

# UNCERTIFICATED SECURITIES RULES 2021

Date of Adoption: 2 September 2021

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers conferred by sections 718, 719, 720, 721, 996 and 997 of the Companies Regulations 2020, hereby enacts the following Rules:-

## PART 1

### INTRODUCTION

#### 1. Citation, commencement and interpretation

- (1) These Rules may be cited as the Uncertificated Securities Rules 2021.
- (2) These Rules shall come into force on the date of their publication.
- (3) Terms used in these Rules which are defined in the Companies Regulations shall have the meanings given to them in the Companies Regulations.
- (4) These Rules apply to a company that is formed or registered under the Companies Regulations.
- (5) In these Rules—

"**Acting as a Central Securities Depository**" has the meaning given to that term in the Financial Services and Markets Regulations 2015.

"**Authorised Person**" has the meaning given to that term in the Financial Services and Markets Regulations 2015.

"**Certificated**" means, in relation to a Security, that the Security is not Uncertificated.

"**Certificate of Title**" means a certificate in tangible form providing legal evidence of title to a Security.

"**Companies Regulations**" means the Companies Regulations 2020.

"**Market Rules**" means the Markets Rules of the ADGM Financial Services Regulatory Authority's rulebook.

"**Operator**" means a person operating a Relevant System.

"**Prescribed Market**" has the meaning given to that term in the Financial Services and Markets Regulations 2015.

"**Recognised Clearing House**" has the meaning given to that term in the Financial Services and Markets Regulations 2015.

"**Relevant System**" means a computer-based system and procedures, which enable title to a Security to be evidenced and transferred without a Certificate of Title or any written instrument of transfer in accordance with the requirements of these Rules, and which facilitate supplementary and incidental matters which may include, but are not limited to, a person Acting as a Central Securities Depository.

"**Remote Body**" has the meaning given to that term in the Financial Services and Markets Regulations 2015.

"**Securities**" means the instruments listed in paragraphs 87, 88, 89, 90, 91, 92, 93 and 99A of Schedule 1 of the Financial Services and Markets Regulations 2015 or their Shari'a compliant equivalents.

"**Shari'a**" has the meaning given to that term in the Glossary of the Financial Services Regulatory Authority's rulebook.

"**Tangible Documentary Requirement**" has the meaning set out in Rule 10.

"**Terms of Issue**" means the terms of issue of a Security, including the terms prescribed by the company on which the Security is held and title to it is transferred.

"**Uncertificated**", in relation to a Security, means that title to the Security (i) is recorded on the relevant register in respect of holders of such Security maintained in, and (ii) may be transferred by means of, a Relevant System.

## PART 2

### ISSUE OF UNCERTIFICATED SECURITIES AND CONVERSION OF SECURITIES INTO UNCERTIFICATED FORM

#### 2. **Conditions to issue Uncertificated Securities and Convert Certificated Securities**

- (1) In relation to any Security, if the governing law of the Securities or its Terms of Issue and the articles of association of the company are in any respect inconsistent with:
  - (a) the issue of that Security in Uncertificated form;
  - (b) the registration or transfer of title to that Security in Uncertificated form; or
  - (c) these Rules,

the company must not permit the issue, holding of, or transfer of title to, that Security in Uncertificated form.

- (2) Where Securities are issued in or converted into Uncertificated form, all Securities of the relevant class must be held in Uncertificated form. This Rule is without prejudice to the right of the company subsequently to convert Uncertificated Securities into Certificated form under Part 0 of these Rules.

#### 3. **Issue of Uncertificated Securities**

- (1) A company may permit the issue, registration and transfer of a Security issued by it in Uncertificated form in accordance with these Rules.
- (2) A company may resolve by resolution of its directors that Securities to be issued by it may be registered and transferred in Uncertificated form.
- (3) The company must notify the Registrar before it issues Securities in Uncertificated form. In accordance with the Registrar's powers under Chapter 31 of the Companies

Regulations and, in particular, Regulation 936(2)(b), notification shall be made in the manner and form specified by the Registrar.

- (4) For the avoidance of doubt, nothing in these Rules removes any liability that a company may have as a result of issuing in Uncertificated form any Securities in breach of any prohibition or restriction contained in the Terms of Issue or articles of association of that Company in respect of such Securities, preventing such issue or only permitting it to take place subject to compliance with specified conditions or requirements.
- (5) On receipt of a notification under Rule 3(3) the Registrar must make a note on the register of the relevant company that the relevant class of Securities shall be held in Uncertificated form.

#### **4. Procedure for Converting Existing Certificated Securities**

- (1) Where a company wishes to permit the registration and transfer of a class of its existing Certificated Securities in Uncertificated form, such Securities shall be converted from Certificated form into Uncertificated form in accordance with these Rules.
- (2) To convert existing shares into Uncertificated form, a company must:
  - (a) approve the occurrence and date for such conversion, by way of an ordinary resolution of members holding the existing class of shares that are proposed to be so converted;
  - (b) comply with any other requirements of the Terms of Issue of those shares, and the articles of association of the company relating to the conversion of those shares into Uncertificated form.
- (3) To convert any Securities that are not shares into Uncertificated form:
  - (a) a company must comply with any requirements of the Terms of Issue of those Securities, and the articles of association of the company relating to the conversion of those Securities into Uncertificated form;
  - (b) to the extent the Terms of Issue of such Securities are not governed by ADGM law, a company must make such changes to such Terms of Issue as may be required to ensure that the requirements of Rule 2 in relation to such Securities are satisfied; and
  - (c) to the extent the Terms of Issue of such Securities are governed by ADGM law and the Terms of Issue do not specify a process for converting the Securities into Uncertificated form, the conversion shall be characterised as an amendment to the Terms of Issue of those Securities and subject to the processes and consents applicable to amendments to such Terms of Issue.
- (4) Conversion of Securities into Uncertificated form is effective on:
  - (a) in respect of shares, the date specified in the ordinary resolution; or
  - (b) in respect of all other Securities, as determined by the company,

provided that on such date the company remains in full compliance with all the requirements of Rules 2 and 4.

- (5) Within three working days of the Securities being converted into Uncertificated form, a company must notify:
  - (a) each holder of the Securities, in writing, of the conversion of the Securities into Uncertificated form, the applicable Operator and Relevant System and the date of such conversion;
  - (b) the Registrar.
- (6) In accordance with the Registrar's powers under Chapter 31 of the Companies Regulations and, in particular, Regulation 936(2)(b), notification to the Registrar in accordance with Rule 4(5)(b) shall be made in the manner and form specified by the Registrar.
- (7) On receipt of a notification under Rule 4(5)(b), the Registrar must make a note on the register of the relevant company of the conversion of the relevant class of Securities into Uncertificated form, and the date of such conversion.
- (8) Nothing in these Rules prevents the conversion of Securities, which have previously been converted from Uncertificated form into Certificated form, back into Uncertificated form.

### **PART 3**

#### **REGISTRATION OF UNCERTIFICATED SECURITIES**

##### **5. Keeping of registers and records**

- (1) A company must maintain (or cause to be maintained by an Operator) in accordance with these Rules a register of the Uncertificated Securities in any class of Uncertificated Securities that it has in issue.
- (2) Nothing in these Rules prohibits a company from appointing a third party to maintain any register of Uncertificated Securities, whether such third party is the company's agent for maintaining such register (where the company is itself the Operator in respect of the Relevant System in relation to the Uncertificated Securities to be recorded on such register) or is an Operator appointed by the company in accordance with Part 0 in relation to such Uncertificated Securities. No such appointment shall relieve the company from any of its obligations under the Companies Regulations (as modified, as the case may be, by these Rules) or otherwise under these Rules in relation to any Uncertificated Securities.

##### **6. Availability of registers and records**

- (1) A company that has Uncertificated Securities must ensure that a register of Uncertificated Securities is at all times made available to the Registrar.
- (2) The Terms of Issue of Uncertificated Securities must be made available publicly in accordance with the applicable law of the Security and its Terms of Issue.
- (3) Where the Companies Regulations or any other applicable ADGM legal requirement grants inspection and access rights with respect to a company's register of members

or securities, any person reasonably claiming to be a member holding Uncertificated shares or otherwise claiming to hold Uncertificated Securities of that company shall have an equivalent right to access the relevant register of Uncertificated Securities of that company for the purposes of enquiring as to or verifying that the register accurately reflects that person's membership or holdings. The company shall facilitate such access and inspection.

## **PART 4**

### **PERSONS THAT MAY MAINTAIN A REGISTER OF UNCERTIFICATED SECURITIES**

#### **7. Operator authorised or recognised in the ADGM**

(1) A company that operates a Relevant System may maintain its own register of Uncertificated Securities. Alternatively, a company may appoint:

- (a) an Authorised Person;
- (b) a Recognised Clearing House; or
- (c) a Remote Body;

that operates a Relevant System to maintain a register of Uncertificated Securities on its behalf.

(2) A company must ensure that any Authorised Person, Recognised Clearing House or Remote Body acting as an Operator shall permit any register maintained on behalf of such company to be made available or inspected in accordance with Rule 6.

#### **8. Operator not authorised or recognised in ADGM**

(1) The Registrar may approve additional Operators outside ADGM to maintain a register of Uncertificated Securities on behalf of companies.

(2) Persons may be approved only by the Registrar to act as Operators outside ADGM, who may consider any candidacy in any one of the following manners:

- (a) Operators outside the ADGM may contact the Registrar directly to request approval as an Operator; or
- (b) companies may contact the Registrar to request that Operators be considered for approval as an Operator.

(3) The Registrar shall provide a response to any request falling under Rule 8(2) within 60 days of the day on which the Registrar acknowledges that it has received sufficient information from, or in respect of, the Operator to enable it to consider its candidacy for approval as an Operator.

(4) The Registrar shall exercise its discretion and consider any factors that it considers relevant for the purpose of approving entities in accordance with this Rule 8. Without prejudice to the generality of the foregoing, approved Operators shall have a regulatory status, and operate in a manner, that the Registrar determines is sufficiently equivalent to an Operator that may be authorised or recognised in the ADGM (whether or not there is any such Operator currently so authorised or recognised in the ADGM).

- (5) In addition to the entities identified under Rule 7(1), a company may appoint an Operator after obtaining written approval from the Registrar in accordance with Rule 8(2) to maintain a register of Uncertificated Securities on behalf of the company.
- (6) A company that appoints an Operator in accordance with this Rule 8 shall ensure that:
  - (a) the register of Uncertificated Securities required to be maintained by such Operator with respect to such company is available for inspection, in accordance with Rule 6;
  - (b) the Relevant System of such Operator will allow the company to comply with its obligations under these Rules.

## **PART 5**

### **EFFECT OF ISSUING OR CONVERTING SECURITIES INTO UNCERTIFICATED FORM**

#### **9. Effect of entries on registers**

- (1) A register of Uncertificated Securities is prima facie and sufficient evidence of any matters in respect of which an entry has been made therein, including that the person to whom the entry relates has legal title to the Security which he is recorded as holding.
- (2) Save in the case of error or fraud:
  - (a) a transaction in Uncertificated Securities shall become final and irrevocable upon the updating of the register in accordance with the terms or procedures of the Relevant System; and
  - (b) no law, regulation, rule or practice on the setting aside of rights or transactions shall lead to the unwinding in the register of a transaction in Uncertificated Securities that has become final and irrevocable in accordance with the terms or procedures of the Relevant System.
- (3) Neither Rules 9(1) or 9(2) shall prevent any person from exercising any right or claim that they may have in law or equity against a purported holder of Uncertificated Securities, including to assert property rights or claims for restitution or damages (for instance in case of fraud, technical error or as a result of that person being a beneficiary under a trust), in respect of a transaction or holding in Uncertificated Securities that has become so evidenced or final and irrevocable.
- (4) Subject to the limitation placed upon inspection and access rights under Rule 6(2) references in any enactment or subordinate legislation to a company's register of members or other register of holders of Securities issued by the company or to any other record, index or list of Securities shall, unless the context otherwise requires, be construed in relation to a company which has any Uncertificated Securities in issue as a reference to the relevant register of Uncertificated Securities (or, as the case may be, record, index or list of Securities) maintained by or on behalf of the company (including by an Operator) in accordance with these Rules.

## **10. Substitution of Tangible Documentary Requirements**

- (1) This Rule 10 applies in respect of any legal or regulatory requirement or restriction relating to all or any of:
  - (a) the creation, issue or provision; and
  - (b) the endorsement or signature,  
of a declaration, certificate, instrument, notice, instruction or other document in tangible form which applies in respect of the creation, issue or transfer of title to Securities or rights in an Uncertificated Security (a "**Tangible Documentary Requirement**").
- (2) Subject as mentioned in Rule 10(3) a Tangible Documentary Requirement does not prevent:
  - (a) the creation, issue, or transfer (including registration of a transfer of title) of an Uncertificated Security or rights in an Uncertificated Security;
  - (b) the conversion of a Security into Uncertificated form; or
  - (c) any such action mentioned in (a) and (b) above being legally valid and binding as if it were made fully in accordance with such Tangible Documentary Requirement.
- (3) Any legal or regulatory requirement in or under any enactment, subordinate legislation or articles of association to endorse any statement or information on a Certificate of Title shall, in the case of an Uncertificated Security, be taken to be a requirement for the company to provide the holder of the Uncertificated Security with the statement or information on request by the holder.
- (4) This Rule 10(2) is without prejudice to the power of the Court to compel a company or the Registrar to fulfil any Tangible Documentary Requirement.
- (5) In relation to an Uncertificated Security, any Tangible Documentary Requirement is to be treated as being satisfied by the provision of the relevant information that would otherwise be contained in the document in tangible form required by such Tangible Documentary Requirement being instead provided by such means as may be required or provided for by the Relevant System in which such Uncertificated Security is held.

## **11. Instructions to transfer Uncertificated Securities**

Without prejudice to Rule 10, an instruction relating to an Uncertificated Security given by a person entitled to give such an instruction shall be made in such form that is effective or otherwise required by or compliant with terms or procedures of the Relevant System in which such Uncertificated Security is held.

## **12. No Certificates of Title in respect of Uncertificated Securities**

- (1) Notwithstanding any law or regulation, a company must not issue a Certificate of Title in relation to an Uncertificated Security, save and except for the purpose of recertification of a Security, in accordance with Part 0.

- (2) Subject to Part 0 of these Rules, a document issued by or on behalf of a company purportedly evidencing title to Uncertificated Securities is not evidence of title to the Security and may not be relied upon as such by any person and, in particular, section 706 of the Companies Regulations shall not apply to any document issued with respect to Uncertificated shares of a company.

### **13. Other applicable rules**

Nothing in these Rules shall restrict the application of any requirements imposed by:

- (a) an Operator (including a Recognised Clearing House, Authorised Person or Remote Body operating a Relevant System);
- (b) any Prescribed Market or a similar market or trading venue situated outside of the ADGM;
- (c) the Financial Services and Markets Regulations 2015 including, without limitation, the regulatory authorisation necessary to carry on the regulated activity of Acting as a Central Securities Depository; and
- (d) the Financial Services Regulator, including under the Market Rules.

### **14. Liability and sanctions in respect of registers and records**

If a company maintains its own register of Uncertificated Securities or causes a third party to maintain its register of Uncertificated Securities, the same liability or sanctions will apply to the company as would apply under applicable law if the Securities to which the obligations related were Certificated Securities.

### **15. Notices of meetings**

- (1) For the purposes of determining which persons are entitled to attend or vote at a meeting of holders of Uncertificated Securities, and how many votes such persons may cast, the company may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the register of Securities held on the Relevant System in order to have the right to attend or vote at the meeting.
- (2) Changes to entries on the register of Securities held on the Relevant System after the time specified by virtue of Rule 15(1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, subordinate legislation or articles of association or other instrument or agreement to the contrary.
- (3) Subject to Rules 15(1) and 15(2), for the purposes of:
  - (a) serving notices of meetings, whether under section 327(1) of the Companies Regulations, any other enactment, subordinate legislation, a provision in the articles of association or any other instrument; or
  - (b) sending copies of the documents required to be sent to any person by section 405(1) of the Companies Regulations, any other enactment, subordinate legislation, a provision in the articles of association or any other instrument,

a company may determine that persons entitled to receive such notices, or copies of such documents (as the case may be), are those persons entered on the register of Securities held by on the Relevant System at the close of business on a day determined by it.

- (4) The day determined by a company under Rule 15(3) may not be more than 21 days before the day that the notices of the meeting, or the copies of the documents as the case may be, are sent.
- (5) In calculating the period mentioned in Rule 15(1) above, no account shall be taken of any part of a day that is not a working day

## **PART 6**

### **TRUSTS**

#### **16. Rules Applicable to Trusts and Trustees**

- (1) Unless expressly prohibited from transferring Securities by means of a Relevant System, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering the estate by reason only of the fact that:
  - (a) for the purpose of acquiring a Security which he has the power to acquire in connection with the trust or estate, he has paid for the Security under arrangements which provide for them to be transferred to him in accordance with the rules of the Operator, but not to be so transferred until after the payment of the price; or
  - (b) for the purpose of disposing of a Security which he has power to dispose of in connection with the trust or estate, he has transferred the Security in accordance with the rules of the Relevant System under arrangements which provide that the price is not to be paid to him until after the transfer is made;
- (2) Notwithstanding section 689 of the Companies Regulations, a trustee of a trust deed for securing an issue of debentures shall not be chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed only for the purposes of:
  - (a) allowing the holding of debentures in Uncertificated form;
  - (b) allowing the exercise of rights attaching to the debentures by means of a Relevant System; or
  - (c) allowing the transfer of title to the debentures by means of a Relevant System,

provided that he has given or caused to be given notice of the amendment in accordance with the trust deed not less than 30 days prior to its becoming effective to all persons registered as holding the debentures on a date not more than 21 days before the dispatch of the notice.

- (3) Without prejudice to section 130 of the Companies Regulations, an Operator shall not be bound by or compelled to recognise any express, implied or constructive trust

or other interest in respect of Uncertificated Security, even if he has actual or constructive notice of the said trust or interest.

## **PART 7**

### **CONVERTING UNCERTIFICATED SECURITIES INTO CERTIFICATED FORM**

#### **17. Conversion of Securities into Certificated Form**

Subject to Rule 18, where a company decides to permit the registration and transfer of a class of its existing Uncertificated Securities in Certificated form, such Securities shall, prior to any such registration or transfer, be converted from Uncertificated form into Certificated form in accordance with these Rules.

#### **18. Conditions to Converting Uncertificated Securities into Certificated Form**

(1) In relation to any Security, if the governing law of the Securities or its Terms of Issue, the articles of association of the company are in any respect inconsistent with:

- (a) the registration or transfer of title to that Security in Certificated form; or
- (b) these Rules,

the company must not permit the issue, holding of, or transfer of title to, that Security in Certificated form.

(2) Where Uncertificated Securities are converted into Certificated form, all Securities of the relevant class after conversion must be held in Certificated form. This Rule is without prejudice to the right of the company subsequently to convert Certificated Securities into Uncertificated form under Part 0 of these Rules.

#### **19. Procedure for Conversion of Securities into Certificated Form**

(1) To convert shares into Certificated form, a company must:

- (a) approve the occurrence and date for such conversion, by way of an ordinary resolution of members holding the existing class of shares that are proposed to be so converted;
- (b) comply with any other requirements of the Terms of Issue of those shares, and the articles of association of the company relating to the conversion of those shares into Certificated form.

(2) To convert any Securities that are not shares into Certificated form:

- (a) a company must comply with any requirements of the Terms of Issue of those Securities, and the articles of association of the company relating to the conversion of those Securities into Certificated form;
- (b) to the extent the Terms of Issue of such Securities are not governed by ADGM law, a company must make such changes to such Terms of Issue as may be required to ensure that the requirements of Rule 18(1) in relation to such Securities are satisfied; and

- (c) to the extent the Terms of Issue of such Securities are governed by ADGM law and the Terms of Issue do not specify a process for converting the Securities into Certificated form, the conversion into Certificated Securities shall be characterised as an amendment to the Terms of Issue of those Securities and subject to the processes and consents applicable to amendments to such Terms of Issue.
- (3) Conversion of Securities into Certificated form is effective on:
  - (a) in respect of shares, the date specified in the ordinary resolution; or
  - (b) in respect of all other Securities, as determined by the company.
- (4) A conversion event will occur in accordance with Rule 19(3) subject to:
  - (a) the company notifying any third-party Operator maintaining the register of the Uncertificated Securities that a conversion event will occur on the specified date and that the register held on that Relevant System shall be closed; and
  - (b) the company remaining in full compliance with all the requirements of Rules 18 and 19.
- (5) Within three working of the conversion event occurring in accordance with Rule 19(3), a company must notify:
  - (a) each holder of the Securities in writing of the conversion of the Securities into Certificated form and the date of such conversion; and
  - (b) the Registrar.
- (6) In accordance with the Registrar's powers under Chapter 31 of the Companies Regulations and, in particular, Regulation 936(2)(b), notification to the Registrar in accordance with Rule 19(5)(b) shall be made in the manner and form specified by the Registrar.
- (7) On receipt of a notification under Rule 19(3), the Registrar must make a note on the register of the relevant company of the conversion of the relevant class of Securities into Certificated form, and the date of such conversion.
- (8) Upon the conversion event occurring in accordance with Rules 19(3) and 19(4):
  - (a) the Securities to which that event relate are Certificated Securities;
  - (b) the company shall issue Certificates of Title in respect of such Securities; and
  - (c) the Rules set out herein that are applicable to Uncertificated Securities cease to apply in respect of such Securities unless and until they are subsequently converted into Uncertificated form.
- (9) Subject to the Terms of Issue of the Security or the articles of association of the company specifying an earlier date, section 714(1) of the Companies Regulation shall apply in relation to the issue of a certificate by a company pursuant to this Rule 19 as it applies in relation to the completion and having ready for delivery by a company of

share certificates or debentures; and in that subsection as it so applies the reference to the date on which a transfer is lodged with the company shall be a reference to the date on which the conversion event occurs in accordance with Rule 19(3).

- (10) During any period between the Relevant System ceasing to keep the relevant register and the entering of equivalent details in any register of Certificated Securities and the issuance of any Certificates of Title:
  - (a) the relevant holder of such Securities shall retain title to their Security, notwithstanding that the Relevant System has ceased to maintain the relevant register; and
  - (b) where those Securities are shares, the relevant holder shall be deemed to continue to be a member of the company.
- (11) Nothing in these Rules prevents the conversion of Uncertificated Securities, which have previously been converted from Certificated form into Uncertificated form, into Certificated form.