

ABU DHABI FREE ZONE (ADFZ)
COMPANIES REGISTRATION REGULATIONS

DEC 2011

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PART 1

GENERAL

1. TITLE

These Regulations are to be referred to as the Abu Dhabi Free Zone Limited Liability Company (ADFZ) Registration Regulations.

2. LEGISLATIVE AUTHORITY

These Regulations are issued by the Abu Dhabi Ports Company, Public Joint Stock Company (ADPC) in fulfilment of its obligations under Article 4 of Emiri Decree No 6 of 2006.

These Regulations are made on and come into force on May 2011 and will apply in the jurisdiction of ADFZ until such time as they are revoked by ADPC. For the avoidance of doubt, Federal Law No (8) of 1984 (as amended from time to time), shall not apply in ADFZ.

3. INTERPRETATION

Schedule 1 contains a list of defined terms used in these Regulations.

PART 2

COMPANY AND BRANCH OFFICE FORMATION AND REGISTRATION

4. FORMATION OF COMPANIES

4.1 Any one or more persons may apply for the formation of a Company with limited liability by signing and filing an application for incorporation with the Registrar in ADFZ.

4.2 A Company may be incorporated to conduct any lawful business in ADFZ as may be permitted pursuant to the Business Licensing Regulations.

4.3 The application submitted to the Registrar under Clause 4.1 shall be signed by the incorporators and shall set out:

- (a) the name of the Company, which must end with the words "Ltd";
- (b) the address of the Company's registered office;
- (c) the nature of the business to be conducted by the Company;
- (d) the amount of the Company's authorised share capital and the amount of share capital paid up upon incorporation, which shall never be less than AED 150,000 or any higher minimum amount as may be required by the Registrar from time to time;
- (e) the full names and address of each of the incorporators together with details of their share holdings and (if they are different) the persons who are to serve as directors;
- (f) the Company's Articles; and
- (g) such other particulars as the Registrar may require.

5. ESTABLISHMENT OF BRANCH OFFICES

- 5.1 Any company or other legal entity incorporated outside ADFZ (and whether in the United Arab Emirates or abroad) may apply to incorporate a branch office in ADFZ by signing and filing an application form with the Registrar. The application submitted to the Registrar under this Clause 5.1 shall be accompanied by:
- (a) a copy of the memorandum and articles of association (or equivalent constitutional documentation) for the company or the legal entity;
 - (b) the names of the Directors of the company or the legal entity; and
 - (c) such other information as the Registrar may require.
- 5.2 The Registrar may refuse to register a branch office for such reason as he believes to be proper grounds for refusing such registration.
- 5.3 Where the Registrar refuses to grant his consent for the registration of a branch office he shall give written notice of that fact to the applicant.
- 5.4 Where the Registrar grants his consent to the registration of a branch office he shall issue a certificate of registration for such branch office.
- 5.5 A branch office may be registered to conduct any lawful business in ADFZ as may be permitted pursuant to the Business Licensing Regulations and its certificate of registration. In these Regulations **branch** means a place of business that forms a legally dependent part of the institution and conducts directly all or some of the operations inherent in its business.

6. ARTICLES

- 6.1 A Company's Articles shall be in the English language and shall be printed and be divided into paragraphs numbered consecutively. A Company's Articles shall contain the information set out in paragraphs (a) through to (g) of Clause 4.3, and such other matters as the incorporators wish to include in the Articles.
- 6.2 ADPC shall prescribe model Articles to be known as the **Standard Articles** and a Company may, for its Articles, adopt the whole or any such part of such Standard Articles as are applicable to that entity.
- 6.3 If the Standard Articles are not adopted by a Company in their entirety, Articles specifying regulations for the Company which are consistent with Applicable Law and these Regulations including the incorporation of corporate governance standards consistent with these Regulations and which do not seek to modify the applicable provisions of these Regulations may be adopted and shall be deposited with the Registrar once such Articles have been adopted by the Company.
- 6.4 Any amendment to a Company's Articles must be consistent with Applicable Law and these Regulations including corporate governance standards consistent with these Regulations and shall be deposited with the Registrar once such amended Articles have been adopted by the Company, for approval prior to such amendment taking effect.
- 6.5 If the Articles of a Company are amended, the rights and obligations of the incorporators or members and/or the Company which have arisen under the Articles prior to the date of such amendment shall not be affected unless the amendment provides otherwise.

6.6 The Articles shall make provision for:

- (a) the transfer of shares;
- (b) a general meeting of the Company at least once in each year;
- (c) the keeping of its accounts and laying of financial statements before general meetings of the Company;
- (d) an audit of the accounts of the Company at least once in every year by an auditor appointed by the general meeting; and
- (e) the number of members required to constitute a quorum at any general meeting of the Company.

7. REGISTRATION

7.1 The Registrar may refuse to register a Company for such reason as he believes to be proper grounds for refusing such registration.

7.2 Where the Registrar refuses to grant his consent for the registration of a Company he shall give written notice of that fact to the applicant and may provide the applicant with a written statement of reasons for the refusal.

7.3 Where the Registrar grants his consent to the registration of a Company he shall register the Company's Articles delivered to him under Clause 4.

8. EFFECT OF REGISTRATION

8.1 On the registration of a Company's Articles the Registrar shall:

- (a) issue a certificate that the Company is incorporated; and
- (b) assign to the Company a number, which shall be the Company's registered number.

8.2 From the date of incorporation mentioned in the Certificate of Incorporation, the incorporators, together with such other persons who may from time to time become members of the Company, shall be a body corporate having the name contained in the Certificate of Incorporation capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets as is provided by these Regulations in the event of its being wound up.

8.3 A Certificate of Incorporation is conclusive evidence of the following matters:

- (a) the incorporation of the Company; and
- (b) that the requirements of these Regulations have been complied with in respect of the registration of the Company.

9. EFFECT OF ARTICLES

9.1 Subject to the provisions of these Regulations, the Articles, when registered, bind the Company and its members to the same extent as if they respectively had been signed by the Company and by each member, and contained covenants on the part of the Company and each member to observe all the provisions of these Regulations and the Articles.

9.2 Money payable by a member to the Company under the Articles is a debt due from them to the Company.

10. ALTERATION OF ARTICLES

10.1 Subject to the provisions of these Regulations, a Company may alter its Articles by Resolution.

10.2 Notwithstanding anything in the Articles, a member of a Company is not bound by an alteration made in the Articles after the date on which he became a member if and so far as the alteration:

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
- (b) in any way increases his liability as at that date to contribute to the Company's share capital or otherwise to pay money to the Company,

unless he agrees in writing, either before or after the alteration is made, to be bound by it. In the event the member does not agree in writing to be so bound, his shareholding in the Company may be diluted in proportion to any new shares issued to the other shareholders and subject to the Articles.

11. COPIES OF ARTICLES FOR MEMBERS

11.1 A Company shall, on being so required by a member, send to that member a copy of the Articles subject to payment of such reasonable sum as the Company may require.

11.2 If a Company fails to comply with this Clause, that Company commits an offence.

12. CHANGE OF NAME

12.1 A Company may, by Resolution, change its name to a name which is acceptable to the Registrar.

12.2 Where a Company changes its name under this Clause, the Registrar shall enter the new Company name on the register in place of the former Company name, and shall issue a Certificate of Incorporation altered to meet the circumstances of the case, and the change of name has effect from the date on which the altered certificate is issued.

12.3 A change of name by a Company under these Regulations does not affect any rights or obligations of the Company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

12.4 The change of name will take effect from the date on which the Registrar issues the certificate of name change.

13. POWER TO REQUIRE CHANGE OF NAME

13.1 If, in the opinion of the Registrar, the name by which a Company is registered is misleading or otherwise undesirable, he may direct the Company to change its name.

13.2 The direction to change the Company's name shall be complied with within one month from the date of the direction or such longer period as the Registrar may allow.

13.3 A Company which fails to comply with a direction under this Clause commits an offence.

14. PARTICULARS IN COMMUNICATION

- 14.1 The name of a Company and the address and geographical location of the registered office of a Company shall appear in legible characters in all its business letters, order forms and other external communications.
- 14.2 If reference to the amount of share capital is made on the stationery used for any such letters, or on the Company's order forms, the reference shall be to paid up share capital.

15. ANNUAL RETURN

- 15.1 Every Company shall, before the end of March in every year after the year in which it is incorporated, file with the Registrar a return stating in respect of the Company's shares the name and address of each member who on 1 January in that year held not less than 5% of the allotted shares in the Company and the total number of shares comprised in that holding.
- 15.2 The return shall contain such information, declarations and verifications as may be prescribed and be accompanied by the prescribed filing fee.

16. FORM OF COMPANY RECORDS

- 16.1 The records, which a Company is required by these Regulations to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in an intelligible written form within a reasonable time.
- 16.2 A Company shall take reasonable precautions to:
- (a) prevent loss or destruction of;
 - (b) prevent falsification of entries in; and
 - (c) facilitate detection and correction of inaccuracies in,
- the records required by these Regulations to be kept.
- 16.3 If any record referred to in this Clause is kept otherwise than in an intelligible written form, any duty imposed on the Company by these Regulations to allow inspection and copying of, or to require the giving or production of, information or documents shall be treated as a duty to allow inspection and copying of, or to require the giving or production of, information or documents in intelligible written form.

PART 3

CORPORATE CAPACITY AND TRANSACTIONS

17. CAPACITY OF COMPANY

- 17.1 A Company has the capacity and rights and privileges of a natural person.
- 17.2 The capacity of a Company is not limited by anything in its Articles or by any act of its members.

18. RESTRICTIONS ON ACTIVITIES

- 18.1 No Company or branch office, which is incorporated or registered under these Regulations, shall:
- (a) without the approval of the Registrar, carry on banking business;
 - (b) without the approval of the Registrar carry on business as an insurance or re-insurance company, insurance agent or insurance broker; or
 - (c) carry on any other business which may, by regulations made by ADPC, be prohibited by ADPC.
- 18.2 If a Company wishes to conduct trade or other business in the United Arab Emirates or elsewhere, it must obtain the appropriate licences and other approvals to conduct the trade or other business activity from the competent authorities.

19. FORM OF CONTRACTS

A person acting under the express or implied authority of a Company may make, vary or discharge a contract or sign an instrument on behalf of the Company to the same manner as if the contract were made, varied or discharged or the instrument signed by a natural person.

20. TRANSACTIONS ENTERED INTO PRIOR TO CORPORATE EXISTENCE

- 20.1 Where a transaction purports to be entered into by a company, or by a person as agent for a company, at a time when the company has not been formed, then, unless otherwise agreed by the parties to the transaction, the transaction has effect as one entered into by the person purporting to act for the company or as agent for it, and he is personally bound by the transaction and entitled to its benefits.
- 20.2 A Company may, within such period as may be specified in the terms of the transaction, or if no period is specified, within a reasonable time after it is formed, by act or conduct signifying its intention to be bound thereby, adopt any such transaction and it shall thenceforth be bound by it and entitled to its benefits and the person who entered into the transaction shall cease to be so bound and entitled.

21. PARTICIPATION IN A HOLDING COMPANY

- 21.1 Except in the cases mentioned in these Regulations, a body corporate cannot be a member of a Company which is its holding company; and an allotment or transfer of shares in a Company to its subsidiary is void.
- 21.2 Clause 21.1 does not prevent a subsidiary which is, when it becomes a subsidiary, a member of its holding company, from continuing to be a member but, subject to Clause 21.4, the subsidiary:
- (a) has no right to vote at meetings of the holding Company or a class of its members;
 - (b) shall not acquire further shares in the holding Company except on a capitalisation issue; and
 - (c) shall within 12 months dispose of all of its shares therein.
- 21.3 Clauses 21.1 and 21.2 apply in relation to a nominee for a body corporate which is a subsidiary as if references to the body corporate included a nominee for it.
- 21.4 Nothing in this Clause applies where the subsidiary concerned is a personal representative.

PART 4

MEMBERSHIP AND SHARES

22. DEFINITION OF "MEMBER"

- 22.1 The incorporators of a Company are deemed to have agreed to become members of the Company, and on its registration shall be entered as such in its register of members.
- 22.2 Every other person who agrees to become a shareholder of a company, and whose name is entered in its register of members, is a member of the Company.

23. NATURE OF SHARES

- 23.1 Each share shall:
- (a) carry the right to vote at a meeting of the Company;
 - (b) represent a proportionate interest in the Company; and
 - (c) rank in all respects equally with each other share in the Company.
- 23.2 The shares or other interests of a member of a Company are, subject to Clause 29, transferable in the manner provided by the Company's Articles.
- 23.3 All shares must be fully paid when allotted.
- 23.4 A Company may create different classes of shares, provided that the rights of each class of shares and the protection of holders of the different classes of shares shall be clearly stipulated in the Company's Articles.

24. ALTERATION OF SHARE CAPITAL

- 24.1 A Company may, by altering its Articles:
- (a) increase its share capital by creating new shares of such value as it thinks expedient;
 - (b) consolidate and divide all or any of its shares (whether issued or not) into shares of a larger amount than its existing shares;
 - (c) sub-divide its shares, or any of them, into shares of a smaller amount than is fixed by the Articles; and
 - (d) cancel shares which, at the date of the passing of a Resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the Company's share capital by the amount of the shares so cancelled.
- 24.2 A cancellation of shares under this Clause does not for the purposes of these Regulations constitute a reduction of share capital.

25. BEARER SHARES

It shall not be lawful for a Company to issue bearer shares.

26. NON-CASH CONSIDERATION FOR SHARES

26.1 Where a Company allots shares the consideration for which will be other than cash, the board of directors of the Company must:

- (a) determine the reasonable cash value of the consideration for the shares;
- (b) resolve that, in its opinion, the consideration for the shares is fair and reasonable to the Company and to all existing shareholders;
- (c) resolve that, in its opinion, the present cash value of the consideration to be provided for the shares is not less than the share value to be credited for the issue of the shares; and
- (d) procure that an accountancy firm acceptable to ADPC shall issue a report to the Registrar confirming that the consideration for the shares is not less than the share value to be credited for the issue of the shares. The Directors shall procure that such auditor's report is provided to the Registrar at least one month prior to the proposed date of allotment of the shares.

For the avoidance of doubt, an allotment of shares under Clause 26.1 shall require the prior written approval of the Registrar.

26.2 The resolutions required pursuant to Clause 26.1 must describe the consideration in sufficient detail and the present cash value of that consideration, as determined by the Directors, and the basis for assessing it.

26.3 Nothing in this Clause applies to:

- (a) the allotment of shares in a Company on the conversion of any convertible securities;
- (b) the exercise of an option to acquire shares in the Company;
- (c) the allotment of shares that are fully paid up from the reserves of the Company to all shareholders in proportion to the number of shares held by each shareholder; or
- (d) the consolidation and division, or subdivision, of shares, or any class of shares, in the Company in proportion to those shares or the shares in that class.

PART 5

REGISTER OF MEMBERS AND CERTIFICATES

27. REGISTER OF MEMBERS

27.1 Every Company shall keep a register of its members and enter in it:

- (a) the names and addresses of its members, together with a statement of the shares held by each member, distinguishing each share by its number (so long as the share has a number);
- (b) the date on which each person was registered as a member; and
- (c) the date on which any person ceased to be a member.

27.2 If a Company fails to comply with Clause 27.1, the Company and every officer of it who is in default commits an offence.

28. REGISTER OF SECURITY INTERESTS

- 28.1 Every Company shall keep a register of any security interests created over or in relation to any shares in the Company and shall enter in it:
- (a) the name and address of the member granting the security interest;
 - (b) the number of shares effected by the security interest;
 - (c) the date on which the security interest was created and the nature of the security interest (including the amount in respect of which the security interest has been created); and
 - (d) the name and address of the security holder.
- 28.2 Every member of a Company shall be obligated to report to the Company the creation, modification and discharge of a security interest over any of his shares in the Company within seven calendar days of the creation, modification or discharge of such security interest.
- 28.3 A Company shall, within seven calendar days of receipt of the information envisaged in Clause 28.2, provide such information to the Registrar.
- 28.4 If a Company fails to comply with the provisions of Clause 28.1 or Clause 28.3, or, if the members of a Company should fail to comply with Clause 28.2, then the Company (in the event of non-compliance with Clause 28.1 or Clause 28.3) and every member of it (in the event of non-compliance with Clause 28.2) who is in default commits an offence.

29. TRANSFER AND REGISTRATION

- 29.1 Notwithstanding anything in its Articles, a Company shall not register a transfer of shares in the Company unless an instrument of transfer in writing, duly signed by or on behalf of the transferee and transferor has been delivered to it.
- 29.2 Clause 29 does not prejudice a power of the Company to register as a shareholder a person to whom the right to shares in the Company has been transmitted by operation of law.
- 29.3 A transfer of the share or other interest of a deceased member of a Company made by his personal representative, although the personal representative is not himself a member of the Company, is as valid as if he had been a member at the time of the execution of the instrument of transfer.
- 29.4 On the application of the transferor of a share or interest in a company, the Company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- 29.5 A Company's register of members shall be kept at its registered office.

30. INSPECTION OF REGISTERS

- 30.1 The register of members and the register of security interests shall during business hours be open to the inspection of a member of the Company without charge, and of any other person on payment of such reasonable sum, as the Company may require at the registered office of the Company.
- 30.2 If inspection under this Clause is refused, the Company commits an offence.
- 30.3 In the case of refusal the Registrar may by order compel an immediate inspection of the relevant register.

30.4 If a Company refuses to allow an inspection of the register of members or the register of security interests in accordance with this Clause 30, the Registrar may issue a direction requiring the Company to provide immediate inspection of the relevant register by a member.

31. RECTIFICATION OF REGISTERS

31.1 If:

- (a) the name of a person or the number of shares held is, without sufficient reason, entered in or omitted from a Company's register of members; or
- (b) there is a failure or unnecessary delay in entering in the register the fact of a person having ceased to be a member; or
- (c) the register of security interests does not accurately reflect the information required under Clause 28,

the person aggrieved, or a member of the Company, or the Company, may apply to the Registrar for rectification of the register.

31.2 The Registrar may refuse the application or may order rectification of the relevant register and payment by the Company of any damages sustained by a party aggrieved.

31.3 Whether or not the Registrar exercises power under Clause 31.2, the Review Committee may make one or more of the following orders:

- (a) on application of the Registrar, an order enforcing any orders made by him under this Clause;
- (b) on application of a person aggrieved, a shareholder of the Company or the Company, an order directing the Registrar to, or not to, rectify the relevant register or to do any act or thing; or
- (c) on application of a person aggrieved, an order requiring the Company to pay damages or to do any act or thing.

32. SHARE CERTIFICATES

32.1 Every Company shall:

- (a) within two months after the allotment of any of its shares; and
- (b) within two months after the date on which a transfer of any of its shares is lodged with the Company,

complete and have ready for delivery the certificates of all shares allotted or transferred unless the conditions of allotment of the shares otherwise provide.

32.2 Clause 32.1 does not apply to a transfer of shares which the Company is for any reason entitled to refuse to register and does not register.

32.3 In the event of failure to comply with Clause 32.1, the Company and every officer of it who is in default commits an offence.

- 32.4 If a Company refuses to register a transfer of shares the Company shall, within two months after the date on which the transfer was lodged with it, give notice of the refusal to the transferor and transferee.

PART 6

PURCHASE OF SHARES

33. POWER OF COMPANY TO PURCHASE OWN SHARES

- 33.1 A Company may purchase its own shares.
- 33.2 A purchase under this Clause shall, unless the Company is a wholly owned subsidiary, be sanctioned by a Resolution.
- 33.3 The shares:
- (a) may only be purchased pursuant to a contract approved in advance by a Resolution of the Company; and
 - (b) shall not carry the right to vote on the Resolution authorising the purchase.
- 33.4 Shares may be purchased only from the following sources:
- (a) in the case of the share value of the shares, from paid up share capital, share premium and other reserves of the Company; and
 - (b) in the case of any premium, from realised or unrealised profits, share premium or other reserves of the Company.
- 33.5 Upon the purchase of shares under this Clause, the amount of the Company's share capital shall be diminished by the share value of those shares but the purchase shall not be taken as reducing the authorised share capital of the Company, unless those shares are cancelled.
- 33.6 Where pursuant to this Clause a Company is about to purchase its shares, it may issue shares up to the share value of the shares to be redeemed as if those shares had never been issued.
- 33.7 A Company may not under this Clause redeem its shares if as a result of the purchase there would no longer be a shareholder of the Company holding shares.

34. TREASURY SHARES

- 34.1 Where shares are purchased by a Company in the manner permitted by these Regulations, the Company may:
- (a) hold the shares (or any of them); or
 - (b) deal with any of them, at any time, in accordance with Clause 37.
- 34.2 Where shares are held under Clause 34.1(a) then, for the purposes of Clause 27, the Company must be entered in the register as the member holding those shares, provided that a Company need not comply with the requirements of Clause 27 if the shares are cancelled forthwith by the Company after the purchase (in accordance with Clause 37.1(a)).

34.3 In these Regulations, references to a Company holding shares as treasury shares are references to the Company holding shares which:

- (a) were (or are treated as having been) purchased by it in circumstances in which this Clause applies; and
- (b) have been held by the Company continuously since they were so purchased.

35. TREASURY SHARES: MAXIMUM HOLDINGS

35.1 Where a Company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the Company at that time.

35.2 Where the share capital of a Company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10% of the nominal value of the issued share capital of the shares in that class at that time.

35.3 Where Clause 35.1 or Clause 35.2 is contravened by a Company, the Company must dispose of or cancel the excess shares, in accordance with Clause 37, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose the **excess shares** means such number of shares, held by the Company as treasury shares at the time in question, as resulted in the limit being exceeded.

36. TREASURY SHARES: VOTING AND OTHER RIGHTS

36.1 This Clause applies to shares which are held by a Company as treasury shares (the **treasury shares**).

36.2 The Company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

36.3 The rights to which Clause 36.2 applies include any right to attend or vote at meetings.

36.4 No dividend may be paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding-up) may be made to the Company in respect of the treasury shares.

37. TREASURY SHARES: DISPOSAL AND CANCELLATION

37.1 Where shares are held as treasury shares, a Company may at any time:

- (a) sell the shares (or any of them);
- (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme; or
- (c) cancel the shares (or any of them).

37.2 If the Company receives a notice under Clause 93 that a person desires to acquire any of the shares, the Company must not, under Clause 37.1, sell or transfer the shares to which the notice relates except to that person.

37.3 If under Clause 37.1(c) the Company cancels shares held as treasury shares, the Company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the Company's authorised share capital.

37.4 The directors may take such steps as are required to enable the Company to cancel its shares under Clause 37.1 without complying with Clause 40 of these Regulations. If on the purchase by a Company of its own shares, the shares so purchased are cancelled forthwith, the Company must give notice of the cancellation to the Registrar, within the period of 28 days beginning with the date on which the shares are delivered to it, specifying the shares cancelled.

38. TREASURY SHARES: PROCEEDS OF SALE

38.1 Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this Clause.

38.2 Where the proceeds of sale are equal to or less than the purchase price paid by the Company for the shares, the proceeds shall be treated as a realised profit of the Company.

38.3 Where the proceeds of sale exceed the purchase price paid by the Company for the shares:

(a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated as a realised profit of the Company; and

(b) a sum equal to the excess shall be transferred to the Company's share premium account.

38.4 The purchase price paid by the Company for the shares shall be determined by the application of a weighted average price method.

39. TREASURY SHARES: PENALTY FOR CONTRAVENTION

If a Company contravenes any provision of Clauses 34 to 38 every officer of the Company who is in default commits an offence.

PART 7

REDUCTION OF CAPITAL

40. REDUCTION OF SHARE CAPITAL

40.1 A Company if authorised by a Resolution and its Articles may reduce its share capital in any way on such terms as it may decide, and in particular, by:

(a) either with or without extinguishing or reducing liability on any of its shares, cancelling any paid up capital that is lost or unrepresented by available assets; or

(b) either with or without extinguishing or reducing liability of any of its shares and either with or without reducing the number of such shares, paying off any paid up capital that is in excess of the requirements of the Company.

40.2 No Company shall reduce the amount of its share capital by virtue of Clause 40.1 unless it complies with the following:

(a) at a date not more than 30 days and not less than 15 days before the date from which the reduction of the share capital is to have effect, the Company shall cause a notice to be published in a newspaper approved by the Registrar stating:

- (i) the amount of the share capital as last previously determined by the Company;
 - (ii) the amount of each share;
 - (iii) the amount to which the share capital is to be reduced; and
 - (iv) the date from which the reduction is to have effect.
- (b) On the date from which the reduction is to have effect a certificate shall be signed by at least two directors of the Company declaring either:
- (i) that on that date the Company is solvent; or
 - (ii) that all the creditors of the Company on that date have consented to the reduction.

40.3 Where shares are to be cancelled in order to reduce the capital of a Company the shares shall be acquired at the lowest price at which, in the opinion of the directors, the shares are obtainable, but not exceeding an amount, if any, stated in or determined by the Articles.

40.4 Where a Company reduces the amount of its share capital then within 30 days after the date from which the reduction has effect the Company shall file a copy of the notice referred to in Clause 40.2(a) and the certificate referred to in Clause 40.2(b) with the Registrar stating that this Clause 40 has been duly complied with.

40.5 If any Company fails to comply with this Clause it commits an offence.

41. LIABILITY OF MEMBERS ON REDUCED SHARES

If after a certificate is signed in accordance with Clause 40.2(b)(ii), a creditor who did not consent to the reduction has a debt or claim against the Company which the Company is unable to pay as a result of the reduction, every person who was a member of the Company at the date of the certificate is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the Company had commenced to be wound up on the date before that date.

PART 8

ADMINISTRATION

42. REGISTERED OFFICE

42.1 A Company shall at all times have a registered office which must be an office maintained in ADFZ by the Company to which all communications and notices may be addressed.

42.2 A document may be served on a Company by leaving it at, or sending it by post to, the registered office of the Company.

PART 9

OFFICERS

43. DIRECTORS

43.1 Subject to any limitations in the Articles, the business and affairs of a Company shall be managed by not less than two Directors.

43.2 The Directors may exercise all the powers of the Company except any powers that these Regulations or the Company's Articles (or equivalent constitutional documentation including any written agreement between the members) require the Company to exercise in general meeting or by other action of the members.

43.3 No person shall be a Director who:

- (a) is under the age of 18 years;
- (b) is disqualified from being a Director;
- (c) is an undischarged bankrupt; or
- (d) is not a natural person.

44. ELECTIONS, TERM AND REMOVAL OF DIRECTORS

44.1 The first Directors shall be elected by the incorporators and thereafter the Directors shall be elected by the members for such term as the members may determine.

44.2 Each Director holds office until his successor takes office or until his earlier death, resignation or removal by Resolution.

44.3 A vacancy created by the removal of a Director may be filled by a Resolution or in the absence of such Resolution by the remaining Directors.

44.4 The number of Directors shall be fixed by the Articles.

45. DUTIES OF OFFICERS

45.1 The general duties specified in Clauses 46 to 53 are owed by an Officer to the Company.

45.2 Clauses 46 to 53 have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a company.

46. BASIC DUTIES

An Officer must act:

- (a) honestly and in good faith;
- (b) for a proper purpose; and
- (c) in the best interests of the Company.

47. USE OF POSITION AND INFORMATION

47.1 Officers must not improperly use their position to:

- (a) gain an advantage for themselves or someone else; or
- (b) cause detriment to the Company.

47.2 A person who obtains information because they are, or have been, an Officer must not improperly use the information to:

- (a) gain an advantage for themselves or someone else; or
- (b) cause detriment to the Company.

This duty continues after the person stops being an Officer of the Company.

48. DUTY TO ACT WITHIN POWERS

A Director must:

- (a) act in accordance with the Company's Articles (or equivalent constitutional documentation including any written agreement between the members); and
- (b) only exercise powers for the purposes for which they are conferred.

49. DUTY TO PROMOTE THE SUCCESS OF THE COMPANY

49.1 A Director must act in the way he considers, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:

- (a) the likely consequences of any decision in the long term;
- (b) the interests of the Company's employees;
- (c) the need to foster the Company's business relationships with suppliers, customers and others;
- (d) the impact of the Company's operations on the community and environment;
- (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
- (f) the need to act fairly as between members of the Company.

49.2 Where or to the extent that the purposes of the Company consist of or include purposes other than the benefit of its members, Clause 49.1 has effect as if the reference to promoting the success of the Company for the benefit of its members were to achieving those purposes.

49.3 The duty imposed by this Clause has effect subject to any enactment or rule of law requiring Directors, in certain circumstances, to consider or act in the interests of creditors of the Company.

50. DUTY TO EXERCISE INDEPENDENT JUDGMENT

50.1 A Director must exercise independent judgment and must be fully aware of the subject matter of any judgment to the extent they reasonably believe to be appropriate.

50.2 This duty is not infringed by his acting:

- (a) in accordance with an agreement duly entered into by the Company that restricts the future exercise of discretion by its Directors; or

- (b) in a way authorised by the Company's Articles (or equivalent constitutional documentation including any written agreement between the members).

51. DUTY TO EXERCISE REASONABLE CARE, SKILL AND DILIGENCE

51.1 An Officer must exercise reasonable care, skill and diligence.

51.2 This means the care, skill and diligence that would be exercised by a reasonably diligent person with:

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions performed by the Officer in relation to the Company; and
- (b) the general knowledge, skill and experience that the Officer has.

52. DUTY TO AVOID CONFLICTS OF INTEREST

52.1 A Director must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

52.2 This duty is not infringed:

- (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (b) if the matter has been authorised by the Directors.

52.3 The authorisation is effective only if:

- (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the Director in question or any other interested Director; and
- (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

52.4 Any reference in this Clause to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

53. DUTY TO DECLARE INTEREST

53.1 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless Clause 53.2 says otherwise.

53.2 The Director does not need to give notice of an interest under Clause 53.1 if;

- (a) the interest:
 - (i) arises because the Director is a member of the Company and is held in common with the other members of the Company;
 - (ii) arises in relation to the Director's remuneration as a director of the Company;
 - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the Company if it is not approved by the members;

- (iv) arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company;
 - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv);
 - (vi) relates to a contract that insures, or would insure, the Director against liabilities the Director incurs as an officer of the Company (but only if the contract does not make the Company or a related body corporate the insurer); or
 - (vii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the Director is a director of the related body corporate; or
- (b) both the following conditions are satisfied:
- (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under Clause 53.1; and
 - (ii) the nature or extent of the interest has not materially increased above that disclosed in the notice.

53.3 The notice required by Clause 53.1 must:

- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a Director's meeting as soon as practicable after the Director becomes aware of their interest in the matter.

53.4 If a declaration of interest under this Clause proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

53.5 This Clause does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

For this purpose a Director is treated as being aware of matters of which he ought reasonably to be aware.

54. CONSEQUENCES OF FAILURE TO COMPLY WITH CLAUSE 53

54.1 Subject to Clauses 54.2 and 54.3, where a Director fails to disclose an interest of his under Clause 53, the Company or a member of the Company may apply to the Review Committee for an order setting aside the transaction concerned and directing that the Director account to the Company for any profit or gain realised, and the Review Committee may so order or make such other order as it thinks fit.

54.2 A transaction is not voidable, and a Director is not accountable, under Clause 54.1 where, notwithstanding a failure to comply with Clause 53:

- (a) the transaction is confirmed by Resolution; and

- (b) the nature and extent of the Director's interest in the transaction were disclosed in reasonable detail in the notice calling the meeting at which the Resolution is passed.

54.3 Without prejudice to its power to order that a Director account for any profit or gain realised, the Review Committee shall not set aside a transaction unless it is satisfied that:

- (a) the interests of third parties who have acted in good faith thereunder would not thereby be unfairly prejudiced; and
- (b) the transaction was not reasonable and fair in the interests of the Company at the time it was entered into.

55. CONSEQUENCES OF DELEGATION

55.1 If a Director delegates a duty or a power, the Director is responsible for the acts or omissions of the delegate in respect of the delegated duty or power as they were acts or omissions of the Director.

55.2 A Director is not responsible under Clause 55.1 if:

- (a) the Director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on Directors of the Company by these Regulations and the Company's Articles (or equivalent constitutional documents); and
- (b) the Director believed:
 - (i) on reasonable grounds;
 - (ii) in good faith; and
 - (iii) after making proper inquiry if the circumstances indicated the need for inquiry, that the delegate was reliable and competent in relation to the power or duty delegated.

56. PROHIBITIONS OF LOANS TO DIRECTORS

56.1 Subject to Clause 56.4, a Company shall not provide the following financial assistance to a Director:

- (a) a loan, debenture, credit facility or other similar form of financial assistance;
- (b) a guarantee or security or indemnity in connection with a loan, debenture, credit facility or other similar form of financial assistance, whether such financial assistance is provided by the Company or another person; or
- (c) any other form of financial assistance as may be prescribed in these Regulations;

unless:

- (d) consent is given by shareholders attending the meeting who together hold not less than 90% of the shares which are voted at that meeting. For this purpose any of the Company's share capital held as treasury shares shall be disregarded; and
- (e) all of the directors of the Company resolve that the giving of the financial assistance does not materially prejudice both of the following:
 - (i) the interests of the Company and its shareholders; and

- (ii) the Company's ability to discharge its liabilities as they fall due.

but in no event shall the Company provide any financial assistance to a Director for the principal purpose of enabling that Director (or a person connected to that Director) to acquire shares in the Company.

56.2 Any such financial assistance provided pursuant to Clause 56.1 shall be;

- (a) documented in writing; and
- (b) prior to its provision, recorded in the minutes of the meeting of the Directors of the Company, under signature of all Directors, as being provided in compliance with the requirements of Clause 56.1.

56.3 Financial assistance shall be deemed to be financial assistance to a Director if it is made to:

- (a) a spouse or child of a Director; or
- (b) to a Company of which a Director, his spouse or child, owns or controls directly or indirectly more than 20% of the share capital.

56.4 Clause 56.1 does not apply to financial assistance where:

- (a) it consists of remuneration, loans or allowances (of any type including housing allowances) in the ordinary course paid to a Director for his services as a director or as an employee;
- (b) it is liability indemnity insurance related to the discharge of his duties to the Company;
- (c) the Company's ordinary business includes providing finance and the financial assistance is given in the ordinary course of that business and on ordinary commercial terms; or
- (d) it is of a kind prescribed in these Regulations as exempted from this Clause.

57. INDEMNITY OF OFFICERS AND FORMER OFFICERS

57.1 Subject to Clauses 57.2 and 57.3 any provision, whether contained in the Articles (or equivalent constitutional documentation including any written agreement between the members) or in a contract with, a Company or otherwise, whereby the Company or any of its subsidiaries or any other person, for some benefit conferred or detriment suffered directly or indirectly by the Company, agrees to exempt any person from, or indemnify him against, any liability which by law would otherwise attach to him by reason of the fact that he is or was an officer of the Company shall be void.

57.2 Clause 57.1 does not apply to a provision for exempting a person from or indemnifying him against:

- (a) any liabilities incurred in defending any proceedings (whether civil or criminal);
 - (i) in which judgment is given in his favour or he is acquitted; or
 - (ii) which are discontinued otherwise than for some benefit conferred by him or on his behalf or some detriment suffered by him; or
 - (iii) which are settled on terms which include such benefit or detriment and, in the opinion of a majority of the Directors of the Company (excluding any Director who conferred such benefit or on whose behalf such benefit was conferred or who

suffered such detriment), he was substantially successful on the merits in his resistance to the proceedings; or

- (b) any liability incurred otherwise than to the Company if he acted in good faith with a view to the best interests of the Company; or
- (c) any liability against which the Company normally maintains insurance for persons other than Directors.

57.3 These Regulations do not prevent a Company from purchasing and maintaining for any such officer insurance against any such liability.

58. ALTERNATE DIRECTORS

58.1 A Director may by a written instrument appoint an alternate who need not be a Director and the name of such alternate shall be given in writing to the secretary.

58.2 An alternate for a Director appointed under Clause 58.1 shall be entitled to attend meetings in the absence of the Director who appointed him and to vote in the place of the Director.

59. REGISTRAR MAY ORDER THAT A PERSON SHALL NOT TAKE PART IN MANAGEMENT

The Registrar may order that any person shall not directly or indirectly take part in the management of a Company.

60. PERSONAL RESPONSIBILITY FOR LIABILITIES WHERE PERSON ACTS WHILE DISQUALIFIED

60.1 A person who acts in contravention of an order made under Clause 59 is personally responsible for such liabilities of the Company as are incurred at a time when that person was in contravention of the order, involved in the management of the Company.

60.2 Where a person is personally responsible under Clause 60.1 for liabilities of a Company he is jointly and severally liable in respect of those liabilities with the Company and any other person who, whether under this Clause 60 or otherwise, is so liable.

60.3 For the purposes of this Clause 60, a person is involved in the management of a Company if he is a Director of the Company or if he is concerned with, whether directly or indirectly, or takes part in, the management of the Company.

61. VALIDITY OF ACTS OF DIRECTOR

The acts of a Director are valid notwithstanding any defect that may afterwards be found in his appointment or qualification.

62. SECRETARY

Every Company shall have a secretary.

63. REGISTER OF DIRECTORS AND SECRETARIES

63.1 Every Company shall keep at its registered office a register of its Directors and secretary which shall contain such particulars, as the Registrar shall prescribe.

- 63.2 The register shall during business hours (subject to such reasonable restrictions as the Company may by its Articles or in general meeting impose, but so that not less than two hours in each business day be allowed for inspection) be open to the inspection of the Registrar and of a member or Director of the Company without charge.
- 63.3 If an inspection required under this Clause is refused, or if there is a failure to comply with Clause 63.1, the Company and every officer of it who is in default commits an offence.
- 63.4 In the case of a refusal of inspection of the register, the Registrar may by order compel an immediate inspection of the register.

64. ASSUMPTIONS IN RELATION TO DIRECTORS AND SECRETARY

- 64.1 Subject to Clause 64.3, a person dealing with a Company is entitled to assume that anyone who it appears, from information that is available to the public on the register of the Company or on a public register of the Registrar, to be a Director or secretary of the Company:
- (a) has been duly appointed; and
 - (b) has the authority to exercise the powers and perform the duties customarily exercised or performed by a Director or Company secretary of a similar company.
- 64.2 A Company is not entitled to assert in proceedings in relation to dealings of the Company that any such assumption is incorrect.
- 64.3 A person is not entitled to make an assumption as per Clause 64.1 if at the time of the dealing he knew or suspected that the assumption was incorrect.

PART 10

MEETINGS

65. PARTICIPATION IN MEETINGS

- 65.1 Subject to the Articles of a Company, if a member is by any means in communication with one or more other members so that each member participating in the communication can hear what is said by any other of them, each member so participating in the communication is deemed to be present at a meeting with the other members so participating.
- 65.2 Clause 65.1 applies to the participation in such communication by Directors or by members of a committee of Directors as it applies to the participation of members of a Company.

66. GENERAL MEETING

- 66.1 Every Company shall in each year hold a general meeting in addition to any other meetings in that year but so long as a Company holds its first general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- 66.2 Not more than 18 months shall elapse between the date of one general meeting and the date of the next.

67. REQUISITION OF MEETINGS

- 67.1 The Directors shall, notwithstanding anything in the Company's Articles, on a members' requisition forthwith proceed to call a general meeting to be held as soon as practicable but in any case not later than two months after the date of the deposit of the requisition.
- 67.2 A members' requisition is a requisition of members of the Company holding at the date of the deposit of the requisition not less than 10% in nominal value of the shares which at that date carry the right of voting at the meeting requisitioned. For this purpose any of the Company's share capital held as treasury shares shall be disregarded.
- 67.3 The requisition shall state the objects of the meeting, and shall be signed by or on behalf of the members making the requisition and deposited at the registered office of the Company, and may consist of several documents in similar form each signed by or on behalf of one or more of such members.
- 67.4 If the Directors do not within 21 days from the date of the deposit of the requisition proceed duly to call a meeting to be held within two months of that date, the member making the requisition, or any of them representing more than one half of the total voting rights of all of them, may themselves call a meeting, but a meeting so called shall not be held after three months from that date.
- 67.5 A meeting called under this Clause shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by Directors.

68. REGISTRAR'S POWER TO CALL MEETING IN DEFAULT

- 68.1 If default is made in holding a meeting in accordance with Clause 66 or Clause 67 or 70, the Registrar may, on the application of any officer, secretary or member of the Company, call, or direct the calling of, a general meeting of the Company.
- 68.2 If default is made in complying with directions given under Clause 68.1, the Company and any officer or secretary of it who is in default commits an offence.

69. NOTICE OF MEETINGS

- 69.1 Any meeting of the Company (other than an adjourned meeting) may be called by giving 14 days' notice in writing.
- 69.2 If a meeting is called by shorter notice than that specified in Clause 69.1, it is deemed to have been duly called if it so agreed by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote at the meeting. For this purpose any of the Company's share capital held as treasury shares shall be disregarded.

70. GENERAL PROVISIONS AS TO MEETINGS AND VOTES

In so far as Articles of the Company do not make other provision in that behalf, the following provisions apply to any meeting of the Company:

- (a) notice of any such meeting shall be given to every member entitled to receive it by delivering or posting it to his registered address;

- (b) members holding not less than 10% in nominal value of the shares carrying a right to vote thereat may call any such meeting. For this purpose any of the Company's share capital held as treasury shares shall be disregarded;
- (c) at any meeting of the Company, the attendance of the majority of the members present shall be a quorum;
- (d) at any meeting, other than an adjourned meeting, the quorum shall be persons holding or representing by proxy at least one-third in nominal value of the issued shares and at any such adjourned meeting, one person holding shares or his proxy shall be a quorum;
- (e) any member elected by the members present at any such meeting may be chairman; and
- (f) on a show of hands, every member present in person at any such meeting has one vote and on a poll, every member has one vote for every share held by him.

71. REPRESENTATION OF BODY CORPORATE AT MEETINGS

- 71.1 A body corporate, whether or not a Company within the meaning of these Regulations, may by Resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of a Company, or of creditors of a Company which it is entitled to attend.
- 71.2 A person so authorised is entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member or creditor of the Company.

72. RESOLUTIONS IN WRITING

- 72.1 Anything that may be done by a Resolution (but excluding a Resolution removing an auditor) passed at a meeting of a Company may, subject to the Articles, be done by a resolution in writing signed by or on behalf of each member who, at the date when the resolution is deemed to be passed, would be entitled to vote on the Resolution if it were proposed at a meeting.
- 72.2 A resolution in writing may consist of several instruments in the same form each signed by or on behalf of one or more members.
- 72.3 A resolution under this Clause shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as is specified in the resolution.
- 72.4 Any document attached to a resolution in writing under this Clause shall be deemed to have been laid before a meeting of the members signing the resolution.
- 72.5 Clause 75 applies to a resolution in writing under this Clause as if it had been passed at a meeting.
- 72.6 Nothing in this Clause affects or limits any provisions in the Articles or any rule of law relating to the effectiveness of the assent of members, or any class of members, of a Company given to any document, act or matter otherwise than at a meeting of them.

73. PROXIES

- 73.1 A member of a Company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him; and a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at

the meeting; but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

73.2 In every notice calling a meeting of the Company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member.

73.3 In the event of failure to comply with Clause 73.2 as respects any meeting, every officer of the Company who is in default commits an offence.

74. DEMAND FOR POLL

74.1 A provision contained in a Company's Articles is void in so far as it would have the effect either;

- (a) of excluding the right to demand a poll at a general meeting, on a question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either:
 - (i) by not less than five members having the right to vote on the question; or
 - (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote on the question.

74.2 The instrument appointing a proxy to vote at such a meeting is deemed also to confer authority to demand or join in demanding a poll, and for the purposes of Clause 74.1 a demand by a person as proxy for a member is the same as a demand by the member.

74.3 On a poll taken at such a meeting, a member entitled to more than one vote need not, if he votes (in person or by proxy), use all his votes or cast all the votes he uses in the same way.

75. MINUTES

75.1 Every Company shall cause minutes of all proceedings at general meetings, meetings of its Directors and of committees of Directors to be entered in books kept for that purpose, and the names of the Directors present at each such meeting shall be recorded in the minutes.

75.2 Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, is evidence of the proceedings.

75.3 Where minutes have been made in accordance with this Clause then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings which took place at the meeting to have duly taken place.

75.4 If a Company fails to comply with Clause 75.1, the Company and every officer of it who is in default commits an offence.

76. INSPECTION OF MINUTE BOOKS

76.1 The books containing the minutes of a general meeting shall be kept at the Company's registered office, and shall during business hours be open to the inspection of a member without charge.

76.2 A member may require, on submission to the Company of a written request and on payment of such reasonable sum as the Company may require, a copy of any such minutes and the Company shall,

within seven days after the receipt of the request and the payment, cause the copy so required to be made available at the registered office of the Company for collection during business hours.

76.3 If an inspection required under this Clause is refused or if a copy required under this Clause is not sent within the proper time, the Company commits an offence.

76.4 In the case of a refusal or default, the Registrar may make an order compelling an immediate inspection of the books in respect of all proceedings of general meetings or directing that the copies required be furnished to the persons requiring them.

PART 11

ACCOUNTS AND AUDIT

77. ACCOUNTING RECORDS

77.1 Every Company shall keep accounting records, which are sufficient to show and explain its transactions, and are such as to:

- (a) disclose with reasonable accuracy, at any time, the financial position of the Company at that time; and
- (b) enable the Directors to ensure that any accounts prepared by the Company under this Part 11 comply with the requirements of these Regulations.

77.2 If a Company fails to comply with Clause 77.1 it commits an offence.

78. RETENTION OF RECORDS

78.1 A Company's accounting records shall be:

- (a) kept at such place as the Directors think fit unless specifically prescribed otherwise in these Regulations;
- (b) at all times open to inspection by an officer or auditor of the Company;
- (c) preserved by it for ten years from the date on which they are made; and
- (d) otherwise kept and maintained in such manner as may be provided in these Regulations.

78.2 If a Company fails to comply with Clause 78.1 it commits an offence.

79. FINANCIAL YEARS

79.1 The first financial year of a Company starts on the day on which that Company is incorporated and lasts for a period not exceeding 18 months as may be determined by the Directors.

79.2 The second and any subsequent financial year shall start at the end of the previous financial year and shall last for 12 months or some other period which is within seven days either shorter or longer than 12 months as may be determined by the Directors.

80. ACCOUNTS

80.1 The accounts shall be prepared in accordance with generally accepted accounting principles approved by the Registrar and show a true and fair view of the profit or loss of the Company for the

period and of the state of the Company's affairs at the end of the period and comply with any other requirements of these Regulations.

80.2 A Company's accounts shall be approved by the Directors and signed on their behalf by one of them.

80.3 Within six months after the end of the financial period, the accounts for that period shall be:

- (a) prepared and examined and reported upon by auditors; and
- (b) laid before a general meeting together with a copy of the auditors' report.

80.4 In this Part 11, references to **accounts** are to those prepared in accordance with this Clause.

80.5 A Company shall file with the Registrar within seven days after the general meeting, a copy of the accounts and auditors' report.

80.6 If a Company fails to comply with this Clause 80 it commits an offence.

81. COPIES OF ACCOUNTS

81.1 Any shareholder or member of a Company is entitled, on written request made by him to the Company and without charge, to be furnished with a copy of the Company's latest audited accounts and auditor's report.

81.2 A Company shall comply with such a request within seven days.

81.3 If default is made in complying with such a request within seven days after its making, the Company and every officer of it who is in default commits an offence.

82. POWER TO MAKE REGULATIONS AS TO ACCOUNTS

82.1 The Registrar may by regulations extend or modify the provisions of this Part 11.

82.2 Such regulations may provide for:

- (a) the inclusion in accounts of group accounts dealing with the affairs of a Company and its subsidiaries;
- (b) the inclusion in accounts of a report by the Directors dealing with such matters as may be specified;
- (c) the accounting principles to be applied in the preparation of accounts; and
- (d) the appointment, remuneration, removal, resignation, rights and duties of auditors.

82.3 Such regulations may further provide for the imposition of fines in respect of offences under the regulations.

83. APPOINTMENT AND REMOVAL OF AUDITORS

83.1 A Company shall appoint auditors who shall examine and report in accordance with these Regulations upon the accounts prepared pursuant to Clause 80.

83.2 A Company shall at each general meeting appoint auditors to hold office from the conclusion of that meeting to the conclusion of the next general meeting.

- 83.3 The Directors or (failing the Directors) the Company in a general meeting may, at any time before the first general meeting, appoint auditors who shall hold office to the conclusion of that meeting.
- 83.4 The Directors or the Company in a general meeting may fill any casual vacancy in the office of auditors and fix their remuneration.
- 83.5 A Company may by Resolution at any time remove an auditor notwithstanding anything in any agreement between the Company and the auditor.
- 83.6 Nothing in this Clause is to be taken as depriving a person removed under it of compensation or damages payable to that person in respect of the termination of his appointment as auditor.
- 83.7 If a Company fails to comply with Clause 83.1, the Company and every officer of it who is in default commits an offence.

84. AUDITORS' REPORT

- 84.1 A Company's auditors shall make a report to the Company's members on the accounts examined by them.
- 84.2 The auditors' report shall state whether in the auditors' opinion the accounts have been properly prepared in accordance with these Regulations and, in particular, whether a true and fair view is given.

85. AUDITORS' DUTIES AND POWERS

- 85.1 A Company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to the following matters:
- (a) whether proper accounting records have been kept by the Company and proper returns adequate for their audit have been received from branches not visited by them; and
 - (b) whether the Company's accounts are in agreement with the accounting records and returns.
- 85.2 If the auditors are of the opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.
- 85.3 The auditors have a right of access at all times to the Company's records, and are entitled to require from the Company's officers and the secretary such information and explanations as they think necessary for the performance of their duties as auditors.
- 85.4 Every auditor is entitled to receive notice of, and attend, any meeting of members and to be heard on any part of the business of the meeting which concerns the auditors.
- 85.5 If the auditors fail to obtain all the information and explanations, which, to the best of their knowledge and belief are necessary for the purposes of their audit, they shall state that fact in their report.
- 85.6 An auditor of a Company may resign his office by depositing a notice in writing to that effect, together with a statement under Clause 85.7 at the Company's registered office; and any such notice operates to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.

- 85.7 When an auditor ceases for any reason to hold office he shall deposit at the Company's registered office:
- (a) a statement to the effect that there are no circumstances connected with his ceasing to vacate office which he considers should be brought to the notice of the members or creditors of the Company; or
 - (b) a statement of any circumstances as are mentioned above.
- 85.8 Where a statement under Clause 85.7 falls within sub-paragraph (b) of that Clause, the Company shall within 14 days send a copy of the statement to every member of the Company and to every person entitled to receive notice of general meetings.
- 85.9 If a person ceasing to hold office as auditor fails to comply with Clause 35.1 he commits an offence.
- 85.10 If a Company fails to comply with Clause 85.8 the Company and every officer of it who is in default commits an offence.

86. FALSE STATEMENTS TO AUDITORS

An officer and the secretary of a Company commits an offence if he knowingly or recklessly makes to the Company's auditors a statement (whether written or oral) which:

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the Company; and
- (b) is misleading, false or deceptive in a material particular.

87. QUALIFICATION FOR APPOINTMENT AS AUDITOR

- 87.1 A person is not qualified for appointment as auditor of a Company under Clause 83 unless he is authorised by the Registrar to be so appointed.
- 87.2 A person who acts as auditor in contravention of Clause 87.1 commits an offence.

PART 12

DISTRIBUTIONS

88. DIVIDENDS AND OTHER DISTRIBUTIONS

- 88.1 In this Part 12 **distribution** means every description of distribution of a Company's assets to its members, whether in cash or otherwise, subject to the following exceptions.
- 88.2 The following are not distributions for the purposes of this Part 12:
- (a) the reduction of share capital:
 - (i) by extinguishing or reducing the liability of any of the members on any of the Company's shares in respect of share capital not paid up; or
 - (ii) by repaying paid-up share capital;
 - (b) the redemption or purchase of any of the Company's own shares out of unrealised profits in accordance with these Regulations; and

(c) a distribution of assets to members of the Company on its winding-up.

88.3 A Company may only make a distribution out of profits available for that purpose.

88.4 A Company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

88.5 Clauses 88.5 to 88.8 apply for determining the amount of a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by a Company of a non-cash asset where:

(a) at the time of the distribution the Company has profits available for distribution; and

(b) if the amount of the distribution were to be determined in accordance with this Clause, the Company could make the distribution without contravening this Part 12.

88.6 The amount of the distribution (or the relevant part of it) is taken to be:

(a) in a case where the amount or value of the consideration for the disposition is not less than the book value of the asset, zero; or

(b) in any other case, the amount by which the book value of the asset exceeds the amount or value of any consideration for the disposition.

88.7 For the purposes of paragraph (a) of Clause 88.5(a) the Company's profits available for distribution are treated as increased by the amount (if any) by which the amount or value of any consideration for the disposition exceeds the book value of the asset.

88.8 In Clauses 88.6 and 88.7 **book value**, in relation to an asset, means:

(a) the amount at which the asset is stated in the relevant accounts; or

(b) where the asset is not stated in those accounts at any amount, zero.

88.9 Clause 88 applies where:

(a) a Company makes a distribution consisting of, or including, or treated as arising in consequence of, the sale, transfer or other disposition by the Company of a non-cash asset; and

(b) any part of the amount at which that asset is stated in the relevant accounts represents an unrealised profit.

88.10 The profit identified in Clause 88.9 is treated as a realised profit for the purpose of determining the lawfulness of the distribution in accordance with this Part 12 (whether before or after the distribution takes place).

89. DISTRIBUTION TO BE JUSTIFIED BY REFERENCE TO COMPANY'S ACCOUNTS

89.1 This Clause is for determining the question of whether a distribution may be made by a Company without contravening Clause 88.

89.2 The amount of a distribution which may be made is determined by reference to the following items as stated in the Company's accounts:

- (a) profits, losses, assets and liabilities;
- (b) references to provisions for depreciation or diminution in value of assets (being any amounts written off by way of providing for depreciation or diminution in value of assets);
- (c) references in the profit and loss account to the depreciation of assets of any description (being any provision for depreciation or diminution in value of assets of that description) or amounts written off;
- (d) references to provisions for liabilities or charges (being any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred, but uncertain as to amount or as to the date on which it will arise); and
- (e) share capital and reserves (including undistributable reserves).

89.3 Except in a case falling within Clause 89.4, the Company's accounts which are relevant for this purpose are its last annual accounts, that is to say those which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid; and for this purpose accounts are laid if Clause 80.3 has been complied with in relation to them.

89.4 In the following two cases:

- (a) where the distribution would be found to contravene the relevant Clause if reference were made only to the Company's last annual accounts; or
- (b) where the distribution is proposed to be declared during the Company's first accounting reference period, or before any accounts are laid in respect of that period, the accounts relevant under this Clause (called **interim accounts** in the first case, and **initial accounts** in the second) are those necessary to enable a reasonable judgement to be made as to the amounts of the items mentioned in Clause 89.2 above.

89.5 The relevant Clause is treated as contravened in the case of a distribution unless the requirements about the relevant accounts are complied with in relation to that distribution.

90. REQUIREMENTS FOR LAST ANNUAL ACCOUNTS

90.1 If the Company's last annual accounts constitute the only accounts relevant under Clause 89, the requirements in respect of them are as follows:

- (a) The accounts must have been properly prepared in accordance with these Regulations, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Clause 89.2, whether the distribution would contravene the relevant Clause; and, without prejudice to the foregoing:
 - (i) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the Company's affairs as at the balance sheet date; and
 - (ii) so much of the accounts as consists of a profit and loss account must give a true and fair view of the Company's profit or loss for the period in respect of which the accounts were prepared.

- (b) The auditors must have made their report on the accounts and Clause 90.1(c) applies if the report is a qualified report, that is to say, it is not a report without qualification to the effect that, in the auditors' opinion, the accounts have been properly prepared in accordance with these Regulations.
- (c) The auditors must, in that case, also have stated in writing (either at the time of their report or subsequently) whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in Clause 89.2, whether the distribution would contravene the relevant Clause; and a copy of the statement must have been laid before the Company in general meeting.
- (d) A statement under Clause 90.1(c) suffices for the purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which includes that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

91. CONSEQUENCES OF UNLAWFUL DISTRIBUTION

Where a distribution, or part of a distribution, made by a Company to one of its members is made in contravention of Clause 88 and, at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he is liable to repay it, or that part of it, to the Company or, in the case of a distribution made otherwise than in cash, to pay the Company a sum equal to the value of the distribution, or that part, at that time.

PART 13

TAKEOVERS

92. TAKEOVER OFFERS

92.1 In this Part of these Regulations **takeover** means an offer to acquire all the shares, or all the shares of any class or classes, in a Company (other than shares which, at the date of the offer, are already held by the offeror).

92.2 In Clause 92.1 **shares** means shares (other than relevant treasury shares) which have been allotted on the date of the offer, but a takeover offer may include among the shares to which it relates:

- (a) all or any shares that are allotted after the date of the offer but before a specified date;
- (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date; and
- (c) all or any other relevant treasury shares.

92.3 In this Clause:

relevant treasury shares means shares which:

- (a) are held by the Company as treasury shares on the date of the offer; or
- (b) become shares held by the Company as treasury shares after that date but before a specified date; and

specified date means a date specified in, or determined in accordance with, the terms of the offer.

93. RIGHT OF OFFEROR TO BUY OUT MINORITY SHAREHOLDERS

- 93.1 If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares to which the offer relates, he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.
- 93.2 If, in a case in which a takeover offer relates to shares of different classes, the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire not less than nine-tenths in value of the shares of any class to which the offer relates, he may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.
- 93.3 No notice shall be given under Clause 93.1 or 93.2 unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that Clause before the end of the period of four months beginning with the date of the offer; and no such notice shall be given after the end of the period of two months beginning with the date on which he has acquired or contracted to acquire shares which satisfy that minimum.
- 93.4 Any notice under this Clause shall be given in the prescribed manner; and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the Company together with a declaration by him in the prescribed form stating that the conditions for the giving of the notice are satisfied.
- 93.5 Where the offeror is a Company (whether or not a Company within the meaning of these Regulations), the declaration shall be signed by a Director of that company.
- 93.6 Any person who fails to send a copy of a notice or a declaration as required by Clause 93.4 or makes such a declaration for the purposes of that Clause knowing it to be false or without having reasonable grounds for believing it to be true, shall be liable to a fine and, for continued failure to send the copy or declaration, to a daily default fine.
- 93.7 If any person is charged with an offence for failing to send a copy of a notice as required by Clause 93.4, it is a defence for him to prove that he took reasonable steps for securing compliance with that Article.
- 93.8 Any offer made in accordance with this Clause 93 shall be on the same financial terms as that made by the offeror and accepted by the members holding the required nine-tenths in value of the shares.

94. EFFECT OF A NOTICE UNDER CLAUSE 93

- 94.1 The following provisions shall, subject to Clause 96, have effect where a notice is given in respect of any shares under Clause 93.
- 94.2 The offeror shall be entitled and bound to acquire those shares on the terms of the offer.
- 94.3 Where the terms of an offer are such as to give the holder of any shares a choice of consideration, the notice shall give particulars of the choice and state:
- (a) that the holder of the shares may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice; and

- (b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid,

and the terms of the offer mentioned in Clause 94.2 shall be determined accordingly.

94.4 At the end of six weeks from the date of the notice the offeror shall forthwith:

- (a) send a copy of the notice to the Company; and
- (b) pay or transfer to the Company the consideration for the shares to which the notice relates.

94.5 Where the consideration referred to in paragraph (b) of Clause 94.4 consists of shares or securities to be allotted by the offeror the reference in that paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the Company.

95. RIGHT OF MINORITY SHAREHOLDER TO BE BOUGHT OUT BY OFFEROR

95.1 If a takeover offer relates to all the shares in a Company and at any time before the end of the period within which the offer can be accepted:

- (a) the offeror has, by virtue of acceptance of the offer, acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the Company which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares in the Company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares on the same financial terms as that made by the offeror and accepted by the members holding the required nine-tenths in value of the shares.

95.2 For the purposes of Clause 95.1, a takeover offer relates to all the shares in a Company if it is an offer to acquire all the shares in the Company within the meaning of Clause 92.

95.3 If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted:

- (a) the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and
- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares of that class,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

95.4 For the purposes of Clauses 95.1 and 95.3, in calculating nine-tenths of the value of all the shares in the Company, or all the shares of any class or classes of shares of the Company, any shares held by the Company as treasury shares shall be treated as having been acquired by the offeror.

96. APPLICATIONS TO THE REVIEW COMMITTEE

- 96.1 Where a notice is given under Clause 93 or 95, the Review Committee may, on application made by the recipient of such notice specify financial terms of acquisition different from those of the offer in the event that they are not the same.
- 96.2 If an application to the Review Committee under Clause 96.1 is pending at the end of the period mentioned in Clause 94.4 that Clause shall not have effect until the application has been disposed of.

97. JOINT OFFERS

- 97.1 A takeover offer may be made by two or more persons jointly and in that event this Part 13 of these Regulations has effect with the following modifications.
- 97.2 The conditions for the exercise of the rights conferred by Clauses 93 and 95 shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those Clauses and Clauses 93 and 95 shall be respectively joint rights and joint and several obligations of the joint offerors.
- 97.3 It shall be a sufficient compliance with any provisions of those Clauses requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the declaration required by Clause 93.4 shall be made by all of them and, in the case of a joint offeror being a company, signed by a Director of that company.
- 97.4 In Clauses 92, 94.5 and 98 references to the offeror shall be construed as references to the joint offerors or any of them.
- 97.5 In Clause 94 references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.
- 97.6 In Clause 96 references to the offeror shall be construed as references to the joint offerors.

98. ASSOCIATES

- 98.1 The requirement in Clause 92.1 that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a Company, shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror held or have contracted to acquire; but, subject to Clause 92 shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part of these Regulations to the shares to which a takeover offer relates.
- 98.2 Where, during the period within which a takeover offer can be accepted, any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then those shares shall be treated for the purposes of that Clause as shares to which the offer relates.
- 98.3 In Clauses 95.1(b) and 95.3(b) the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of that offeror has acquired or contracted to acquire.
- 98.4 In this Clause **associate**, in relation to an offeror means:
- (a) a nominee of the offeror;

- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested; or
- (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the takeover offer, being an agreement which includes provisions imposing obligations or restrictions.

98.5 For the purposes of Clause 98.4(b) a Company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

98.6 For the purposes of Clause 98.4(c) an offeror has a substantial interest in a body corporate if:

- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

PART 14

WINDING UP

99. MODES OF WINDING UP

The winding-up of a Company may either be:

- (a) summary under Chapter 1 or of this Part 14;
- (b) by its creditors under Chapter 2 of this Part 14; or
- (c) by the courts of Abu Dhabi under the Commercial Transactions Law No.18 of 1993 (Volume 5, Bankruptcy and Preventive Composition) as amended from time to time and other applicable legislation.

CHAPTER 1: SUMMARY WINDING UP

100. APPLICATION OF THIS CHAPTER

This Chapter applies to the winding-up of a Company which has no liabilities or which is able to discharge its liabilities in full within six months after the commencement of the winding-up and such a winding up is a summary winding-up.

101. PROCEDURE

101.1 A Company may be wound up under this Chapter by making a statement of solvency in accordance with Clause 101.2:

- (a) by passing, within 28 days after the statement has been signed by each of the Directors of the Company, a Resolution that the Company be wound up summarily; and
- (b) by delivering to the Registrar, within 21 days after the Resolution has been passed, a copy of it together with the statement.

- 101.2 A statement of solvency shall be signed by each of the Directors and state that, having made full inquiry into the Company's affairs, each of them is satisfied:
- (a) that the Company has no assets and no liabilities; or
 - (b) that the Company has assets and no liabilities; or
 - (c) that the Company will be able to discharge its liabilities in full within six months after the commencement of the winding up, as the case may be.

102. COMMENCEMENT OF SUMMARY WINDING UP

A summary winding-up under which assets of the Company are to be distributed commences on the passing of the Resolution for summary winding up.

103. EFFECT ON STATUS OF COMPANY

After the commencement of a summary winding up of a Company which has assets, the corporate state and capacity of the Company continue until the Company is dissolved but, from the commencement of the winding up, its powers shall be exercised only so far as may be required for the realisation of the assets of the Company, the discharge of any liabilities of the Company and the distribution of its assets in accordance with Clause 54.3.

104. APPOINTMENT OF LIQUIDATOR

- 104.1 On or after the date of commencement of a summary winding-up of a Company, it may by Resolution appoint a person to be liquidator for the purposes of the winding-up.
- 104.2 On the appointment of a liquidator all the powers of the Directors cease except so far as the Resolution appointing the liquidator or any subsequent Resolution otherwise provides and, subject to any such Resolution and to Clause 54.3, all those powers shall thereafter be exercisable by the liquidator.

105. APPLICATION OF ASSETS AND DISSOLUTION

- 105.1 On the registration by the Registrar of a statement delivered under Clause 101 that the Company has no assets and no liabilities the Company is dissolved.
- 105.2 On the registration by the Registrar of a statement so delivered that the Company has assets and no liabilities the Company shall forthwith proceed to distribute its assets among its members according to their rights or otherwise as provided by these Regulations.
- 105.3 On the registration by the Registrar of a statement so delivered that the Company will be able to discharge its liabilities in full within six months after the commencement of the winding-up the assets of the Company shall be applied in satisfaction of the Company's liabilities and, subject to that application, shall be distributed as aforesaid.
- 105.4 As soon as the Company has completed the distribution of its assets in accordance with Clause 105.2 or 105.3, it shall deliver to the Registrar a statement signed by each of the Directors or, if the distribution has been completed by a liquidator appointed under Clause 104, by the liquidator, that each Director or (as the case may be) the liquidator, having made full inquiry into the Company's affairs, is satisfied that the Company has no assets and no liabilities and, upon the registration of the statement, the Company is dissolved.

106. EFFECT OF INSOLVENCY

- 106.1 This Clause applies where after the commencement of a summary winding up the Directors (or, if there is a liquidator, the liquidator) form the opinion that the Company has liabilities which it will be unable to discharge in full within six months after the commencement of the winding-up.
- 106.2 When that opinion is formed it shall be recorded in the minutes of a meeting of the Directors or, as the case may be, by the liquidator.
- 106.3 The Directors (or, if there is a liquidator, the liquidator) shall:
- (a) by not less than 14 days' notice given by post, call a meeting of the creditors of the Company to be held within 28 days after that opinion was recorded and the Company shall in the notice nominate a person to be liquidator for the purpose of a creditors' winding up;
 - (b) when that notice is given to the creditors, deliver a copy of it to the Registrar;
 - (c) not less than ten days before the day for which the meeting is called, give notice of the meeting by advertisement in the newspaper prescribed by the Registrar;
 - (d) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information concerning the affairs of the Company as he may reasonably request; and
 - (e) make out a statement as to the affairs of the Company and lay that statement before the creditors' meeting.
- 106.4 The statement as to the affairs of the Company shall be verified by affidavit by some or all of the directors or (if there is a liquidator) by the liquidator.
- 106.5 If there is a liquidator, he shall preside at the creditors' meeting and, if there is no liquidator, a director nominated by the directors shall preside.
- 106.6 As from the day on which the creditors' meeting under this Clause is held the winding up becomes a creditors' winding up and these Regulations shall have effect as if that meeting was the meeting of creditors mentioned in Clause 113.
- 106.7 If the directors or, as the case may be, the liquidator without reasonable excuse fail to comply with their obligations under this Clause or if a director or, as the case may be, the liquidator fails to comply with Clause 106.5 so far as requiring him to preside at the creditors' meeting, the directors or the director or the liquidator, (as the case may be) commits an offence.
- 106.8 A director or liquidator who signs a statement delivered to the Registrar under Clause 101 or 54.3 without having reasonable grounds for stating that the Company has no liabilities or that it will be able to discharge its liabilities in full within six months after the commencement of the winding up commits an offence.

107. REMUNERATION OF LIQUIDATOR

A liquidator appointed under Clause 104 shall be entitled to receive from the Company such remuneration as is agreed between him and the Company before his appointment or as is subsequently approved by the Company in general meeting or by the Review Committee.

108. CESAR OF OFFICE BY LIQUIDATOR

A liquidator appointed under Clause 104 may be removed from office by a Resolution of the Company and shall vacate office if he ceases to be qualified to hold that office.

109. TERMINATION OF SUMMARY WINDING-UP

109.1 Where:

- (a) the summary winding-up of a Company has commenced;
- (b) the Company has not received any contribution from any present or past member pursuant to Clause 130;
- (c) the Company has not for the purposes of the winding-up distributed any of its assets among its members;
- (d) the Company is able to discharge its liabilities as they fall due; and
- (e) termination of the winding-up has been approved by a Resolution of the Company, the documents described in Clause 109.2 may be delivered to the Registrar and thereupon the winding-up shall forthwith terminate.

109.2 The documents to be delivered to the Registrar pursuant to Clause 109.1 are:

- (a) a certificate signed by all the Directors of the Company stating that the Company:
 - (i) has received no such contribution;
 - (ii) has made no such distribution; and
 - (iii) is able to discharge its liabilities as they fall due; and
- (b) a copy of the Resolution approving the termination of the winding up.

109.3 Upon the termination of a winding up pursuant to Clause 109.1:

- (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and
- (b) the Company and all other persons shall be in the same position, subject to Clause 109.4, as if the winding up had not commenced.

109.4 The termination of a winding up pursuant to Clause 109.1 shall not affect the validity of anything duly done by any liquidator, director or other person, or by operation of law, before its termination.

109.5 A Director who signs a certificate delivered to the Registrar pursuant to Clause 109.1 without having reasonable grounds for believing that the statements in it are true commits an offence.

CHAPTER 2: CREDITORS' WINDING-UP

110. Procedure

A Company may be wound up under this Chapter if the Company so resolves by Resolution.

111. NOTICE OF WINDING UP

- 111.1 When a Company has passed a Resolution for creditors' winding up, it shall, within 14 days of the passing of the Resolution, give notice of the Resolution by advertisement in a newspaper prescribed by the Registrar.
- 111.2 In the event of failure to comply with this Clause, the Company and every officer of it who is in default commits an offence.

112. COMMENCEMENT AND EFFECTS OF CREDITORS' WINDING UP

- 112.1 A creditors' winding-up is deemed to commence when the Resolution for winding-up is passed or, where Clause 106 applies, when the winding-up becomes a creditors' winding-up; and the Company shall from the commencement of the winding-up cease to carry on its business, except so far as may be required for its beneficial winding-up.
- 112.2 The corporate state and capacity of the Company continue until the Company is dissolved.
- 112.3 A transfer of shares, not being a transfer made to, or with, the sanction of the liquidator, and an alteration in the status of the Company's members made after the commencement of the winding-up are void.
- 112.4 After the commencement of the winding-up no action shall be taken or proceeded with against the Company except by leave of the Review Committee and subject to such terms as the Review Committee may impose. Any references in this Clause to **Review Committee** shall be deemed to be references to the Abu Dhabi courts in any instance where Clause 99(c) applies.

113. MEETING OF CREDITORS IN CREDITORS' WINDING UP

- 113.1 The Company shall:
- (a) not less than 14 days before the day on which there is to be held the Company meeting at which the Resolution for a creditors' winding up is to be proposed, give by post to its creditors notice calling a meeting of creditors to be held on the same day as, and immediately following the conclusion of, the Company meeting and nominating a person to be liquidator for the purposes of a creditors' winding up;
 - (b) give notice of the creditors' meeting by advertisement in a newspaper prescribed by the Registrar not less than ten days before the day for which that meeting has been called; and
 - (c) during the period before the creditors' meeting furnish creditors free of charge with such information concerning the Company's affairs as they may reasonably require.
- 113.2 The Directors shall:
- (a) make out a statement as to the affairs of the Company, verified by affidavit by some or all of the Directors;
 - (b) lay that statement before the creditors' meeting; and
 - (c) appoint a Director to preside at that meeting, and the director so appointed shall attend the meeting and preside over it.

- 113.3 If:

- (a) the Company without reasonable excuse fails to comply with Clause 113.1; or
- (b) the Directors without reasonable excuse fail to comply with Clause 113.2; or
- (c) a Director without reasonable excuse fails to comply with Clause 113.295.1, so far as requiring him to attend and preside at the creditors' meeting the Company, the Directors or the Director (as the case may be) commits an offence.

114. APPOINTMENT OF LIQUIDATOR

- 114.1 The creditors and the Company at their respective meetings mentioned in Clause 113 may nominate a person to be liquidator for the purpose of the winding-up.
- 114.2 Where a creditors' meeting is called in accordance with Clause 106, the person nominated to be liquidator in the notice calling the meeting shall be deemed, for the purposes of this Clause, to have been nominated as aforesaid by the Company.
- 114.3 The person nominated by the creditors, or if no person is nominated by the creditors, the person nominated, or deemed to have been nominated, by the Company is appointed liquidator with effect from the conclusion of the creditors' meeting.
- 114.4 In the case of different persons being nominated, a director, member or creditor of the Company may, within seven days after the date on which the nomination was made by the creditors, apply to the Registrar for an order either:
 - (a) directing that the person nominated as liquidator by the Company shall be liquidator instead of or jointly with the person nominated by the creditors; or
 - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.
- 114.5 A liquidator appointed under this Clause shall within 14 days after his appointment give notice thereof signed by him to the Registrar and to the creditors.

114.6 A liquidator who fails to comply with Clause 114.5 commits an offence.

115. APPOINTMENT OF LIQUIDATION COMMITTEE

- 115.1 A creditors' meeting may appoint a liquidation committee consisting of not more than five persons to exercise the functions conferred on it by, or under, these Regulations.
- 115.2 If a committee is appointed, the Company may, in general meeting, appoint such number of persons not exceeding five as they think fit to act as members of the committee.
- 115.3 The creditors may resolve that all or any of the persons so appointed by the Company ought not to be members of the committee; and if the creditors so resolve:
 - (a) the persons mentioned in the Resolution are not then qualified to act as members of the committee; and
 - (b) on an application to the Registrar under this provision the Registrar may appoint other persons to act as such members in place of the persons mentioned in the Resolution.

116. REMUNERATION OF LIQUIDATOR, CESSATION OF DIRECTORS' POWERS, AND VACANCY IN OFFICE OF LIQUIDATOR

- 116.1 A liquidator in a creditors' winding-up is entitled to receive such remuneration as is agreed between him and the liquidation committee or, if there is no committee, between him and the creditors.
- 116.2 On the appointment of a liquidator in a creditors' winding-up, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.
- 116.3 The creditors may at any time remove a liquidator.
- 116.4 If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by the Review Committee or the Abu Dhabi courts) the creditors may fill the vacancy.

117. NO LIQUIDATOR APPOINTED

- 117.1 This Clause applies where a creditors' winding-up has commenced but no liquidator has been appointed.
- 117.2 During the period before the appointment of a liquidator, the powers of the Directors shall not be exercised except:
- (a) with the sanction of the Review Committee or the Abu Dhabi courts (in the event where Clause 99(c) applies); or
 - (b) to secure compliance with Clause 113; or
 - (c) to protect the Company's assets.
- 117.3 If the Directors, without reasonable excuse, fail to comply with this Clause, they are guilty of an offence.

118. COSTS OF CREDITORS' WINDING-UP

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

119. ARRANGEMENT WHEN BINDING ON CREDITORS

- 119.1 An arrangement entered into between a Company immediately preceding the commencement of, or in the course of, a creditors' winding up and its creditors is (subject to the right of appeal under this Clause) binding:
- (a) on the Company, if sanctioned by a Resolution; and
 - (b) on the creditors, if acceded to by three-quarters in number and value of them.
- 119.2 A creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Review Committee against it; and the Review Committee may thereupon, as it thinks just, amend, vary or confirm the arrangement. Any references in this Clause to the Review Committee shall be construed as references to the Abu Dhabi courts in any instance where Clause 99(c) applies.

120. MEETINGS OF COMPANY AND CREDITORS

- 120.1 If a creditors' winding-up continues for more than 12 months, the liquidator shall call a general meeting of the Company and a meeting of the creditors to be held at the first convenient date within three months after the end of the first 12 months from the commencement of the winding-up, and of each succeeding 12 months, or such longer period as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding-up during the preceding 12 months.
- 120.2 If the liquidator fails to comply with this Clause, he commits an offence.

121. FINAL MEETING AND DISSOLUTION

- 121.1 As soon as the affairs of a Company in a creditors' winding up are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the Company's property has been disposed of, and thereupon shall call a general meeting of the Company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.
- 121.2 Each such meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the liquidator's account.
- 121.3 Within seven days after the date of the meetings (or, if they are not held on the same date, after the date of the later one), the liquidator shall make a return to the Registrar of the holding of the meetings and of their dates.
- 121.4 If the copy is not delivered or the return is not made in accordance with Clause 121.3, the liquidator commits an offence.
- 121.5 If a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by Clause 121.3, deliver a return that the meeting was duly called and that no quorum was present; and when that return is made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.
- 121.6 The Registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and at the end of three months from the registration of the return the Company is deemed to be dissolved; but the Registrar may, on the application of the liquidator or of another person who appears to the Registrar to be interested, make an order deferring the date on which the dissolution of the Company is to take effect for such time as the Registrar thinks fit.
- 121.7 If the liquidator fails to call a general meeting of the Company or a meeting of the creditors as required by this Clause, he commits an offence.

122. POWERS AND DUTIES OF LIQUIDATOR

- 122.1 The liquidator in a creditors' winding-up may, with the sanction of the liquidation committee (or, if there is no such committee, a meeting of the creditors):
- (a) pay a class of creditors in full; and
 - (b) compromise any claim by, or against, the Company.

122.2 The liquidator may, without sanction, exercise any other power of the Company as may be required for its beneficial winding-up.

122.3 The liquidator may:

- (a) settle a list of contributories (and the list of contributories is *prima facie* evidence of the persons named in it to be contributories);
- (b) make calls; and
- (c) summon general meetings of the Company for the purpose of obtaining its sanction by Resolution or for any other purpose he may think fit.

122.4 The liquidator shall pay the Company's debts and adjust the rights of the contributories among themselves.

122.5 The appointment or nomination of more than one person as liquidator shall declare whether any act to be done is to be done by all or any one or more of them, and in default, any such act may be done by two or more of them.

123. APPOINTMENT OR REMOVAL OF LIQUIDATOR BY THE REGISTRAR

123.1 If for any reason there is, in a creditors' winding-up, no liquidator acting, the Registrar may appoint a liquidator.

123.2 The Registrar may, on reason being given, remove a liquidator in a creditors' winding-up and appoint another.

124. DUTY TO CO-OPERATE WITH LIQUIDATOR

124.1 In a creditors' winding-up each of the persons mentioned in Clause 124.2 shall:

- (a) give the liquidator information concerning the Company and its promotion, formation, business, dealings, affairs or property which the liquidator may at any time after the commencement of the winding up reasonably require; and
- (b) attend on the liquidator at reasonable times and on reasonable notice when requested to do so.

124.2 The persons referred to in Clause 124.1 are:

- (a) those who are, or have at any time been, officers of the Company;
- (b) those who have taken part in the formation of the Company at any time within one year before the commencement of the winding up; and
- (c) those who are in the employment of the Company, or have been in its employment within that year, and are in the liquidator's opinion capable of giving information which he requires.

124.3 If a person without reasonable excuse fails to comply with an obligation imposed by this Clause, he commits an offence.

125. DISTRIBUTION OF COMPANY'S PROPERTY

Subject to the provisions of any enactment as to preferential payments, a Company's property shall on winding-up be realised and applied in satisfaction of the Company's liabilities *pari passu* and, subject to that application, shall (unless the articles or Applicable Law otherwise provide) be distributed among the members according to their rights and interests in the Company.

126. QUALIFICATIONS OF LIQUIDATOR

- 126.1 A person who is not an individual is not qualified to act as a liquidator.
- 126.2 The Registrar may prescribe the qualifications required for any person to act as a liquidator.
- 126.3 An appointment made in contravention of this Clause is void.
- 126.4 A person who acts as liquidator when not qualified to do so commits an offence.
- 126.5 A liquidator shall vacate office if he ceases to be a person qualified to act as a liquidator.

127. CORRUPT INDUCEMENT AFFECTING APPOINTMENT AS LIQUIDATOR

A person who gives or agrees or offers to give to a member or creditor of a Company any valuable benefit with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the Company's liquidator, commits an offence.

128. NOTIFICATION BY LIQUIDATOR OF RESIGNATION ETC

- 128.1 A liquidator who resigns, is removed or for any other reason vacates office shall, within 14 days after the resignation, removal or vacation of office give notice thereof, signed by him, to the Registrar and in the case of a creditors' winding-up (except where the removal is pursuant to Clause 116.3), to the creditors.
- 128.2 If a liquidator fails to comply with Clause 128.1 he commits an offence.

129. NOTIFICATION THAT COMPANY IS IN LIQUIDATION

- 129.1 When a Company is being wound up, every invoice, order for goods or services or business letter issued by, or on behalf of, the Company, or a liquidator of the Company, being a document on or in which the name of the Company appears, shall contain a statement that the Company is in liquidation.
- 129.2 In the event of failure to comply with this Clause, the Company and every officer of it who is in default, commits an offence.

130. LIABILITY AS CONTRIBUTORS OF PRESENT AND PAST MEMBERS

- 130.1 When a Company is wound up, every present and past member is liable to contribute to its assets to an amount sufficient for payment of its liabilities, and the expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves:
 - (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up;

- (b) a past member is not liable to contribute in respect of a liability of the Company contracted after he ceased to be a member.
- (c) a past member is not liable to contribute unless it appears to the Review Committee that the existing members are unable to satisfy the contributions required to be made by them in pursuance of these Regulations;
- (d) no contribution is required from a past or present member exceeding the amount (if any) unpaid on the shares in respect of which he is liable; and
- (e) a sum due to a member of the Company (in his capacity as a member) by way of dividends, profits or otherwise is not deemed to be a liability of the Company, and is payable to that member in a case of competition between himself and any other creditor not a member of the Company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

131. DISPOSAL OF RECORDS

- 131.1 When a Company has been wound up and is about to be dissolved, its records and those of a liquidator may be disposed of as follows;
- (a) in the case of a summary winding up, in the way that the Company by Resolution directs; and
 - (b) in the case of a creditors' winding up, in the way that the liquidation committee or, if there is no such committee, the Company's creditors, may direct.
- 131.2 After ten years from the Company's dissolution no responsibility rests on the Company, a liquidator, or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.
- 131.3 The Registrar may direct that, for such period as it thinks proper (but not exceeding ten years from the Company's dissolution), the records of a Company, which has been wound up, shall not be destroyed.
- 131.4 If a person acts in contravention of a direction made for the purposes of this Clause, he commits an offence.

PART 15

INVESTIGATIONS

132. APPOINTMENT OF INSPECTORS BY REGISTRAR

- 132.1 The Registrar, on being satisfied that there is good reason to do so, may appoint one or more competent inspectors to investigate the affairs of a Company and to report on them as the Registrar may direct.
- 132.2 The appointment may be made on the application of the Registrar, the Company or a member, officer or creditor of the Company.
- 132.3 The Registrar may, before appointing inspectors, require the applicant, other than the Registrar, to give security, to an amount not exceeding AED 250,000 or such other sum as may be prescribed for payment of the costs of the investigation.

132.4 This Clause applies whether or not the Company is being wound up.

133. POWERS OF INSPECTORS

133.1 If inspectors appointed under Clause 132 to investigate the affairs of a Company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the Company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they shall with the approval of the Registrar have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the first mentioned Company.

133.2 Inspectors so appointed may at any time in the course of their investigation, without the necessity of making an interim report, inform the Registrar of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

134. PRODUCTION OF RECORDS AND EVIDENCE TO INSPECTORS

If inspectors appointed under Clause 132 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him:

- (a) to produce and make available to them all records in his custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice, to appear before them; and
- (c) otherwise to give them all the assistance in connection with the investigation that he is reasonably able to give,

and it is that person's duty to comply with the requirement.

135. POWER OF INSPECTORS TO CALL FOR DIRECTORS' BANK ACCOUNTS

If inspectors appointed under Clause 132 have reasonable grounds for believing that a Director, or past Director, of the Company or other body corporate whose affairs they are investigating, maintains or has maintained a bank account of any description, whether alone or jointly with another person, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that Director towards the Company or other body corporate or its members, the inspectors may require the Director to produce and make available to them all records in the Director's possession or under his control relating to that bank account.

136. INSPECTORS' REPORTS

136.1 The inspectors may, and if so directed by the Registrar shall, make interim reports to the Registrar and, on the conclusion of their investigation, shall make a final report to the Registrar.

136.2 The Registrar may:

- (a) forward a copy of any report made by the inspectors to the Company's registered office; and
- (b) furnish a copy on request and on payment of the prescribed fee to any person whom the Registrar deems appropriate.

137. EXPENSES OF INVESTIGATING A COMPANY'S AFFAIRS

The expenses of, and incidental to, an investigation by inspectors shall be defrayed in the first instance by the Registrar, but the Registrar may in his absolute discretion order any person or body corporate to make repayment to the Registrar to the extent specified in his order.

138. DIRECTIONS TO COMPANY TO COMPLY WITH THESE REGULATIONS

138.1 If a Company or any officer of it fails to comply with:

- (a) a provision of these Regulations or of any legislation administered by the Registrar; or
- (b) a requirement made by the Registrar pursuant to any power under these Regulations, or other legislation,

which requires either or both of them to deliver to or file with the Registrar any document or to give notice to him of any matter, the Registrar may issue a direction that the Company or any officer of it or both of them make good the failure within a time specified in the direction.

138.2 If the Registrar considers that the Company or any officer of it has failed to comply with the direction, he may apply to the Review Committee for one or more of the following orders:

- (a) an order directing the Company or officer to comply with the direction or with any provision of these Regulations or of any legislation administered by the Registrar relevant to the issue of the direction;
- (b) an order directing the Company or officer to pay any costs incurred by the Registrar or other person relating to the issue of the direction by the Registrar or the contravention of the Regulations or legislation relevant to the issue of the direction; or
- (c) any other order that the Review Committee considers appropriate in the circumstances.

138.3 Nothing in this Clause prejudices the operation of any section imposing penalties on a Company or any officer of it in respect of a failure mentioned above, nor any powers that the Registrar or other person or the Review Committee may have under any other provision of these Regulations.

PART 16

REGISTRAR

139. REGISTRAR AND OTHER OFFICERS

139.1 The board of directors of ADPC, or any person so authorised by it, shall appoint an officer known as the Registrar of companies and branch offices and such other officers as may be necessary to assist the Registrar in the exercise of his functions under these Regulations.

139.2 Any functions of the Registrar under these Regulations may, to the extent authorised by him, be exercised by any officer on his staff.

140. FEES AND FORMS

140.1 A Company shall pay to the Registrar the fees ordered and published by the Registrar from time to time.

- 140.2 The Registrar may by order require the payment to the Registrar of such fees as may be prescribed in respect of:
- (a) the performance by the Registrar of such functions under these Regulations as may be specified in the order, including the receipt by him of any document under these Regulations which is required to be delivered to him; and
 - (b) the inspection of documents or other material held by him under these Regulations.
- 140.3 The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by these Regulations.
- 140.4 Where a fee is provided for, or charged under, this Clause for the performance of an act or duty by the Registrar, no action need be taken by him until the fee is paid, and where the fee is payable on the receipt by him of a document required to be delivered to him he shall be deemed not to have received it until the fee is paid.
- 140.5 The Registrar may prescribe forms to be used for any of the purposes of these Regulations and the manner in which any document to be delivered to the Registrar is to be authenticated.
- 140.6 Unless otherwise provided by, or under, these Regulations, any document delivered to the Registrar by a company pursuant to these Regulations shall be signed by an officer or the secretary of the company.

141. ENFORCEMENT OF COMPANY'S DUTY TO MAKE RETURNS

- 141.1 If a company, having failed to comply with a provision of these Regulations which requires it to deliver to the Registrar any document, or to give notice to him of any matter, does not make good the failure within 14 days after the service of a notice on the Company requiring it to do so, the Registrar may make an order directing the company and any officer of it to make good the failure within a time specified in the order.
- 141.2 The Registrar's order may provide that all costs of, and incidental to, the application shall be borne by the Company or by any officers of it responsible for the failure.
- 141.3 Nothing in this Clause prejudices the operation of any section imposing penalties on a Company or its officers in respect of a failure mentioned above.

142. REGISTRAR MAY STRIKE DEFUNCT COMPANY OFF REGISTER

- 142.1 If the Registrar has reason to believe that a Company is not carrying on business or is not in operation, he may send to the Company by post a letter inquiring whether the Company is carrying on business or in operation.
- 142.2 If the Registrar receives an answer to the effect that the Company is not carrying on business or is not in operation, or does not within one month after sending the letter receive an answer, he may send to the Company by post, a notice stating that at the end of three months from the date of that notice the name of the Company will, unless reason is shown to the contrary, be struck off the register and the Company will be dissolved.
- 142.3 If, where a Company is being wound up in a creditors' winding up, the Registrar has reason to believe either that no liquidator is acting, or that the affairs of the Company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive

months, the Registrar shall send to the Company or the liquidator (if any) a notice similar to that provided for in Clause 142.2142.2.

142.4 At the end of the period mentioned in the notice the Registrar may, unless reason to the contrary is previously shown by the Company or a member, creditor or liquidator of it, strike its name off the register; and on the striking off the Company is dissolved; but the liability (if any) of every Director and member of the Company continues and may be enforced as if the Company had not been dissolved.

143. REGISTRAR MAY STRIKE COMPANY OFF REGISTER

143.1 Where it appears to the Registrar that:

- (a) a Company is acting in breach of Clause 18; or
- (b) it is necessary to protect the good repute of ADFZ as a centre for business activities that a Company should be struck off the register,

the Registrar may send to the Company a letter setting out the reasons for that belief and requesting the Company to show reason why it should not be struck off.

143.2 If within one month after sending the letter the Registrar does not receive an answer, the Registrar may send to the Company by post, a notice stating that at the end of the three months from the date of the notice the Company will, unless reason is shown to the contrary, be struck off the register and the Company will be dissolved.

143.3 At the end of the period mentioned in the notice the Registrar may, unless reason to the contrary is previously shown by the Company or a member, creditor or liquidator of it, strike its name off the register, and on the striking off the Company is dissolved, but the liability (if any) of every Director and member of the Company continues and may be enforced as if the Company had not been dissolved.

143.4 Where a Company has been dissolved under Clause 142142 or Clause 143, the Registrar may, on an application made for the purpose by a liquidator of the Company or by any other person appearing to the Registrar to be interested, make an order, on such terms as the Registrar thinks fit, declaring the dissolution to be void and the Registrar may, by the order, give such directions and make such provisions as seem just for placing the Company and all other persons in the same position as if the Company had not been dissolved. Thereupon such proceedings may be taken which might have been taken if the Company had not been dissolved.

144. REGISTRAR MAY STRIKE COMPANY OFF REGISTER FOR NON-PAYMENT OF FEES

144.1 If a Company has failed to pay any fees required to be paid to the Registrar under Clause 140 the Registrar may send to the Company a letter requiring the Company to make the required payment within 30 days failing which the name of the Company may be struck off the register.

144.2 If the Company fails to pay the required fee due under Clause 140 before the expiration of two months from the time specified in Clause 144.1, the Registrar may strike the name of the Company off the Register.

144.3 A Company, the name of which has been struck off the register under Clause 144.2, remains liable for all claims, debts, liabilities and obligations of the Company, and the striking off does not affect the liability of any of its members, directors, officers or agents.

144.4 If the name of a Company has been struck off the register under Clause 144.2, the Company or a creditor, member or liquidator of the Company may, within two years following the date of the striking off, apply to the Registrar to have the name of the Company restored to the register and, upon payment of all fees due under Clause 140 and any penalties imposed by the Registrar, the Registrar shall restore the name of the Company to the register. Upon restoration of the name of the Company to the register, the name of the Company is deemed never to have been struck off the register.

145. CONFLICTS OF INTEREST

145.1 Officers, employees and agents of the Registrar shall disclose material conflicts of interest to which they are subject in performing their functions. Such disclosure shall be made without undue delay to the person to whom such officer, employee or agent reports.

145.2 Officers, employees and agents of the Registrar shall not participate in the making of decisions on matters in relation to which they are subject to a material conflict of interest, save that breach hereof shall not result in such decision being invalid.

146. CONFIDENTIAL INFORMATION

146.1 Subject to Clause 146.3, confidential information must not be disclosed by the Registrar or by any of its officers, employees or agents, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.

146.2 Information is confidential when:

- (a) it is received by the Registrar or any of its officers, employees or agents in the course of the performance by such person of a function under these Regulations or under any other legislation administered by the Registrar; and
- (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under these Regulations or other legislation.

146.3 The Registrar may disclose confidential information where such disclosure:

- (a) is permitted or required under the Regulations or under other legislation administered by the Registrar;
- (b) is permitted or required by any other law; or
- (c) is made in good faith for the purposes of performance and exercise of the functions and powers of the Registrar.

PART 17

MISCELLANEOUS AND FINAL PROVISIONS

147. WAIVERS AND MODIFICATION OF LAW

147.1 In this Clause, a reference to a **relevant provision** is a reference to any provision of these Regulations.

147.2 The Registrar may:

- (a) on the application of a person; or

(b) with the consent of a person,

by means of a written notice provide that one or more relevant provision either:

(i) shall not apply in relation to such person; or

(ii) shall apply to such person with such modifications as are set out in the written notice.

147.3 A written notice may be given subject to conditions.

147.4 A person to whom a condition specified in a written notice applies must comply with the condition. In the event of failure to comply with a condition, the Registrar may, without limiting any other powers that he may have, apply to the Review Committee for an order, including an order that the person must comply with the condition in a specified way.

147.5 Unless the Registrar is satisfied that it is inappropriate or unnecessary to do so, he must publish a written notice in such a way as he considers appropriate for bringing the notice to the attention of:

(a) those likely to be affected by it; and

(b) others who may be likely to become subject to a similar notice.

147.6 The Registrar may:

(a) on his own initiative or on the application of the person to whom it applies, withdraw a written notice; or

(b) on the application of, or with the consent of, the person to whom it applies, vary a written notice.

148. OBLIGATION OF DISCLOSURE TO THE REGISTRAR

148.1 Subject to Clause 148.2, a Company or an auditor of a Company shall disclose to the Registrar any matter which reasonably tends to show one of the following:

(a) a contravention, or likely contravention of a provision of these Regulations or other legislation administered by the Registrar; or

(b) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation,

which may be attributable to the conduct of the relevant Company or of its officers, employees or agents.

148.2 Clause 148.1 shall not apply to the extent that compliance with such requirement would disclose a privileged communication (being a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality).

148.3 A Company shall establish and implement appropriate systems and internal procedures to enable its compliance with Clause 148.1.

148.4 Any provision in an agreement between a Company and an officer, employee, agent or auditor is void in so far as it purports to hinder any person from causing or assisting a Company to comply with an obligation under Clause 148.1.

148.5 No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist a Company to comply with an obligation under Clause 148.1.

148.6 The Review Committee may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Clause 148.5.

149. DISCLOSURES TO THE REGISTRAR

A person is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of the giving of information or production of a document by the person to the Registrar:

- (a) in good faith; and
- (b) in reasonable belief that the information or document is relevant to any functions of the Registrar,

whether such information or document is given or produced pursuant to a requirement at law or otherwise.

150. IRREGULARITIES

150.1 In this Clause:

- (a) **procedure** is a reference to any procedure including, but not limited to, the making of a decision, the conduct of a hearing, the giving of a notice, and any proceeding whether a legal proceeding or not; and
- (b) **procedural irregularity** includes a reference to a defect, irregularity or deficiency of notice or time.

150.2 A procedure under these Regulations or any other legislation administered by the Registrar is not invalidated because of any procedural irregularity unless the Review Committee declares the procedure to be invalid.

150.3 In addition to the matters referenced in these Regulations that may be referred to the Review Committee, a person may apply to the Review Committee for an order declaring that:

- (a) any act or thing purporting to have been done; or
- (b) any procedure purporting to have been commenced or undertaken;

by the Registrar under and/or in accordance with these Regulations or any other legislation administered by the Registrar is valid or invalid by reason of any contravention of a provision of these Regulations or other legislation and where any such act or thing, or procedure, is essentially of a procedural nature.

150.4 A person may also apply to the Review Committee to review whether the substance of a decision of the Registrar made under, or in accordance, with these Regulations is manifestly wrong.

150.5 All protocol for matters that may be referred to the Review Committee in accordance with the provisions of these Regulations shall be managed in accordance with Schedule 2, together with any subsequent applications to the Independent Adjudicator, as applicable.

151. FALSE OR MISLEADING INFORMATION

A person shall not:

- (a) provide information which is false, misleading or deceptive to the Registrar; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the Registrar.

152. COMPLIANCE WITH AN ORDER OR DIRECTION OF THE REGISTRAR

Where the Registrar makes an order, issues a direction or makes a requirement in relation to a person pursuant to a provision of these Regulations or legislation administered by the Registrar, such person must comply with such order, direction or requirement.

153. FORM OF COMPANY'S RECORDS

153.1 The records, which a Company is required by these Regulations to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

153.2 A Company shall take reasonable precautions:

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by these Regulations to be kept, and a Company which fails to comply with the provisions of this paragraph commits an offence.

154. EXAMINATION OF RECORDS AND ADMISSIBILITY OF EVIDENCE

If any record referred to in Clause 153.1 is kept otherwise than in intelligible written form, any duty imposed on the Company by these Regulations to allow examination of or to furnish extracts from, such record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

155. PRODUCTION AND INSPECTION OF RECORDS WHERE OFFENCE SUSPECTED

155.1 If, on an application by the Registrar, there is shown to be reasonable cause to believe that a person has, while an officer of a Company, committed an offence in connection with the management of the Company's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of, the Company, the Review Committee may make an order:

- (a) authorising a person named in it to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the Company or an officer of it named in the order to produce and make available the records (or any of them) to a person named in the order at a place so named.

155.2 Clause 156.1 applies also in relation to records of a person carrying on the business of banking so far as they relate to the Company's affairs, as it applies to records of or under the control of the Company, except that no order referred to in sub-paragraph (b) of Clause 156.1 shall be made by virtue of this paragraph.

156. PUNISHMENT OF OFFENCES

156.1 In the event of an offence under a provision of these Regulations the Registrar shall have the power to impose appropriate sanctions.

156.2 For the purposes of any Clause of these Regulations where under or pursuant to these Regulations an officer of a Company or other body corporate who is in default commits an offence, the expression **officer in default** means any officer of the Company or body corporate who knowingly and wilfully authorises or permits the default refusal or contravention mentioned in the Clause.

SCHEDULE 1

INTERPRETATION

1. INTERPRETATION

1.1 In these Regulations, unless the context otherwise requires:

ADPC means the Abu Dhabi Ports Company or any other entity or company designated by it (including ADFZ) to carry out its functions under these Regulations and the Business Licensing Regulations;

AED means United Arab Emirates Dirham, the lawful currency of the United Arab Emirates;

Allotment, in relation to shares, means a transaction by which a person acquires the unconditional right to be included in a company's register of members in respect of the shares;

Applicable Law means the laws of the Emirate of Abu Dhabi and the United Arab Emirates as applied to the Company and its business;

Articles, in relation to a Company, means its articles of association as originally framed or as altered;

Business Licensing Regulations means the regulations issued by ADPC and designated as the ADFZ Business Licensing Regulations;

Certificate of Incorporation means the certificate issued pursuant to Clause 8 of these Regulations;

Company means a company registered under these Regulations;

Creditors includes present, future and contingent creditors and, in relation to a protected cell Company which is an authorised collective investment scheme, also includes any investor;

Director means:

- (a) a person occupying the position of director of a company, by whatever name called; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the company; or
 - (ii) who has the capacity to affect significantly the financial standing of the company; or
 - (iii) in accordance with whose instructions or wishes the directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the company);

Document includes summons, notice, statement, return, account, order and other legal process, and registers;

Financial period means a period for which a profit and loss account of a Company is made up in accordance with these Regulations;

Independent Adjudicator means the independent adjudicator specified in Schedule 2;

Liabilities includes any amount reasonably necessary to be retained for the purpose of providing for any liability or loss which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise;

Liability includes any debt or obligation;

ADFZ means Abu Dhabi Free Zone Limited Liability Company with Commercial License No. CN-1280435 and those areas located within Khalifa Industrial Zone Abu Dhabi designated as free zones by Executive Council Resolution No.59 of 2010 (concerning land plots designated for Abu Dhabi Ports Company as a free zone area), as such areas may be varied or extended from time to time and such other areas in Khalifa Industrial Zone Abu Dhabi as may be designated as free zones from time to time;

Officer, in relation to a body corporate, means a Director, secretary or liquidator;

Paid up includes credited as paid up;

personal representative means the executor or administrator for the time being of a deceased person;

Prescribed means prescribed by order made by the Registrar;

Printed includes typewritten and a photocopy of a printed or typewritten document;

Records means documents and other records however stored;

Registrar means the Registrar of companies and branch offices appointed pursuant to Clause 139;

Regulations means these ADFZ Companies Registration Regulations 2011;

Resolution means a Resolution passed by a simple majority of such members as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the Resolution has been duly given;

Review Committee means the review committee specified in Schedule 2;

Share means share in the capital of a body corporate and includes stock (except where a distinction between shares and stock is expressed or implied); and

Year means a calendar year.

- 1.2 References in these Regulations to a body corporate include a body corporate incorporated outside ADFZ.
- 1.3 A reference in these Regulations to a Part, Clause or Schedule by number only, and without further identification, is a reference to the Part, Clause or Schedule of that number in these Regulations.
- 1.4 A reference in a Clause or other division of these Regulations to a paragraph, sub-paragraph or Article by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or Clause of that number or letter contained in the Clause or other division of these Regulations in which that reference occurs.

1.5 Unless the context otherwise requires, where these Regulations refer to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by, or under, another enactment, including any other provision of that enactment.

2. MEANING OF HOLDING COMPANY, SUBSIDIARY AND WHOLLY OWNED SUBSIDIARY

2.1 For the purposes of these Regulations, a Company is a subsidiary of another Company only if:

(a) it is controlled by:

(i) that other Company; or

(ii) that other Company and one or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a subsidiary of that other company.

2.2 For the purposes of these Regulations, a Company is the holding Company of another only if that other Company is its subsidiary.

2.3 For the purposes of these Regulations, one Company is affiliated with another Company only if one of them is the subsidiary of the other or both are subsidiaries of the same Company or each of them is controlled by the same person.

2.4 For the purposes of these Regulations, a Company is controlled by another Company or person or by two or more companies only if:

(a) shares of the first-mentioned Company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other Company or person or by or for the benefit of those other companies; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

SCHEDULE 2

REVIEW OF THE REGISTRAR'S DECISION

Right to Review

1. A person materially affected by a decision of the Registrar made under the terms of these Regulations (the **Affected Person**) shall have the right to request a review of that decision in accordance with the provisions of this Schedule 2.
2. The procedure set out in this Schedule 2 shall constitute the Affected Person's sole and exclusive right of redress in relation to a decision made by the Registrar pursuant to these Regulations.
3. ADPC and the Affected Person shall at all times give full effect to the decision of the Registrar notwithstanding that the Affected Person has initiated the review procedure contained in this Schedule 2.
4. ADPC shall establish an autonomous review committee (the **Review Committee**) for the purposes of conducting reviews of the Registrar's decisions pursuant to this Schedule 2.

Request for Reasons

5. An Affected Person may, within 14 days of receiving notice of a decision made by the Registrar under these Regulations (the **Decision**), apply in writing to the Registrar requesting a written statement setting out the reasons for the Decision.
6. Where such a request is made, the Registrar will, as soon as practicable, and in any event within 14 days of the Affected Person's written request, prepare a statement which sets out the reasons for the Decision (the **Statement of Reasons**) and provide a copy to the Affected Person.

Review of Decision

7. An Affected Person may, within 35 days of the date of the Decision being communicated to the Affected Person, apply by notice in writing to the Review Committee for a review of the Decision (the **Application for Review**).
8. The Review Committee shall not be required to review any decision of the Registrar unless the Application for Review is served on it within 35 days of the Decision being communicated to the Affected Person.
9. An Affected Person who makes an Application for Review must, as soon as practicable, and in any event within 48 hours of serving the Application for Review on the Review Committee, provide a copy of the application to the Registrar.

Review Committee procedure

10. The Review Committee shall have the power to decide its own procedure for the conduct of the review and shall act fairly, impartially and transparently in applying the provisions of these Regulations to the circumstances of the particular case.

11. The Review Committee's powers include the ability to:
 - (a) require documents to be produced by the Affected Person or the Registrar; and
 - (b) orally examine any Officer of ADPC, the Registrar or any employee or officer of the Affected Person.
12. The Registrar and the Affected Person shall co-operate fully and in good faith with the Review Committee and shall do all things reasonably necessary for the proper and expeditious conduct of the review.
13. The Review Committee must, within 45 days of receiving an Application for Review, or such other period as may be agreed in writing between the Registrar, the Affected Person and the Review Committee, give written notice to the Affected Person and the Registrar of its ruling. The Review Committee's ruling shall either:
 - (a) affirm the Decision; or
 - (b) withdraw or vary the Decision and set out such further steps (if any) in consequence of the withdrawal or variation as it may consider appropriate.
14. The Review Committee shall be required to give reasons for its ruling.
15. The Registrar and the Affected Person will be bound by, will act in accordance with, and will give full effect to, the Review Committee's ruling notwithstanding any reference to the procedure set out in paragraph 17 below.
16. The Review Committee's ruling must include a statement to the effect that the Registrar or the Affected Person may appeal the Review Committee's ruling to an independent adjudicator appointed by the International Court of Arbitration (**ICC**) (**Independent Adjudicator**).

Independent Adjudicator

17. Within 14 days of receiving a copy of the Review Committee's ruling, the Registrar or the Affected Person may appeal the Review Committee's ruling to an Independent Adjudicator appointed by the ICC (**appeal**). The right to appeal will be lost if not made within 14 days of receipt of the Review Committee's ruling.
18. An application for an appeal must be made in writing, and a copy of that application must be served on the other parties subject of the appeal within 48 hours of the application being made.
19. The parties to the appeal shall be:
 - (a) the Affected Person;
 - (b) the Registrar; and
 - (c) the Review Committee.
20. The Independent Adjudicator shall sit as adjudicator and not as an arbitrator.
21. The Independent Adjudicator shall have absolute discretion in relation to the procedure to be adopted for the conduct of the appeal but shall do so acting fairly, impartially and transparently in applying the provisions of these Regulations to the circumstances of the particular case.

22. The Independent Adjudicator's powers include the ability to:
 - (a) require documents to be produced by the Affected Person, the Registrar or the Review Committee; and
 - (b) orally examine any Officer of ADPC, the Registrar or any employee or officer of the Affected Person.
23. The Registrar, the Affected Person and the Review Committee shall co-operate fully and in good faith with the Independent Adjudicator and shall do all things reasonably necessary for the proper and expeditious conduct of the appeal.
24. The Independent Adjudicator must, within 45 days of receiving an application for appeal, or such other period as may be agreed in writing between the Registrar, the Affected Person, the Review Committee and the Independent Adjudicator, give written notice of its decision to the parties referred to at paragraph 19 above.
25. The Independent Adjudicator's decision shall either:
 - (a) affirm the Review Committee's ruling; or
 - (b) withdraw or vary the Review Committee's ruling and set out such further steps (if any) in consequence of the withdrawal or variation as it may consider appropriate.
26. The Independent Adjudicator shall be required to give reasons for his/her decision.
27. The Independent Adjudicator's decision shall be final and binding on all parties referred to in paragraph 19 above.

Costs

28. Subject to the provisions of paragraph 29 below, the Affected Person and ADPC, on behalf of the Registrar shall bear their own costs of, and occasioned by, any review under this Schedule 2. The costs of any Independent Adjudicator shall be borne 50:50 between ADPC and the Affected Person irrespective of the Independent Adjudicator's findings.
29. Notwithstanding the provisions of paragraph 28 above, the Adjudicator shall have the power to grant an order for payment of costs against the Affected Person or ADPC as he/she may see fit in the circumstances.

Notices

30. Any notices or other documents to be served, given or sent under, or in relation to, procedures specified in this Schedule 2 may be delivered by hand to the person to be served or sent by prepaid courier service to his registered address or left at that address, and any such notification or document shall be deemed to have been served:
 - (a) if so delivered or left, at the time of delivery or leaving; or
 - (b) if so sent by prepaid courier service, at the time the delivery is received at the registered address of the person to be served.

In proving such service, it shall be sufficient to prove that delivery was made or that the envelope containing such notification or document was properly addressed, sent via prepaid courier service and left at the proper address, as the case may be.