transaction affecting or concerning any Trust Property is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the Trustee by the Trust Instrument, if any, or by law, the Court may, by order, confer upon the Trustee, either generally or in any particular instance, the necessary power for that purpose, on such terms, and subject to such provision and conditions, if any, as the Court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and Income.
- (2) The Court may make an order under this section at a time after the dealing has commenced or is completed.
- (3) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.
- (4) An application to the Court under this section may be made by the Trustee or any of them if more than one, or by any Beneficiary.
- (5) The power conferred by this section is in addition to the powers conferred on the Court by subsection 37(8) (Variation and revocation of a Trust).

39. Failure or lapse of interest

- (1) Subject to the terms of a Trust and to any order of the Court, the Trust Property or interest under the Trust shall be held by the Trustee for the Settlor absolutely or if the Settlor is dead, for the Settlor's personal representatives or estate where:
 - (a) the interest in question fails or lapses;
 - (b) the Trust Property is vested in a person otherwise than for his sole benefit but the Trusts upon which he is to hold the Property are not declared or communicated to him; or
 - (c) the Trust terminates otherwise than in pursuance of subsection 40(1)(d) (Termination of a Trust).
- (2) For the purposes of this section, the "Settlor" is the particular person who provided the Property affected by the failure or lapse.

40. Termination of a Trust

- (1) Without prejudice to the powers of the Court under these Regulations a Trust terminates:
 - (a) if the Trust is revoked or expires pursuant to its terms;
 - (b) if there is no Beneficiary or person who can become a Beneficiary in accordance with the terms of the Trust or if no purpose of the Trust remains to be achieved;
 - (c) if the purposes of the Trust have become unlawful, or impossible to achieve; or



- (d) notwithstanding the terms of the Trust, upon consent of all the Beneficiaries in existence who have been ascertained and none of whom is a Minor or a person under a legal disability.
- (2) The Court may terminate a Trust:
 - (a) because of circumstances not anticipated by the Settlor, if termination will further the purposes of the Trust; or
 - (b) if the value of the Trust Property is insufficient to justify the cost of administration.
- (3) An application to the Court under this section may be made by a Settlor, a Trustee or a Beneficiary as the case may be.

41. Distribution of Property

- (1) Without prejudice to the powers of the Court under subsection 41(4), on the termination of the Trust the Trustee shall distribute the Trust Property to the persons entitled thereto within a reasonable time and in accordance with the terms of the Trust.
- (2) If the Trust Instrument makes no provision as to the proportions of the Trust Property to which the Beneficiaries are entitled *inter se*, the Beneficiaries shall take in equal proportions.
- (3) The Trustee may retain sufficient assets or obtain satisfactory security to make reasonable provision for liabilities, whether existing, future, contingent or otherwise, before distributing the Trust Property under subsection 41(1).
- (4) The Court may, on the termination of a Trust or at any time thereafter, upon an application made by a Trustee or any Beneficiary as the case may be:
 - (a) require the Trustee to distribute the Trust Property;
 - (b) direct the Trustee not to distribute the Trust Property; or
 - (c) make such other order as it thinks fit.



PART 5: THE BENEFICIARIES OF AN AIFC TRUST

42. Beneficiaries of a Trust

- (1) A Beneficiary shall be:
 - (a) identifiable by name; or
 - (b) ascertainable by reference to:
 - (i) a class; or
 - (ii) a relationship to some person whether or not living at the time of the creation of the Trust or at the time which under the terms of the Trust is the time by reference to which members of a class are to be determined.
- (2) The terms of a Trust may provide for the addition of a person as a Beneficiary or the exclusion of a Beneficiary from benefit.
- (3) A Settlor or a Trustee of a Trust may also be a Beneficiary of a Trust.

43. Disclaimer

- (1) A Beneficiary may disclaim his whole interest.
- (2) A disclaimer made under subsection 43(1) shall be in writing and shall be irrevocable.
- (3) Subject to the terms of a Trust, a Beneficiary under a Trust may disclaim part of his interest, whether or not he has received some benefit from his interest.
- (4) A disclaimer made under subsection 43(3) may, subject to the terms of the Trust, be revocable and it shall be exercisable in the manner and under the circumstances so expressed.

44. Interest of Beneficiary and dealings thereof

- (1) The interest of a Beneficiary shall constitute movable Property.
- (2) Subject to the terms of a Trust, a Beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

45. Termination of interest of Beneficiary upon Trust being challenged

- (1) The terms of a Trust may provide that the interest of a Beneficiary shall terminate (or may be terminated in exercise of a power in that regard) upon:
 - (a) the validity of the Trust being challenged, in whole or in part,
in any court within or outside the AIFC;
 - (b) any action being taken to assist, promote or encourage a challenge; or
 - (c) the Beneficiary refusing to agree to have a dispute or difference in relation to the affairs of the Trust referred to arbitration.
- (2) Subsection 45(1) applies whether or not the challenge or action:



AIFC TRUST REGULATIONS

- (a) is brought or taken by the Beneficiary; or
 - (b) is brought or taken in good faith or with reasonable cause.
- (3) Unless otherwise provided in the Trust Instrument, no rule of law or equity giving relief against forfeiture shall apply to a provision referred to in subsection 45(1).
- (4) In this section:
 - (a) in relation to a Beneficiary who is the object of a power or whose interest arises by virtue of his membership of a class, the termination of his interest includes his ceasing to be an object of the power or a member of the class;
 - (b) the "validity of the Trust" includes the validity of any disposition of Property to be held upon the Trusts of the Trust and any question whether any Settlor of the Trust intended to create a Trust on the terms of the Trust Instrument.



PART 6: PROTECTIVE TRUSTS AND CREDITORS' CLAIMS

46. Protective Trusts

- (1) The terms of a Trust may make the interest of the Beneficiary liable to termination.
- (2) Without prejudice to the generality of subsection 46(1), the terms of a Trust may make the interest of a Beneficiary in the Income or capital of the Trust Property subject to:
 - (a) a restriction on alienation or disposal; or
 - (b) a diminution or termination in the event of the Beneficiary becoming bankrupt or any of his Property becoming liable to sequestration for the benefit of his creditors.
- (3) A Trust under which the interest of a Beneficiary is subject to restriction, diminution or termination under subsection 46(2) is a Protective Trust.
- (4) A provision in the terms of a Trust requiring the interest of a Beneficiary in Trust Property to be held upon a Protective Trust shall be construed as a requirement that the interest of the Beneficiary be subject to restriction, diminution or termination as mentioned in subsection 46(2).

47. Creditors claims in relation to a Discretionary Trust

- (1) In the case of a Discretionary Trust, whether or not such Trust contains a protective provision, a creditor of a Beneficiary may not compel a distribution that is subject to the Trustee's discretion, even if:
 - (a) the discretion is expressed in the form of a standard of distribution; or
 - (b) the Trustee has abused the discretion.
- (2) To the extent a Trustee has not complied with a standard of distribution or has abused a discretion:
 - (a) a distribution may be ordered by the Court to satisfy a judgment or Court order against the Beneficiary for support or maintenance of the Beneficiary's child, spouse or former spouse; and
 - (b) the Court shall direct the Trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the Trustee would have been required to distribute to or for the benefit of the Beneficiary had the Trustee complied with the standard or not abused the discretion.



PART 7: OFFICE OF TRUSTEE

48. Accepting or declining trusteeship

- (1) Except as otherwise provided in subsection 48(3) a person designated as Trustee accepts the trusteeship:
 - (a) by substantially complying with a method of acceptance provided in the terms of the Trust; or
 - (b) if the terms of the Trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the Trust Property, exercising powers or performing duties as Trustee, or otherwise indicating acceptance of the trusteeship.
- (2) A person designated as Trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated Trustee who does not accept the trusteeship within a reasonable amount of time after knowing of the designation is deemed to have rejected the trusteeship.
- (3) A person designated as a Trustee, without accepting the trusteeship, may without liability for loss:
 - (a) act to preserve the Trust Property if, within a reasonable time after acting, he sends a written rejection of the trusteeship to the person (if any) with the power to appoint a new Trustee;
 - (b) inspect or investigate Trust Property to determine potential liability under any law (including the law of any jurisdiction in which the Trust Property is located) or for any other purpose; or
 - (c) apply to the Court for directions or advice.
- (4) A person who knowingly does any act or thing in relation to the Trust Property consistent with the status of a Trustee of that Property shall be deemed to have accepted appointment as a Trustee, but he shall not be remunerated for acting in such capacity as provided in section 53 (Remuneration of a Trustee), unless the Trustee appointed under the terms of the Trust otherwise agrees.

49. Vacancy in trusteeship; appointment of a new Trustee

- (1) A vacancy in a trusteeship occurs if:
 - (a) a person designated as Trustee rejects the trusteeship;
 - (b) a person designated as Trustee cannot be identified or does not exist;
 - (c) a Trustee resigns;
 - (d) a Trustee is removed;
 - (e) a Trustee dies, becomes bankrupt, or, being a corporation, has a petition for its winding up presented or an administrator appointed;
 - (f) a guardian is appointed for an individual serving as Trustee; or



AIFC TRUST REGULATIONS

- (g) a Trustee is unable freely to exercise his rights or powers or to fulfil his duties or obligations hereunder because of duress or undue influence brought to bear on such person by any other person or persons.
- (2) Where the terms of a Trust contain no provision for the appointment of a new Trustee, the Trustee for the time being may appoint a new Trustee or failing that the Court may appoint a new Trustee.
- (3) Subject to the terms of the Trust, a Trustee appointed under this section shall have the same powers, discretions and duties and may act as if he had been originally appointed a Trustee.
- (4) A Trustee having power to appoint a new Trustee who fails to exercise such power may be removed from office by the Court and the Court may appoint a new Trustee.
- (5) If one or more co-Trustees remain in office, a vacancy in a trusteeship need not be filled.
- (6) A vacancy in trusteeship shall be filled if the Trust has no remaining Trustee.
- (7) Where there is no Trustee a Trust shall not fail on that account.

50. Resignation of Trustee

- (1) Subject to the terms of the Trust, a Trustee may resign his office:
 - (a) by giving at least 30 days notice in writing to the Beneficiaries, the Settlor, if living, and all his co-Trustees. Such resignation shall take effect upon termination of such 30 day notice period or such earlier date as shall be agreed between the Trustee resigning and the Settlor, if living, and his co-Trustees;
 - (b) with the approval of the Court; or
 - (c) otherwise in accordance with the terms of the Trust.
- (2) A resignation given in order to facilitate a Breach of Trust shall have no effect.

51. Removal of Trustee by Court or under the terms of a Trust

- (1) The Settlor, an Enforcer, a co-Trustee, or a Beneficiary may request the Court to remove a Trustee, or a Trustee may be removed by the Court on its own initiative.
- (2) The Court may remove a Trustee if:
 - (a) the Trustee has committed a Breach of Trust;
 - (b) lack of cooperation among co-Trustees substantially impairs the administration of the Trust;
 - (c) because of unfitness, unwillingness, or persistent failure of the Trustee to administer the Trust, the Court determines that removal of the Trustee best serves the interests of the Beneficiaries; or
 - (d) there has been a substantial change of circumstances or removal is requested by all of the Beneficiaries, the Court finds that removal of the Trustee best serves the interests of all the Beneficiaries and is not inconsistent with a material purpose of the Trust, and a suitable co-Trustee or successor Trustee is available.



- (3) Pending a final decision on a request to remove a Trustee, or in lieu of or in addition to removing a Trustee, the Court may order an appropriate relief under section 69 (Remedies for Breach of Trust).
- (4) This power conferred by this section is in addition to any power to remove a Trustee contained in the Trust Instrument.

52. Position of outgoing Trustee

- (1) A Trustee who resigns or is removed shall proceed expeditiously to deliver the Trust Property within the Trustee's possession to the co-Trustee, successor Trustee or other person entitled to it.
- (2) Unless a co-Trustee remains in office or the Court otherwise orders, and until the Trust Property is delivered to a successor Trustee or other person entitled to it, a Trustee who has resigned or been removed has the duties of a Trustee and the powers necessary to protect the Property.
- (3) A Trustee who resigns or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering Trust Property.
- (4) A Trustee who resigns or is removed and has complied with subsection 52(1) shall be released from liability to any Beneficiary, Trustee or person interested under the Trust for any act or omission in relation to the Trust Property or the Trustee's duty as a Trustee except liability:
 - (a) arising from any Breach of Trust to which such Trustee was a party or to which the Trustee was privy; or
 - (b) in respect of actions to recover from such Trustee Trust Property or the proceeds of Trust Property in the possession of such Trustee.

53. Remuneration of a Trustee

- (1) Unless authorised by:
 - (a) the terms of the Trust;
 - (b) the consent in writing of all of the Beneficiaries; or
 - (c) an order of the Court;a Trustee shall not be entitled to remuneration for his services.
- (2) If the terms of a Trust specify the Trustee's remuneration, the Trustee is entitled to be remunerated as specified, but the Court may allow more or less remuneration if:
 - (a) the duties of the Trustee are substantially different from those contemplated when the Trust was created; or
 - (b) the remuneration specified by the terms of the Trust would be unreasonably low or high.



- (3) A Trustee may reimburse himself out of the Trust Property for or pay out of the Trust all expenses and liabilities properly incurred in connection with the administration of the Trust.

54. Advisory Trustees

- (1) In the administration of any Trust Property any Trustee may act, to the extent provided in this section, with an advisory Trustee or advisory Trustees.
- (2) An advisory Trustee or advisory Trustees may be appointed in respect of all or any part of the Trust Property:
 - (a) by the testator, Settlor or other creator of the Trust, in the instrument creating the Trust; or
 - (b) by order of the Court made on the application of any Beneficiary or Trustee or of any person on whose application the Court would have power to appoint a new Trustee; or
 - (c) by any person having power to appoint a new Trustee.
- (3) Where a Trustee acts with an advisory Trustee or advisory Trustees, the Trust Property shall be vested in the first mentioned Trustee (in this section referred to as the **responsible Trustee**), who shall have the sole management and administration of the estate and its Trusts as fully and effectually as if the responsible Trustee were the sole Trustee, and in any such case:
 - (a) the responsible Trustee may consult the advisory Trustee on any matter relating to the Trusts or the estate;
 - (b) the advisory Trustee may advise the responsible Trustee on any matter relating to the Trusts or the estate, but shall not be Trustee in respect of the Trust;
 - (c) where any advice or direction is tendered or given by the advisory Trustee, the responsible Trustee may follow and act on that advice or direction without being liable for anything done or omitted by him by reason of his following that advice or direction unless the Trustee knew or ought to have known that the advice was unlawful, contrary to the terms of the Trust or Trustees' duties, or advice that no reasonable advisory Trustee would have given;
 - (d) where the responsible Trustee is of opinion that any advice or direction of an advisory Trustee conflicts with the Trusts or any rule of law, or exposes him to any liability, or is otherwise objectionable, he may apply to the Court for directions in the matter, and any decision and order therein shall be final and shall bind the responsible Trustee and the advisory Trustee, and the Court may make such order as to costs as appears proper; but nothing in this section makes it necessary for the responsible Trustee to apply to the Court for any such directions; and
 - (e) where there are two or more advisory Trustees who are not unanimous, and tender to the responsible Trustee conflicting advice or directions, the responsible Trustee may apply to the Court for directions in like manner and with like effect as provided by subsection 54(3)(d).
- (4) A person dealing with the responsible Trustee in relation to any Trust Property shall not be concerned to inquire as to the concurrence or otherwise of the advisory Trustees or be affected by notice of the fact that the advisory Trustees have not concurred.



AIFC TRUST REGULATIONS

- (5) Subject to the provisions of the instrument (if any) creating the Trust and to any order made by the Court, where remuneration or commission is payable to the Trustee of any Trust Property, remuneration or commission may be paid to both the responsible Trustee and the advisory Trustee, and subject as aforesaid the amount thereof shall be as may be determined by the responsible Trustee (if he is entitled to fix his own remuneration) or by the Court.



PART 8: DUTIES AND POWERS OF TRUSTEES

CHAPTER 1 – DUTIES OF TRUSTEES

55. Duty to administer a Trust

- (1) Upon acceptance of a trusteeship, the Trustee shall in the execution of his duties and in the exercise of his powers and discretions:
 - (a) act with due diligence as would a prudent person to the best of his ability and skill; and
 - (b) observe the utmost good faith;in accordance with the terms and purposes of the Trust and these Regulations.
- (2) A Trustee shall administer the Trust solely in the interest of the Beneficiaries or in furtherance or support of the purposes of the Trust.

56. Duties of Trustees

- (1) Subject to the terms of the Trust, a Trustee shall so far as is reasonably practical preserve the value of the Trust Property.
- (2) Except with the approval of the Court or as permitted by these Regulations or expressly provided by the terms of the Trust, a Trustee shall not:
 - (a) directly or indirectly profit from his trusteeship;
 - (b) cause or permit any other person to profit directly or indirectly from such trusteeship;
 - (c) on his own account enter into any transaction with the Trustees or relating to the Trust Property which may result in such profit; or
 - (d) dispose of the Trust Property, or any part of it, in such a manner as to frustrate or adversely affect the purpose of the Trust or the interests of the Beneficiaries.
- (3) Subject to section 75 (Beneficiary's consent, release or ratification), a sale, encumbrance, or other transaction involving the investment or management of Trust Property entered into by the Trustee for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests is voidable by a Beneficiary affected by the transaction unless:
 - (a) the transaction was authorised by the terms of the Trust;
 - (b) the transaction was approved by the Court;
 - (c) the Beneficiary did not commence judicial proceedings within the time allowed by section 72 (Limitation of action against Trustee); or
 - (d) the Beneficiary consented to the Trustee's conduct or ratified the transaction.
- (4) A Trustee shall keep accurate accounts and records of his trusteeship.



AIFC TRUST REGULATIONS

- (5) A Trustee shall keep Trust Property separate from his personal Property and separately identifiable from any other Property of which he is a Trustee.
- (6) A Trustee of an Express Trust shall:
 - (a) at all times take reasonable steps to obtain, maintain and record adequate, accurate and current UBO Details relating to the Ultimate Beneficial Owners of any party to the Trust, including the Settlor, Enforcer, Protector, Beneficiaries, any other Trustees and any other natural person exercising ultimate effective control over the Trust;
 - (b) at all times take reasonable steps to obtain, maintain and record adequate, accurate and current UBO Details of each party to the Trust which is an individual;
 - (c) keep records of the names and contact details of the agents and service providers engaged on behalf of the Trust;
 - (d) disclose its status as Trustee to financial institutions and DNFBPs when engaging their services on behalf of the Trust;
 - (e) maintain accurate and up-to-date records of the information required under subsections 56(6)(a) and (b) for a period of six (6) years from the date on which it ceased to act or be involved with the Trust;
 - (f) upon receipt of a notice issued by the AFSA, make the information referred to in subsections 56(6)(a) and (b) available to the AFSA for the purposes of subsection 56(7), at such time and at such place as may be specified in the notice; and
 - (g) upon receipt of a notice from the AFSA, provide to the AFSA particulars of its processes for compliance with its obligations under subsections 56(6)(a), (b) and (c).
- (7) The AFSA shall:
 - (a) collect and process information obtained under subsection 56(6)(f) only for the purposes of regulation in relation to money laundering and terrorism financing, unlawful organisations and sanctions compliance in the AIFC, or to comply with any other applicable laws in the AIFC; and
 - (b) disclose such information only at the request of a regulator, a law enforcement agency or other government authority prescribed by the AIFC Co-operation and Exchange of Information Rules.
- (8) A Trustee is entitled to rely in good faith, without further enquiry, on any information provided to the Trustee in response to enquiries made pursuant to subsection 56(6)(a), unless the Trustee has reason to believe the response is misleading or false.
- (9) Where the Trustee fails to comply with the requirements in section 56(6), the AFSA may impose a fine in its discretion in respect of such non-compliance and, if the fine is not paid within 30 days, may make an application to the Court for orders under subsection 17(2)(a)(i) (Application to and certain powers of the Court). If the Trustee fails to comply with such an order, the AFSA may make an application under subsection 51(1) (Removal of Trustee by Court or under the terms of a Trust). For the avoidance of doubt, the AFSA shall be deemed, for the purpose of this section, to have standing to make applications to the Court under subsections 17(2)(a)(i) and 51(1).



AIFC TRUST REGULATIONS

- (10) The AFSA has powers for supervision and enforcement with respect to fulfilment of requirements in section 56(6) by any means including but not limited to on-site/off inspections or other risk-based review procedures.
- (11) In this section:
- (a) “UBO Details” in relation to a party to the trust who is an individual or a person who is an Ultimate Beneficial Owner of a party to the trust which is a body corporate means:
 - (i) full legal name;
 - (ii) residential address and, if different, an address for service of notices;
 - (iii) date and place of birth;
 - (iv) nationality;
 - (v) information identifying the person from their passport or other government-issued national identification document acceptable to the AFSA, including the identifying number, country of issue, date of issue and of expiry;
 - (vi) the date on which the person became an Ultimate Beneficial Owner of a party to the trust; and
 - (vii) the date on which the person ceased to be an Ultimate Beneficial Owner of a party to the trust.
 - (b) “Ultimate Beneficial Owner” in relation to a body corporate which is a party to the trust has the meaning it has in the Companies Regulations; and
 - (c) if the party to the Trust is a body corporate which by reason of section 179-8 (Exemptions) of the Companies Regulations is exempt from the application of Part 14-1 of those regulations, the information which the Trustee must obtain in relation to that party is the information required in relation to that party by subsection 179-9(2) (Ownership through an exempt entity) of those regulations.

57. Duties of co-Trustees to act together

- (1) Subject to the terms of the Trust, where there is more than one Trustee all the Trustees shall join in performing the Trust.
- (2) Subject to subsection 57(3), where there is more than one Trustee no power or discretion given to the Trustees shall be exercised unless all the Trustees agree on its exercise.
- (3) The terms of a Trust may empower Trustees to act by a majority but a Trustee who dissents from a decision of the majority of the Trustees may require his dissent to be recorded in writing.

58. Impartiality of a Trustee

Subject to the terms of the Trust, where there is more than one Beneficiary, or more than one purpose, the Trustee shall act impartially and shall not perform the Trust for the advantage of one at the expense of the other.



59. Cost of administration

In administering a Trust, the Trustee may incur only costs that are reasonable in relation to the Trust Property, the purposes of the Trust and the skills of the Trustee.

60. Enforcement and defence of claims

A Trustee may take reasonable steps to Enforce claims of the Trust and to defend claims against the Trust.

61. Collecting Trust Property

A Trustee shall take reasonable steps to compel a former Trustee or other person to deliver Trust Property to the Trustee, and, subject to the terms of the Trust, to redress a Breach of Trust known to the Trustee to have been committed by a former Trustee.

62. Duty to inform and report

- (1) Subject to the terms of a Trust and any order of the Court, a Trustee shall, on application in writing by a Beneficiary, disclose to the applicant all documents which relate to or form part of the accounts of the Trust.
- (2) A Trustee shall not be required to disclose to any person any document which:
 - (a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred upon him;
 - (b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or
 - (c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.
- (3) Notwithstanding the terms of the Trust:
 - (a) the Court may on application made to it declare that in the particular circumstances of the Trust its terms do not render the Trustees sufficiently or appropriately accountable to the Beneficiaries or any of them; and
 - (b) the Court may pursuant to such declaration extend or restrict the rights of all or any Beneficiaries to information regarding the Trust or may make such other order as it thinks fit.

CHAPTER 2 – GENERAL POWERS OF TRUSTEES

63. Powers of Trustees

- (1) Subject to the terms of the Trust and duties under these Regulations, a Trustee shall in relation to the Trust Property have:
 - (a) all the same powers as a natural person;
 - (b) any other powers appropriate to achieve the proper investment, management, and distribution of Trust Property; and



- (c) any other powers conferred by these Regulations.
- (2) A Trustee shall exercise his powers only in the interest of the Beneficiaries and in furtherance and support of the purposes of the Trust and in accordance with the terms of the Trust.

64. Specific powers of Trustees

Without limiting the generality of section 63 (Powers of Trustees), and subject to the terms of the Trust, a Trustee may:

- (a) collect Trust Property and accept or reject additions to the Trust Property from a Settlor or any other person and whether or not such acceptance is subject to the performance of an obligation and where the Trustee accepts Property subject to the performance of an obligation, the Trustee shall be deemed to have given to the obligee for good consideration an undertaking to perform that obligation;
- (b) subject to the terms of a Trust, a Trustee may, without the consent of any Beneficiary, appropriate Trust Property in or towards satisfaction of the interest of a Beneficiary in such matter and in accordance with such valuation as he thinks fit;
- (c) acquire or sell Property, for cash or on credit, at public or private sale;
- (d) exchange, partition, or otherwise change the character of Trust Property;
- (e) deposit Trust money in an account in a regulated financial services institution;
- (f) borrow money, with or without security, and mortgage or pledge Trust Property for a period within or extending beyond the duration of the Trust;
- (g) where the terms of a Trust so permit, exercise a discretion in relation to the manner in which and to whom Trust Property is distributed;
- (h) with respect to an interest in a partnership, limited liability company, business Trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or Property owners, including merging, dissolving, or otherwise changing the form of business organisation or contributing additional capital;
- (i) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (i) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting Trust agreement;
 - (ii) hold a security in the name of a nominee or in other form without disclosure of the Trust so that title may pass by delivery;
 - (iii) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
 - (iv) deposit the securities with a depository or other regulated financial services institution;
- (j) with respect to an interest in immovable Property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures,



AIFC TRUST REGULATIONS

demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plots and adjust boundaries;

- (k) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the Trust;
- (l) grant an option involving a sale, lease, or other disposition of Trust Property or acquire an option for the acquisition of Property, including an option exercisable beyond the duration of the Trust, and exercise an option so acquired;
- (m) insure the Property of the Trust against damage or loss and insure the Trustee, the Trustee's agents, and Beneficiaries against liability arising from the administration of the Trust and the insurance proceeds shall belong to the Trust fund;
- (n) abandon or decline to administer Property of no value or of insufficient value to justify its collection or continued administration;
- (o) pay or contest any claim, settle a claim by or against the Trust, and release, in whole or in part, a claim belonging to the Trust;
- (p) pay taxes, assessments, remuneration of the Trustee, Protector or Enforcer and of employees and agents of the Trust, and other expenses incurred in the administration of the Trust;
- (q) exercise elections with respect to any taxes;
- (r) indemnify outgoing Trustees;
- (s) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
- (t) make loans out of Trust Property, including loans to a Beneficiary on terms and conditions the Trustee considers to be fair and reasonable under the circumstances, and the Trustee has a lien on future distributions for repayment of those loans;
- (u) pledge Trust Property to guarantee loans made by others to the Beneficiary;
- (v) pay an amount distributable to a Beneficiary who is under a legal disability or who the Trustee reasonably believes is incapacitated, by paying it directly to the Beneficiary or applying it for the Beneficiary's benefit, or by:
 - (i) paying it to the Beneficiary's guardian and the receipt by such guardian shall constitute a full discharge of the Trustee's obligation;
 - (ii) if the Trustee does not know of a guardian, or custodian Trustee, paying it to an adult relative or other person having legal or physical care or custody of the Beneficiary, to be expended on the Beneficiary's behalf and the receipt of such person shall constitute a full discharge of the Trustee; or
 - (iii) managing it as a separate fund on the Beneficiary's behalf, subject to the Beneficiary's continuing right to withdraw the distribution;



AIFC TRUST REGULATIONS

- (w) on distribution of Trust Property or the division or termination of a Trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the Trust Property for those purposes, and adjust for resulting differences in valuation;
- (x) resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution and participate in any Trust arbitration pursuant to section 28 (Arbitration of Trust disputes);
- (y) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect Trust Property and the Trustee in the performance of the Trustee's duties;
- (z) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the Trustee's powers; and
- (aa) on termination of the Trust, exercise the powers appropriate to wind up the administration of the Trust and distribute the Trust Property to the persons entitled to it.

65. Power of accumulation and advancement

- (1) Where the terms of a Trust so authorise, a Trustee may accumulate for a period part or all of the Income of the Trust.
- (2) Subject to subsection 65(3), Income of the Trust which is not accumulated under subsection 65(1) shall be distributed.
- (3) Subject to the terms of the Trust and subject to any prior interests or charges affecting the Trust Property, where a Beneficiary is a Minor and whether or not the Beneficiary's interest:
 - (a) is a vested interest; or
 - (b) is an interest which will become vested:
 - (i) on attaining the age of majority;
 - (ii) at any later age; or
 - (iii) upon happening of any event;the Trustee may:
 - (c) accumulate the Income attributable to the interest of such Beneficiary pending the attainment of the age of majority or such later age or the happening of such event;
 - (d) apply such Income or part of it to or for the maintenance, education or other benefit of such Beneficiary; or
 - (e) advance or appropriate to for the benefit of any such Beneficiary such interest or part of such interest.
- (4) The receipt of a parent or the lawful guardian of a Beneficiary who is a Minor shall be a sufficient discharge of the Trustee's obligations for a payment made under subsection 65(3).



66. Corporate Trustee may act by resolution

A corporate Trustee may:

- (a) act in connection with a Trust by a resolution of the corporate Trustee or of its board of directors or other governing body, or
- (b) by such a resolution appoint an officer or employee, or a committee of officers or employees or both, to act on its behalf in connection with the Trust.

67. Combination and division of Trusts

- (1) Subject to the terms of the Trust, a Trustee may combine two or more Trusts into a single Trust or divide a Trust into two or more separate Trusts, if the result does not impair rights of any Beneficiaries or adversely affect achievement of the purposes of the Trusts.
- (2) Subject to the terms of the Trust, where a Trustee divides a Trust into two or more separate Trusts, he shall have the power to appoint Trustees for such Trusts.



PART 9: LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH A TRUSTEE

68. Liability for Breach of Trust

- (1) Subject to these Regulations and to the terms of the Trust, a Trustee shall be liable for a Breach of Trust committed by the Trustee or in which the Trustee has concurred.
- (2) A Trustee who is liable for a Breach of Trust shall be liable for:
 - (a) the loss or depreciation in value of the Trust Property resulting from such breach; and
 - (b) the profit, if any, which would have accrued to the Trust Property if there had been no such breach.
- (3) Where there are two or more breaches of Trust, a Trustee shall not set off a gain from one Breach of Trust against the loss resulting from another Breach of Trust.
- (4) A Trustee shall not be liable for a Breach of Trust committed prior to his appointment, if such Breach of Trust was committed by some other person.
- (5) A Trustee shall not be liable for a Breach of Trust committed by a co-Trustee unless:
 - (a) he becomes aware or ought to have become aware of the commission of such breach or of the intention of his co-Trustee to commit a Breach of Trust; and
 - (b) he actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the Trust Property or prevent such breach.
- (6) A Beneficiary may:
 - (a) relieve a Trustee of liability to him for a Breach of Trust; or
 - (b) indemnify a Trustee against liability for a Breach of Trust.
- (7) Subsection 68(6) shall not apply unless the Beneficiary:
 - (a) has legal capacity;
 - (b) has full knowledge of all material facts; and
 - (c) is not improperly induced by the Trustee to take action under subsection 68(6).
- (8) Where two or more Trustees are liable in respect of a Breach of Trust, they shall be liable jointly and severally.
- (9) A Trustee who becomes aware of a Breach of Trust under subsection 68(4) shall take all reasonable steps to have such breach remedied.
- (10) Nothing in terms of a Trust shall relieve, release, or exonerate a Trustee from liability for Breach of Trust arising from his own fraud, wilful misconduct or gross negligence.



69. Remedies for Breach of Trust

To remedy a Breach of Trust that has occurred or may occur, the Court may:

- (a) compel the Trustee to perform the Trustee's duties;
- (b) restrain the Trustee from committing a Breach of Trust;
- (c) compel the Trustee to redress a Breach of Trust by paying money, restoring Property, or other means;
- (d) order a Trustee to account;
- (e) appoint a special fiduciary to take possession of the Trust Property and administer the Trust;
- (f) suspend the Trustee;
- (g) remove the Trustee as provided in section 51 (Removal of Trustee by Court or under the terms of a Trust);
- (h) reduce or deny compensation to the Trustee;
- (i) subject to section 77 (Protection of persons dealing with Trustees), invalidate an act of the Trustee, impose a lien or a Constructive Trust on Trust Property, or trace Trust Property wrongfully disposed of and recover the Property or its proceeds; or
- (j) order any other appropriate relief.

70. Damages in absence of a breach

- (1) Except as expressly provided in the terms of the Trust, a Trustee is accountable to the Trust for any profit made by the Trustee arising from the administration of the Trust, even absent a Breach of Trust.
- (2) Except as expressly provided in the terms of the Trust, absent a Breach of Trust, a Trustee is not liable for a loss or depreciation in the value of Trust Property or for not having made a profit.

71. Legal fees and costs

In a judicial proceeding involving the administration of a Trust, the Court, as justice and equity may require, may award costs and expenses, including reasonable lawyers' fees, to any party, to be paid by another party or from the Trust that is the subject of the controversy.

72. Limitation of action against Trustee

- (1) A person may not commence a proceeding against a Trustee for Breach of Trust more than 3 years after the date such person or a representative of such person receives a report from the Trustee that adequately disclosed information that could form the basis for a potential claim for Breach of Trust and informed such person or his representative of the time allowed for commencing a proceeding.
- (2) A report adequately discloses the existence of a potential claim for Breach of Trust if it provides sufficient information so that such person or representative knows of the potential claim or should have inquired into its existence.



- (3) If subsection 72(1) does not apply, a judicial proceeding by such person against a Trustee for Breach of Trust shall be commenced within 7 years after the first to occur of:
 - (a) the removal, resignation, or death of the Trustee;
 - (b) in relation to a claim by a Beneficiary, the termination of the Beneficiary's interest in the Trust; or
 - (c) the termination of the Trust.
- (4) No period of limitation shall apply to an action brought against a Trustee:
 - (a) in respect of any fraud to which the Trustee was a party or to which the Trustee was privy; or
 - (b) to recover from the Trustee Trust Property:
 - (i) in the Trustee's possession;
 - (ii) under the Trustee's control; or
 - (iii) previously received by the Trustee and converted to the Trustee's use.
- (5) This section applies also to proceedings brought against an Enforcer.

73. Reliance on Trust Instrument

Any person who acts in reasonable reliance on the terms of the Trust as expressed in the Trust Instrument is not liable for a Breach of Trust to the extent the breach resulted from the reliance.

74. Exculpation or insurance of Trustee

- (1) A term of a Trust relieving a Trustee of liability for Breach of Trust is unenforceable to the extent that it:
 - (a) relieves the Trustee of liability for Breach of Trust committed in bad faith or with reckless indifference to the purposes of the Trust or the interests of the Beneficiaries; or
 - (b) was inserted as the result of an abuse by the Trustee of a fiduciary or confidential relationship to the Settlor.
- (2) Any insurance purchased and maintained by the Trust in respect of a Trustee must not include insurance in respect of any liability the Trustee may incur:
 - (a) to the Trust or a Beneficiary; or
 - (b) to pay a fine in respect of an offence; or
 - (c) any costs the Trustee may incur:
 - (i) in defending criminal proceedings in which the Trustee is convicted; or
 - (ii) in defending civil proceedings brought by a successor Trustee or a Beneficiary in which judgment is given against the Trustee. ¹SEP



75. Beneficiary's consent, release or ratification

- (1) Subject to subsection 68(10) (Liability for Breach of Trust), a Trustee is not liable to a Beneficiary for Breach of Trust if the Beneficiary consented to the conduct constituting the breach, released the Trustee from liability for the breach as provided in subsection 68(6) (Liability for Breach of Trust) or ratified the transaction constituting the breach, unless:
 - (a) the consent, release, or ratification of the Beneficiary was induced by improper conduct of the Trustee; or
 - (b) at the time of the consent, release, or ratification, the Beneficiary did not know of the Beneficiary's rights or of the material facts relating to the breach.
- (2) Where a Trustee commits a Breach of Trust at the instigation or at the request or with the consent of a Beneficiary, the Court may by order impound all or part of the interest of the Beneficiary by way of indemnity to the Trustee or any person claiming through the Trustee.

76. Limitation on personal liability of Trustee

- (1) Except as otherwise provided in the contract, a Trustee is not personally liable on a contract properly entered into in the Trustee's fiduciary capacity in the course of administering the Trust if the Trustee in the contract disclosed the fiduciary capacity.
- (2) A Trustee is personally liable for torts committed in the course of administering a Trust, or for obligations arising from ownership or control of Trust Property only if the Trustee is personally at fault.
- (3) A claim based on a contract entered into by a Trustee in the Trustee's fiduciary capacity or an obligation arising from ownership or control of Trust Property, or on a tort committed in the course of administering a Trust, may be asserted in a judicial proceeding against the Trustee in the Trustee's fiduciary capacity, whether or not the Trustee is personally liable for the claim.

77. Protection of persons dealing with Trustees

- (1) A person other than a Beneficiary who in good faith assists a Trustee, or who in good faith and for value deals with a Trustee, without knowledge that the Trustee is exceeding or improperly exercising the Trustee's powers is protected from liability as if the Trustee properly exercised the power.
- (2) A person other than a Beneficiary who in good faith deals with a Trustee is not required to inquire into the extent of the Trustee's powers or the propriety of their exercise.
- (3) A person who in good faith delivers assets to a Trustee need not ensure their proper application.
- (4) A person other than a Beneficiary who in good faith assists a former Trustee or who in good faith and for value deals with a former Trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former Trustee were still a Trustee.
- (5) Comparable protective provisions of other AIFC Law relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.



78. Trustees of more than one Trust

A Trustee acting as such for more than one Trust shall not, in the absence of fraud or bad faith, be affected by notice of matter in relation to a particular Trust if the Trustee has obtained notice of it merely by reason of acting or having acted for the business of another Trust.



PART 10: AGENTS, NOMINEES AND CUSTODIANS

79. Application of this Part

Except as otherwise provided in section 87(4) (Investment in bearer securities), this Part shall apply in relation to a Trust having a sole Trustee as it applies in relation to other Trusts, and references to Trustees in this Part (except in sections 81(1) and (3) (Persons who may act as agents) and 88(4) (Persons who may be appointed as nominees or custodians) shall be read accordingly.

80. Power to appoint agents

- (1) Subject to the provisions of this Part, the Trustees of a Trust may authorise any person to exercise any or all of their delegable functions as their agent.
- (2) In the case of a Trust other than a Charitable Trust, the Trustees' delegable functions consist of any function other than:
 - (a) any function relating to whether or in what way any assets of the Trust should be distributed;
 - (b) any power to decide whether any fees or other payment due to be made out of the Trust funds should be made out of Income or capital;
 - (c) any power to appoint a person to be a Trustee of the Trust; or
 - (d) any power conferred by any other written law or the Trust Instrument which permits the Trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.
- (3) In the case of a Charitable Trust, the Trustees' delegable functions are:
 - (a) any function relating to carrying out a decision that the Trustees have taken;
 - (b) any function relating to the investment of assets subject to the Trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land); and
 - (c) any function relating to the raising of funds for the Trust otherwise than by means of profits of a trade which is an integral part of carrying out the Trust's charitable purpose.
- (4) For the purposes of subsection 80(3)(c) (Power to appoint agents), a trade is an integral part of carrying out a Trust's charitable purpose if, whether carried on in the AIFC or elsewhere, the profits are applied solely to the purposes of the Trust and either:
 - (a) the trade is exercised in the course of the actual carrying out of a primary purpose of the Trust; or
 - (b) the work in connection with the trade is mainly carried out by Beneficiaries of the Trust.



81. Persons who may act as agents

- (1) Subject to subsection 81(2), the persons whom the Trustees may under section 80 (Power to appoint agents) authorise to exercise functions as their agent include one or more of their number.
- (2) The Trustees may not authorise 2 or more persons to exercise the same function unless they are to exercise the function jointly.
- (3) The Trustees may not, under section 80 (Power to appoint agents), authorise a Beneficiary to exercise any function as their agent (even if the Beneficiary is also a Trustee).
- (4) The Trustees may, under section 80 (Power to appoint agents), authorise a person to exercise functions as their agent even though he is also appointed to act as their nominee or custodian (whether under section 85 (Power to appoint nominees), 86 (Power to appoint custodians) or 87 (Investment in bearer securities) or any other power).

82. Linked functions, etc.

- (1) Subject to subsection 82(2), a person who is authorized under section 80 to exercise any function shall, notwithstanding the terms of the agency, be subject to any specific duties or restrictions attached to the function.
- (2) A person who is authorised under section 80 (Power to appoint agents) to exercise a power which is subject to a requirement to obtain advice shall not be subject to the requirement if he is the kind of person from whom it would have been proper for the Trustees, in compliance with the requirement, to obtain advice.

83. Terms of agency

- (1) Subject to subsection 83(2) and sections 84(2) (Asset management — special restrictions), 53 (Remuneration of a Trustee) and 94 (Remuneration and expenses of agents, nominees and custodians), the Trustees may authorise a person to exercise functions as their agent on such terms as to remuneration and other matters as they may determine.
- (2) The Trustees may not authorise a person to exercise functions as their agent on any of the terms set out in subsection 83(3) unless it is reasonably necessary for them to do so.
- (3) The terms for the purposes of subsection 83(2) are:
 - (a) a term permitting the agent to appoint a substitute;
 - (b) a term restricting the liability of the agent or his substitute to the Trustees or any Beneficiary; and
 - (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

84. Asset management — special restrictions

- (1) The Trustees may not authorise a person to exercise any of their asset management functions as their agent except by an agreement which is in writing or evidenced in writing.



AIFC TRUST REGULATIONS

- (2) The Trustees may not authorise a person to exercise any of their asset management functions as their agent unless:
 - (a) the Trustees have provided that person with a statement that gives guidance as to how the functions should be exercised (referred to in these Regulations as a policy statement); and
 - (b) the agreement under which the agent is to act includes a term to the effect that he will secure compliance with:
 - (i) the policy statement; or
 - (ii) if the policy statement is revised or replaced under section 91 (Review of agents, nominees and custodians, etc.), the revised or replacement policy statement.
- (3) The Trustees shall formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interests of the Trust.
- (4) The policy statement shall be in writing or evidenced in writing.
- (5) For the purposes of this section, the asset management functions of Trustees are their functions relating to:
 - (a) the investment of assets subject to the Trust;
 - (b) the acquisition of Property which is to be subject to the Trust; and
 - (c) the management of Property which is subject to the Trust and the disposal of, or the creation or disposal of an interest in, such Property.

85. Power to appoint nominees

- (1) Subject to the provisions of this Part, the Trustees of a Trust may:
 - (a) appoint a person to act as their nominee in relation to such of the assets of the Trust as they may determine (other than settled land); and
 - (b) take such steps as are necessary to secure that those assets are vested in a person so appointed.
- (2) An appointment under this section shall be in writing or evidenced in writing.

86. Power to appoint custodians

- (1) Subject to the provisions of this Part, the Trustees of a Trust may appoint a person to act as a custodian in relation to such of the assets of the Trust as the Trustees may determine.
- (2) For the purposes of these Regulations, a person is a custodian in relation to assets if he undertakes the safe custody of the assets or of any document or record concerning the assets.
- (3) An appointment under this section shall be in writing or evidenced in writing.



87. Investment in bearer securities

- (1) If Trustees retain or invest in securities payable to bearer, they shall appoint a person to act as a custodian of the securities.
- (2) Subsection 87(1) shall not apply if the Trust Instrument or any written law contains any provision which (however expressed) permits the Trustees to retain or invest in securities payable to bearer without appointing a person to act as a custodian.
- (3) An appointment under this section shall be in writing or evidenced in writing.
- (4) This section shall not impose a duty on a sole Trustee if that Trustee is an Authorised Firm for Providing Trust Services.

88. Persons who may be appointed as nominees or custodians

- (1) A person may not be appointed under section 85 (Power to appoint nominees), 86 (Power to appoint custodians) or 87 (Investment in bearer securities) as a nominee or custodian or continue to act as such nominee or custodian unless:
 - (a) the person carries on a business which consists of or includes acting as a nominee or custodian; or
 - (b) the person is a body corporate which is controlled by the Trustees.
- (2) For the purposes of subsection 88(1)(b), a body corporate is controlled by the Trustees if the Trustees have power to secure:
 - (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
 - (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of the Trustees.
- (3) Subject to subsection 88(1), the persons whom the Trustees may, under section 85 (Power to appoint nominees), 86 (Power to appoint custodians) or 87 (Investment in bearer securities), appoint as a nominee or custodian include:
 - (a) one of their number, if that one is an Authorised Firm for Providing Trust Services; or
 - (b) 2 or more of their number, if they are to act as joint nominees or joint custodians.
- (4) The Trustees may, under section 85 (Power to appoint nominees), appoint a person to act as their nominee even though he is also:
 - (a) appointed to act as their custodian (whether under section 86 (Power to appoint custodians) or 87 (Investment in bearer securities) or any other power); or
 - (b) authorised to exercise functions as their agent (whether under section 80 (Power to appoint agents) or any other power).



- (5) The Trustees may, under section 86 (Power to appoint custodians) or 87 (Investment in bearer securities), appoint a person to act as their custodian even though he is also:
 - (a) appointed to act as their nominee (whether under section 85 (Power to appoint nominees) or any other power); or
 - (b) authorised to exercise functions as their agent (whether under section 80 (Power to appoint agents) or any other power).

89. Terms of appointment of nominees and custodians

- (1) Subject to subsection 89(2) and sections 53 (Remuneration of a Trustee) and 94 (Remuneration and expenses of agents, nominees and custodians), the Trustees may, under section 85 (Power to appoint nominees), 86 (Power to appoint custodians) or 87 (Investment in bearer securities), appoint a person to act as a nominee or custodian on such terms as to remuneration and other matters as they may determine.
- (2) The Trustees may not, under section 85 (Power to appoint nominees), 86 (Power to appoint custodians) or 87 (Investment in bearer securities), appoint a person to act as a nominee or custodian on any of the terms set out in subsection 89(3) unless it is reasonably necessary for them to do so.
- (3) The terms for the purposes of subsection 89(2) are:
 - (a) a term permitting the nominee or custodian to appoint a substitute;
 - (b) a term restricting the liability of the nominee or custodian or his substitute to the Trustees or to any Beneficiary; and
 - (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

90. Application of sections 91 and 92

- (1) Sections 91 (Review of agents, nominees and custodians, etc.) and 92 (Liability for agents, nominees and custodians, etc.) shall apply in a case where Trustees have, under section 80 (Power to appoint agents), 85 (Power to appoint nominees), 86 (Power to appoint custodians) or 87 (Investment in bearer securities):
 - (a) authorised a person to exercise functions as their agent; or
 - (b) appointed a person to act as a nominee or custodian.
- (2) Subject to subsection 90(3), sections 91 (Review of agents, nominees and custodians, etc.) and 92 (Liability for agents, nominees and custodians, etc.) shall also apply in a case where Trustees have, under any power conferred on them by the Trust Instrument or by any written law:
 - (a) authorised a person to exercise functions as their agent; or
 - (b) appointed a person to act as a nominee or custodian.
- (3) If the application of section 91 (Review of agents, nominees and custodians, etc.) or 92 (Liability for agents, nominees and custodians, etc.) in a case is inconsistent with the terms of the Trust Instrument or any written law, that section shall not apply to that case.



91. Review of agents, nominees and custodians, etc.

- (1) While the agent, nominee or custodian continues to act for the Trust, it shall be the duty of the Trustees:
 - (a) to keep under review the arrangements under which the agent, nominee or custodian acts and the manner in which such arrangements are being put into effect;
 - (b) if circumstances make it appropriate to do so, to consider whether there is a need to exercise any power of intervention that they have; and
 - (c) if they consider that there is a need to do so, to exercise the power of intervention.
- (2) If the agent has been authorised to exercise asset management functions, the duty under subsection 91(1) shall include, in particular:
 - (a) a duty to consider whether there is any need to revise or replace the policy statement made for the purposes of section 84 (Asset management — special restrictions);
 - (b) if the Trustees consider that there is a need to revise or replace the policy statement, a duty to do so; and
 - (c) a duty to assess whether the policy statement (as it has effect for the time being) is being complied with.
- (3) Section 84(3) (and (4) (Asset management — special restrictions) shall apply to the revision or replacement of a policy statement under this section as they apply to the making of a policy statement under that section.
- (4) In this section, “power of intervention” includes:
 - (a) a power to give directions to the agent, nominee or custodian; and
 - (b) a power to revoke the authorisation or appointment of the agent, nominee or custodian.

92. Liability for agents, nominees and custodians, etc.

- (1) A Trustee shall not be liable for any act or default of the agent, nominee or custodian unless he fails to comply with the any of the duties applicable to him under chapter 1 of Part 8 when:
 - (a) entering into the arrangements under which the person acts as agent, nominee or custodian; or
 - (b) carrying out his duties under section 91 (Review of agents, nominees and custodians, etc.).
- (2) If a Trustee has agreed to a term under which the agent, nominee or custodian is permitted to appoint a substitute, the Trustee shall not be liable for any act or default of the substitute unless he has failed to comply with the any of the duties applicable to him under chapter 1 of Part 8:
 - (a) when agreeing to that term; or



- (b) when carrying out his duties under section 91 (Review of agents, nominees and custodians, etc.) in so far as they relate to the use of the substitute.

93. Effect of Trustees exceeding their powers

A failure by the Trustees to act within the limits of the powers conferred by this Part:

- (1) in authorising a person to exercise a function of theirs as an agent; or
- (2) in appointing a person to act as a nominee or custodian,

shall not invalidate the authorisation or appointment.

94. Remuneration and expenses of agents, nominees and custodians

- (1) This section shall apply if, under a power conferred by Part 10 or any other written law, or by the Trust Instrument, a person other than a Trustee has been:
 - (a) authorised to exercise functions as an agent of the Trustees; or
 - (b) appointed to act as a nominee or custodian.
- (2) The Trustees may remunerate the agent, nominee or custodian out of the Trust funds for services if:
 - (a) he is engaged on terms entitling him to be remunerated for those services; and
 - (b) the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that Trust.
- (3) The Trustees may reimburse the agent, nominee or custodian out of the Trust funds for any reasonable expenses properly incurred by him in exercising functions as an agent, nominee or custodian.



PART 11: RESERVED AND RESTRICTED POWERS, EXPRESSIONS OF WISHES, AND INCAPACITATION

95. Reserved and restricted powers

- (1) Without prejudice to the generality of section 37 (Variation and revocation of a Trust), the reservation by the Settlor to himself or grant to any other person in the Trust Instrument of an AIFC Trust of any limited Beneficial Interest in the Trust Property whether of Income or capital, or any or all of the powers specified in subsection 95(2) (or both such an interest and any or all of such powers) shall not:
 - (a) invalidate the Trust; or
 - (b) prevent the Trust taking effect according to its terms; or
 - (c) cause any or all of the Trust Property, or the interests or powers reserved, to be part of the real estate or personal estate of the Settlor for any purpose.

- (2) The powers referred to in subsection 95(1) are:
 - (a) in the case of a reservation to the Settlor or other donor of Trust Property, power to revoke the Trusts in whole or in part;
 - (b) power to vary or amend the terms of the Trust Instrument or any of the Trusts, purposes or powers arising thereunder in whole or in part;
 - (c) a general, intermediate or special power to advance, appoint, pay, apply, distribute or transfer Trust Property (whether Income or capital or both) or to give directions for the making of any such advancement, appointment, payment, application, distribution or transfer;
 - (d) power to act as, or give binding directions as to, the appointment or removal of, a director or an officer of any company wholly or partly owned by the Trust or to direct the Trustee as to the manner of exercising voting rights attaching to any of the shares held in such company;
 - (e) power to give binding directions in connection with the purchase, retention, holding, sale or other commercial or investment dealings with Trust Property or any investment or reinvestment thereof or the exercise of any powers or rights arising from such Trust Property;
 - (f) power to give binding directions that the Trustee shall not be under any duty nor be bound to interfere in the business of any company to which any such direction applies in which the Trust is interested, the manner in which the Trustee shall act in respect of exercise of any right or power arising from the ownership of the shares of such company or any loan or advance of money to such company, and the liability of the Trustee arising as a result of any such direction;
 - (g) power to appoint, add, remove or replace any Trustee, Protector, Enforcer or any other office holder;
 - (h) power to add, remove or exclude any Beneficiary, class of Beneficiaries or purpose;
 - (i) power to change the Governing Law and the forum for administration of the Trust; and



AIFC TRUST REGULATIONS

- (j) power to restrict the exercise of any powers, discretions or functions of a Trustee by requiring that they shall only be exercisable with the consent, or at the direction of, any person specified in the Trust Instrument or any other written notice to the Trustee.
- (3) A Trustee who:
 - (a) has acted, or refrained from acting, in compliance with, or as a result of, a valid exercise of any of the powers set out in subsection 95(2), shall not, by reason only of such compliance, commit a Breach of Trust or other fiduciary or equitable duty; or
 - (b) is or has been prevented from acting in accordance with any of the powers specified in subsection 95(2), or any exercise of those powers by reason of the provisions of any applicable law or because insufficient rights or powers are exercisable by the Trustee in relation to the Trust Property, shall not, by reason only of such non-compliance or failure to act, commit a Breach of Trust or other fiduciary or equitable duty.
- (4) No person other than a person in whom Trust Property or an interest in Trust Property is vested and who is formally appointed as a Trustee, shall be or become a Trustee by reason only of the reservation or grant of any of the powers set out in subsection 95(2).
- (5) The terms of an AIFC Trust may provide that the reservation or grant of any of the powers set out in subsection 95(2) shall not impose a fiduciary duty on the holder of such powers.
- (6) In the absence of any contrary provision of the terms of an AIFC Trust:
 - (a) in the case of the reservation by a Settlor or the grant to another person of any of the powers specified in section 95(2), where so long as the holder of the power is not the sole Trustee, such powers shall be personal and non-fiduciary; and
 - (b) in any other case, such powers shall be fiduciary.

96. Expressions of wishes

- (1) The Settlor of a Trust may give to the Trustee a letter of the wishes of the Settlor or the Trustee may prepare a memorandum of the wishes of the Settlor with regard to the exercise of any functions conferred on the Trustee by the terms of the Trust.
- (2) A Beneficiary of a Trust may give to the Trustee a letter of the wishes of the Beneficiary or the Trustee may prepare a memorandum of the wishes of the Beneficiary with regard to the exercise of any functions conferred on the Trustee by the terms of the Trust.
- (3) Where a Trust is in favour of a class of persons, then a member of that class may give to the Trustee a letter of the wishes of that member or the Trustee may prepare a memorandum of the wishes of that member with regard to the exercise of any functions conferred on the Trustee by the terms of the Trust.
- (4) Where a letter of wishes or a memorandum of wishes is given to or prepared by the Trustee of a Trust then-
 - (a) the Trustee may have regard to that letter or memorandum in exercising any functions conferred upon the Trustee by the terms of the Trust; but



- (b) the Trustee shall not be bound to have regard to that letter or memorandum and shall not be accountable in any way for failure or refusal to have regard to that letter or memorandum.
- (5) No fiduciary duty or obligation shall be imposed on a Trustee merely by the giving to the Trustee of a letter of wishes or the preparation by the Trustee of a memorandum of wishes.

97. Incapacitation of Protector or Settlor

- (1) If the Settlor becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the Protector (if appointed) or by any other person designated by the Trust Instrument or appointed for that purpose by the Court declaring or confirming him to be incapacitated.
- (2) If the Protector becomes incapacitated then the rights or powers (if any) reserved to him shall during his incapacitation be exercisable by the person designated by the Trust Instrument or appointed for that purpose by the Court declaring or confirming him to be incapacitated.
- (3) For the purpose of this section:
 - (a) a person shall be deemed to be incapacitated if declared to be of unsound mind by a court of competent jurisdiction or if declared by two qualified examining physicians to be of unsound mind or physically impaired so as to be unable to act responsibly prudently or effectively and shall be deemed to remain incapacitated until declared otherwise by such court or such physicians; and
 - (b) a corporation shall be deemed to be incapacitated if it has been dissolved, or if it is under administration or a petition for its winding up has been presented in any Court and has not been finally determined by the Court
- (4) The Trustee may declare in writing a person to be incapacitated during any period in which the Trustee is of the opinion that such person is unable freely to exercise his rights or powers or to fulfil his duties or obligations hereunder because of duress or undue influence brought to bear on such person by any other person or persons but the Trustee shall not be under any duty to make any inquiries as to whether any person is suffering from duress or undue influence and in any case the Trustee shall not be under any duty to make any declaration as aforementioned.



PART 12: PROVISIONS APPLICABLE TO A FOREIGN TRUST

98. Enforceability of a Foreign Trust

- (1) Subject to subsection 98(2), a Foreign Trust shall be regarded as being governed by, and shall be interpreted in accordance with, its Governing Law.
- (2) A Foreign Trust shall be unenforceable in the AIFC:
 - (a) to the extent that it purports:
 - (i) to do anything which is contrary to AIFC Law; or
 - (ii) to confer any right or power or impose any obligation the exercise of which is contrary to AIFC Law; or
 - (b) to the extent that the Court declares that the Trust is contrary to public policy in the AIFC,

but otherwise shall be enforceable in accordance with its terms and its Governing Law.

INTERPRETATION

1. Rules of interpretation

- (1) In these Regulations, a reference to:
 - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Regulations, include publishing or causing to be published in printed or electronic form;
 - (d) unless stated otherwise, a day means a calendar day. If an obligation falls on a calendar day which is either a Saturday or Sunday or an official state holiday in the Republic of Kazakhstan, the obligation shall take place on the next calendar day which is a business day;
 - (e) a calendar year shall mean a year of the Gregorian calendar; and
 - (f) a reference to the masculine gender includes the feminine.
- (2) The headings in these Regulations shall not affect their interpretation.

2. Legislation in the AIFC

AIFC Law is any AIFC Act or law in force in the AIFC.

3. Defined Terms



AIFC TRUST REGULATIONS

In these Regulations, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings.

Term	Definition
Acting Law of the AIFC	has the meaning given by the Constitutional Statute.
AFSA	Astana Financial Services Authority.
AIFC	Astana International Financial Centre.
AIFC Act	means an act adopted by the AIFC Bodies.
AIFC Bodies	has the meaning given by article 9 of the Constitutional Statute and the document entitled <i>The Structure of the Bodies of the Astana International Financial Centre</i> adopted by the Management Council on 26 May 2016.
AIFC Co-operation and Exchange of Information Rules	means the rules entitled AIFC Co-operation and Exchange of Information Rules, AIFC Rules No. FR0042 of 2018.
AIFC Glossary	means the glossary of terms entitled AIFC Glossary, AIFC Act No. FR0017 of 2018.
AIFC Participant	has the meaning given by article 1(5) of the Constitutional Statute.
AIFC Trust	<p>means a legal relationship whereby:</p> <p>(a) Trust Property is held by or in the name of a Trustee, and</p> <p>(b) the Trustee is under a fiduciary obligation to administer the Trust (in accordance with its terms) exclusively for the benefit of the Beneficiaries; and</p> <p>(c) the Beneficiaries are identified in or ascertainable in accordance with the terms of the Trust, and</p> <p>(d) the Beneficiaries may be persons (whether in existence or not) or groups of such persons, or persons able to benefit from any valid Charitable Trust or other Purpose Trust.</p>
Arbitration Regulations	means the arbitration regulations adopted by the Resolution of the AIFC Management Council, dated 5 December 2017.
Authorised Firm for Providing Trust Services	means an AIFC Participant that has been licensed by the AFSA to carry on the regulated activity defined in paragraph 7 of Schedule 1 of the AIFC's General Rules.



Term	Definition
Beneficial Interest	means the interest of a Beneficiary under a Trust.
Beneficiary	means a person entitled to benefit under a Trust or in whose favour a discretion to distribute Property held on Trust may be exercised.
Breach of Trust	means a breach of any duty imposed on a Trustee by these Regulations or by the terms of the Trust.
Charitable Trust	means a Trust or portion of a Trust, created for a charitable purpose described in section 35 (Charitable Trusts).
Companies Regulations	means the AIFC Companies Regulations No. 2 of 2017, as amended.
Collective Investment Scheme Rules	means the AIFC Collective Investment Scheme rules.
Constitutional Statute	means the constitutional statute of the Republic of Kazakhstan dated 7 December 2015 entitled <i>On the Astana International Financial Centre</i> .
Constructive Trust	means a trust imposed by a Court in accordance with section 69 or otherwise.
Court	means the AIFC Court as established under the Constitutional Statute.
Discretionary Trust	<p>is a Trust in which the Settlor has delegated complete or limited discretion to the Trustee to decide, amongst other things:</p> <ul style="list-style-type: none"> (a) when and how much Income or Property is distributed to a Beneficiary; and (b) which of the Beneficiaries may benefit.
DNFBP	has the meaning given to it in the AIFC Glossary.



Term	Definition
Enforce	in relation to a Trust means to require or compel Trustees to execute, carry out and perform their duties under the Trust Instrument in relation to its non-charitable purposes and to bring and prosecute proceedings to enforce the terms of the Trust.
Enforcer	shall be construed in accordance with section 36 (Non-Charitable Trusts or Purpose Trusts).
Express Trust	is a Trust created with the Settlor's express intent declared in writing or a written declaration of Trust by the Trustee.
Foreign Law	means any law other than AIFC Law.
Foreign Trust	is a Trust whose Governing Law is the law of a jurisdiction other than AIFC, including any Trust within the meaning of the Hague Convention.
Governing Law	has the meaning given in section 8 (Governing Law).
Governor	means the Governor of the Astana International Financial Centre.
Hague Convention	means the Convention on the law applicable to Trusts and on their recognition, done at The Hague on 1 July 1985.
Heirship Right	means any right, claim or interest in, against or to Property of a person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the Property of such person.
Income	includes rents and profits.
Management Council Resolution on AIFC Bodies	means the document entitled The Structure of the Bodies of the Astana International Financial Centre, adopted by resolution of the Management Council on 26 May 2016, as amended by resolution of the Management Council, the Amendments and supplementations to the Structure of the Bodies of the Astana International Financial Centre, adopted on 9 October 2017.
Minor	means a person who has not attained the age of majority under the Governing Law of Trust or the law of his domicile.
Non-Charitable Trust (or Purpose Trust)	has the meaning given in section 36 (Non-Charitable Trusts or Purpose Trusts).



Term	Definition
Personal Relationship	<p>includes every form of relationship by blood adoption marriage or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, including a former personal relationship which has in law or in fact terminated and in particular a personal relationship between two persons exists if:</p> <ul style="list-style-type: none"> (a) one is the child of the other, natural or adopted, whether or not the adoption is recognised by law, legitimate or illegitimate; (b) one is married to the other, whether or not the marriage is recognised by law; (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, (d) obligations or responsibilities analogous to those of parents and child or husband and wife; or (e) personal relationships exist between each of them and a third person, <p>but no change in circumstances shall cause a personal relationship once established to terminate.</p>
Property	means any movable or immovable property, and includes rights and interests, whether present or future and whether vested or contingent.
Protective Trust	is a Trust that is designed to protect the Trust Property to ensure the continued support of the Beneficiary.
Protector	means any person other than the Settlor upon whom any power is conferred by section 97 (Incapacitation of Protector or Settlor).
Purpose Trust	means a Trust or portion of a Trust created for a purpose which is not a charitable purpose as described in section 36 (Non-Charitable Trusts or Purpose Trusts).
Regulations	means the AIFC Trust Regulations 2019.
Schedule	means a schedule to these Regulations.
Settlor	means a person who provides Trust Property or makes a testamentary disposition on Trust or to a Trust.



Term	Definition
Trust	is a right, enforceable solely in equity, to the beneficial enjoyment of Property to which another person holds the legal title and includes an AIFC Trust and a Foreign Trust.
Trust Instrument	means an instrument by which a Trust is created and includes a unilateral declaration of Trust and any instrument varying the terms of the Trust.
Trust Property	means the Property for the time being held in Trust.
Trustee	means a person appointed to act as a Trustee of a Trust or holding office as such in accordance with the provisions of these Regulations.



SCHEDULE 1

APPLICATION OF THE ARBITRATION REGULATIONS

1. The Arbitration Regulations shall apply and be construed with respect to a Trust arbitration, as stated hereunder.
2. In the Arbitration Regulations, "dispute" includes an administration question.
3. Section 15(1) (Definition and form of arbitration agreement) of the Arbitration Regulations shall apply as if it read -

The Settlor of a Trust shall be free to determine (by provision in the Trust Instrument) how, in relation to a Trust, disputes are resolved, subject only to such safeguards as are necessary in the public interest;".
4. Where in the Arbitration Regulations reference is made to a matter agreed between the parties to an arbitration agreement (including a matter which may be authorised, chosen, conferred, designated, nominated or vested by the parties) that matter shall (except where no effective provision is made) be determined as provided in the Trust Instrument.
5. Neither section 15 (Definition and form of arbitration agreement) of the Arbitration Regulations nor any rule of law or construction treating an arbitration agreement separate to any agreement of which it is a part shall apply in relation to a Trust arbitration.
6. The term "action" in section 16 (Arbitration agreement and substantive claim before a court) of the Arbitration Regulations includes an application or other reference to the Court concerning an administration question which the Trust Instrument requires to be submitted to arbitration and a stay of that application or other reference may be sought by any of the parties in relation to the Trust, whether or not a party to that application or other reference.
7. In any application or other reference to the Court referred to in paragraph 6, the Court may stay the proceedings on its own volition unless all parties in relation to the Trust affected by the application are before it or are represented by persons before it.
8. Section 41 (Form and contents of award) of the Arbitration Regulations shall apply as if it included the following sections:

"(5) Where a person is or has been a party to a Trust arbitration in the capacity of Trustee he shall, unless the tribunal otherwise orders, be entitled to the costs of the arbitration, in so far as they are not recovered from or paid by any other person, out of the fund held by the Trustee; and the tribunal may otherwise order only on the ground that the Trustee has in substance acted for his own benefit rather than for the benefit of the Trust.

"(6) Where a person is or has been a party to a Trust arbitration in the capacity of Trustee and is entitled to be paid his costs out of the fund held by the Trustee any doubt as to whether costs were reasonably incurred shall be resolved in favour of the Trustee. Costs shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the Trustee."
9. For the purposes of enforcing an arbitral award under section 44(2)(a)(iii) (Application for setting aside as exclusive recourse against arbitral award) of the Arbitration Regulations, the term "dispute" includes an administration question.