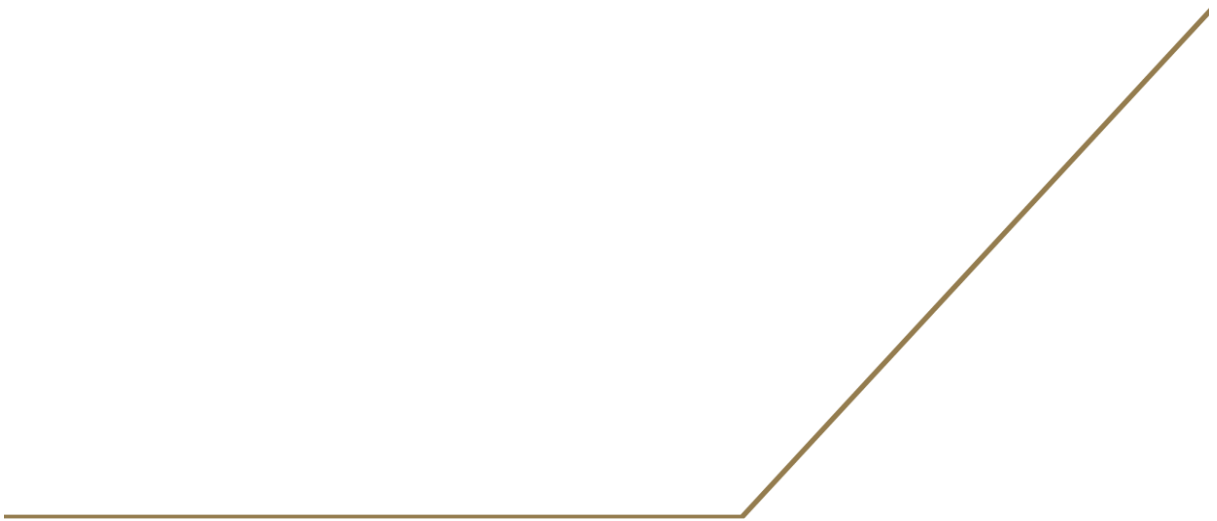


**FOUNDATIONS REGULATIONS 2017**

(CONSOLIDATED VERSION)



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## **FOUNDATIONS REGULATIONS 2017**

Regulations to make provision for the establishment and registration of foundations in the Abu Dhabi Global Market.

Date of Enactment: **14 August 2017**

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations –

### **PART 1 – ESTABLISHMENT AND REGISTRATION OF FOUNDATIONS**

#### *Requirements for establishment and registration*

#### **1. Establishing and Registering a Foundation**

- (1) A Foundation is established and registered under these Regulations when:
  - (a) the Registrar receives each of the following (together, the “Registration Application”):
    - i. a written Charter signed by one or more of the Founders;
    - ii. the registration fee specified in Schedule 1;
    - iii. a declaration of compliance signed by the applicant affirming that all requirements of these Regulations relating to registration have been fulfilled;
    - iv. an application for any license(s) required by the Commercial Licensing Regulations 2015; and
    - v. information comprising Confidential Disclosure; and
  - (b) the Registrar issues a certificate of registration.
- (2) At any time after the Registration Application is received and before the Registrar issues a certificate of registration, the Registrar may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to make its determination.
- (3) All license-related matters, including the determination by the Registrar whether to grant a license to the applicant and, if granted, the period of time during which such license shall be valid, shall be governed by the Commercial Licensing Regulations 2015.

## *Objects*

### **2. Objects of a Foundation**

- (1) A Foundation may have any objects, provided that they do not contravene this section 2.
- (2) The objects of a Foundation shall include the management of its Assets and income and the distribution of such Assets and income by the Foundation Council in accordance with its Charter.<sup>1</sup>
- (3) The objects of a Foundation shall not include the carrying on of any activity which is unlawful, contrary to any public policy of the Abu Dhabi Global Market or the United Arab Emirates or prohibited under Article 17 of the ADGM Founding Law.

## *Registration and its effect*

### **3. Registration**

- (1) In order to register a Foundation pursuant to these Regulations, the Registrar must receive a Charter, the registration fee specified in Schedule 1 and a signed declaration of compliance that all requirements of these Regulations relating to registration have been fulfilled.
- (2) Before registering a Foundation the Registrar shall satisfy itself that the Charter is in compliance with these Regulations. A Foundation may not be so formed for an unlawful purpose.
- (3) If the Registrar is satisfied that the requirements of these Regulations as to registration are complied with, the Registrar may accept the documents delivered to it, allocate a registered number to the Foundation and include the Foundation in the Foundations Register.
- (4) If the Registrar is not satisfied that a Charter complies with subsection (2) it shall inform the applicant of its decision, together with its reasons, within one month of submission of the Charter.
- (5) With effect from the date of registration stated in the certificate of registration, the Foundation shall be a legal entity having separate legal personality and may sue and be sued.
- (6) On each anniversary of registration the Registrar must be paid the annual fee set out in Schedule 1.

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<sup>1</sup> Amended 29 April 2020

#### **4. Certificate of Registration**

- (1) On the registration of a Foundation, the Registrar shall give a certificate that the Foundation is duly registered.
- (2) The certificate of registration<sup>2</sup> must state –
  - (a) the name and registered number of the Foundation;
  - (b) the date of its registration;
  - (c) the address of its registered office in the Abu Dhabi Global Market; and, if different,
  - (d) the name and address (in the Abu Dhabi Global Market) of its Company Service Provider<sup>3</sup>, if any.
- (3) Subsections 12(3) and 12(4) of the Companies Regulations 2015 shall apply *mutatis mutandis* to certificates of registration for Foundations.
- (4) The certificate of registration shall be in electronic form only, unless a request is made subject to section 4(5).
- (5) Any person may request that the Registrar provide it with a paper copy of any certificate of registration, signed by the Registrar or authenticated by the Registrar's seal.
- (6) The Board may make rules requiring the payment of certain fees to the Registrar for the provision of the paper copy as described in subsection 4(5).<sup>4</sup>
- (7) Upon registration, the Registrar shall allocate a registration number to the Foundation.

#### *Registered Office*

#### **5. Registered office**

- (1) A Foundation must at all times have a registered office in the Abu Dhabi Global Market to which all communications and notices may be addressed and which may be the same address as that of its Company Service Provider<sup>5</sup>.
- (2) A Foundation may change the address of its registered office by giving notice to the Registrar. The change takes effect upon the notice being registered by the Registrar, but until the end of

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<sup>2</sup> Amended 29 April 2020

<sup>3</sup> Amended 17 March 2021

<sup>4</sup> Amended 29 April 2020

<sup>5</sup> Amended 17 March 2021

the period of 14 days beginning with the date on which it is registered a Person may validly serve any document on the Foundation at the address previously registered.

## **6. Names of Foundations**

- (1) The name of a Foundation shall end with the word “Foundation”.
- (2) The name of a Foundation shall comply with the Business and Company Names Rules 2016, as modified from time to time.

### *The Registrar*

## **7. Powers of the Registrar**

- (1) The Registrar shall administer these Regulations and perform the functions and exercise the powers conferred by or under these Regulations, the Companies Regulations 2015 and the Commercial Licensing Regulations 2015.
- (2) The Registrar has the authority to approve such forms as it considers necessary for the purpose of these Regulations and may issue such guideline or directions as are required for the proper administration of these Regulations.
- (3) The Registrar shall utilize the official seal referenced in Section 937 (The Registrar’s official seal) of the Companies Regulations 2015 in authenticating or issuing official documents in connection with the registration of Foundations under these Regulations.
- (4) The Registrar may give directions to the Foundation requiring it–
  - (a) to produce such documents (or documents of such description) as may be specified in the directions,
  - (b) to provide such information (or information of such description) as may be so specified,at such time and place as may be specified in the directions.
- (5) The production of a document in pursuance of subsection (4) does not affect any lien which a person has on the document.
- (6) The Registrar may take copies of or extracts from a document produced in pursuance of this section.
- (7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document–

- (a) in hard copy form, or
  - (b) in a form from which a hard copy can be readily obtained.
- (8) Any person who fails without reasonable excuse to comply with any requirement imposed in accordance with this section commits a contravention of these Regulations and shall be liable to a fine of up to level 7.
- (9) In this section “document” includes information recorded in any form.
- (10) The Registrar may disclose any material held where such disclosure is—
- (a) is permitted or required to be made under the laws, regulations or rules of the Abu Dhabi Global Market,
  - (b) is made to—
    - i. the Financial Services Regulator;
    - ii. a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering,
    - iii. a self-regulatory body or organization exercising and performing powers and functions in relation to financial services,
    - iv. a civil or criminal law enforcement agency, or
    - v. a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers, for the purpose of assisting the performance by any such person of its regulatory functions, or
  - (c) is made in good faith for the purposes of performance and exercise of the functions and powers of the Registrar.
- (11) The Registrar shall maintain a Foundations Register established under these Regulations which will contain the following information in respect of each Foundation –
- (a) name and registration number;
  - (b) name and address (in the Abu Dhabi Global Market) of its Company Service Provider<sup>6</sup>, if any;

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<sup>6</sup> Amended 17 March 2021



- (c) name and address of each Councillor;
  - (d) date of establishment under these Regulations; and
  - (e) record of payment of annual fees.
- (12) The Foundations Register shall be in such form as the Registrar may determine, but shall be separate and apart from the register established and maintained pursuant to Companies Regulations 2015.
- (13) For the avoidance of doubt, Section 939 (Public notice of issue of certificate of incorporation) and Section 952 (Documents subject to enhanced disclosure requirements) of Companies Regulations 2015 do not apply in respect of Foundations.

## **8. Powers of the Court**

Any Person with appropriate standing may apply to the Court to protect or enforce rights provided to them in these Regulations. The jurisdiction of the Court and the scope of its authority to issue enforceable writs, orders, judgements and process are as set forth in the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

## **PART 2 – FOUNDATION DOCUMENTS**

### *Foundation Charter*

## **9. Foundation Charter**

- (1) A Foundation shall have a Charter that complies with the provisions of these Regulations. For the avoidance of doubt, any provisions, duties, powers, functions and rights set forth in a Charter are for internal governance purposes only and shall in no way replace or limit the processes, restrictions, oversight or other terms set forth in these Regulations.
- (2) The Charter shall contain the following information –
- (a) the name of the Foundation;
  - (b) the name and address of the Founder or each of the Founders;
  - (c) the objects of the Foundation;
  - (d) if the Foundation has been established for a specific purpose, the purpose for which the Foundation has been established;
  - (e) a description of the Initial Assets;

- (f) provisions for the establishment of a Council;
  - (g) the name of a natural person or Legal Person who shall become a Beneficiary only in circumstances where a Foundation has no other Beneficiary (the “Designee”);
  - (h) the name and address (in the Abu Dhabi Global Market) of the Foundation’s Company Service Provider<sup>7</sup>, if any;
  - (i) the address of the Foundation’s registered office in the Abu Dhabi Global Market; and
  - (j) the term for which the Foundation is established, if any, or the details of any contingent event which will trigger the dissolution of the Foundation.
- (3) The Charter may contain the following information in addition to the details set out in subsection (2) –
- (a) provisions for the Foundation to be endowed with Supplementary Assets;
  - (b) the name and address of each of the initial Councillors;
  - (c) provisions governing the appointment and removal of a Councillor;
  - (d) description of the manner in which decisions of the Council are to be made;
  - (e) provisions for the designation of any initial Beneficiaries or any Beneficiaries to be designated at a later date;
  - (f) the names and addresses of any Beneficiaries;
  - (g) provisions for identifying any remaining Beneficiaries upon dissolution of the Foundation;
  - (h) provisions for the addition or removal of a Beneficiary;
  - (i) provisions for the appointment of one or more Persons to act as Guardian or Guardians respectively;
  - (j) the duties, powers, functions and rights, including the rights to remuneration, of a Guardian;
  - (k) provisions for the removal of a Guardian;

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<sup>7</sup> Amended 17 March 2021

- (l) provisions for the making of By-laws;
  - (m) provisions for the appointment of a Person, whether by power of attorney or otherwise, to carry out particular duties on behalf of the Foundation;
  - (n) provisions for the appointment, term of office and removal of an auditor, if any, of the Foundation;
  - (o) provisions for amending the Charter or By-laws;
  - (p) provisions for the circumstances, if any, in which the Foundation may be continued in or outside the Abu Dhabi Global Market and the conditions to be satisfied in respect of such continuation in or outside the Abu Dhabi Global Market;
  - (q) provisions for the reservation of rights or powers to the Founder or Founders, as the case may be;
  - (r) provisions for the appointment, term of office and removal of any other supervisory Person to the Foundation; and
  - (s) provisions for any other lawful matter in respect of the Foundation.
- (4) The Charter shall not contain the provisions referenced in subsection 25(3).

**9A. Statement of Initial Beneficial Ownership and Control<sup>8</sup>**

- (1) An application to register a Foundation pursuant to these Regulations must also contain a statement of initial beneficial ownership and control, stating whether, on incorporation, there will be any person who will be considered a beneficial owner of the Foundation.
- (2) The statement required to be delivered to the Registrar must contain the required particulars as prescribed under section 2 of the Beneficial Ownership and Control Regulations 2018.
- (3) For the purposes of this section, “beneficial owner” shall have the meaning prescribed to it in Schedule 1 (Meaning of Beneficial Owner) of the Beneficial Ownership and Control Regulations 2018.

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<sup>8</sup> Amended on 17 April 2018

*Facility to Amend Charter and Confidential Disclosure*

**10. Amendment of Charter or Revision of Confidential Disclosure**

- (1) The Charter may make provision permitting its amendment.
- (2) Where no provision is made for the amendment of the Charter, the Charter may still be amended in writing by the Founder during the Founder's lifetime/existence or in the case of multiple Founders, by the Founders jointly during their joint lifetimes/existences or by the surviving Founder or Founders jointly.
- (3) In the event that there is no surviving Founder at the time of a proposed amendment under subsection (2) the Council may approve the proposed amendment by a Resolution of Councillors if the amendment is in their opinion necessary for the furtherance of the objects of the Foundation.
- (4) A Resolution of Councillors approving an amendment to the Charter must be confirmed by the Court under subsection (5).
- (5) An application must be made by the Foundation Council to the Court requesting the confirmation of the amendment to the Charter. The Court may confirm, reject or modify the amendment or make such other order as it thinks fit for carrying into effect an amendment.
- (6) Amendment to the Charter shall be executed by or on behalf of each Founder or in the case of an amendment under subsection (3) by each Councillor.
- (7) Any changes to the information contained in a Foundation's Confidential Disclosure shall be in accordance with these Regulations.
- (8) Where a Foundation amends its Charter or changes the information contained in its Confidential Disclosure, it must send to the Registrar a copy of the updated document not later than 14 days after the amendment takes effect or the information changes, as applicable. If a Foundation fails to comply with this subsection a contravention of these Regulations is committed by the Foundation and every Councillor of the Foundation who is in default. A Person who commits the contravention referred to in this subsection is liable for a level 2 fine.

*By-laws*

**11. By-laws of a Foundation**

- (1) A Foundation shall have By-laws that comply with the provisions of these Regulations. For the avoidance of doubt, any provisions, duties, powers, functions and rights set forth in By-laws

are for internal governance purposes only and shall in no way replace or limit the processes, restrictions, oversight or other terms set forth in these Regulations.

- (2) If the following matters are not included in the Charter, they must be set out in the By-laws -
  - (a) the functions of the Council (including the nature of any powers to delegate its responsibilities); and
  - (b) the procedures for the appointment, registration and removal of Councillors and any Guardian and details of any remuneration payable to the Councillors and any Guardian.
- (3) The By-laws may -
  - (a) detail the circumstances in which Assets of a Foundation may be distributed, accumulated or applied;
  - (b) describe whether, and if so how, Supplementary Assets may be endowed upon the Foundation;
  - (c) provide the names and addresses of each of the initial Councillors and the Beneficiaries;
  - (d) provide for additions or removals of Beneficiaries, either revocably or irrevocably;
  - (e) make the interests of Beneficiaries conditional, liable to termination or subject to a restriction; and
  - (f) provide for any other matter in respect of the Foundation in addition to the matters required to be set out in the By-laws or in these Regulations.
- (4) The By-laws shall not contain the provisions referenced in subsection 25(3).
- (5) The By-laws shall be in writing and signed and executed by each Founder or each Councillor if there is no surviving Founder.
- (6) To the extent of any conflict between the Charter and the By-laws, the Charter shall control.

## **12. Amendment of By-laws**

Subject to the provisions of the Charter or By-laws, the Council may amend or replace the By-laws by a unanimous resolution of the Councillors.

## PART 3 – FOUNDATION ASSETS

### *Assets*

#### **13. Minimum Initial Asset Value**

In order to be registered by the Registrar the Charter must require the Foundation to have Initial Assets with a value of 100 US dollars or its equivalent in any other currency.

#### **14. Undertakings to Endow a Foundation**

Where a Charter or other legal documents record an undertaking by a Founder or any other Person to endow Assets to a Foundation, the Foundation may enforce that undertaking against the Founder or such other Person.

#### **15. Assets of a Foundation**

- (1) The Assets of a Foundation may comprise any property.
- (2) This subsection (1) is to be read in accordance with sections 32, 33 and 34 of these Regulations.

#### **16. Management of Foundation Assets**

The Assets of a Foundation must be managed in accordance with the Charter, By-laws and the provisions of these Regulations and solely for the attainment of the objects specified in the Charter and authorized by these Regulations.

## PART 4 – RESERVATION OF POWERS TO FOUNDER

### *Reserved Powers*

#### **17. Reserved Powers**

- (1) The Charter or By-laws may reserve, for the Founder or any other Person, the following powers:
  - (a) the power to amend, revoke or vary the terms of the Charter or By-laws;
  - (b) the power to change the objects of the Foundation and to dissolve the Foundation;
  - (c) the power to direct or approve the investment activities of the Foundation;
  - (d) the power to appoint and remove any Councillor;

- (e) the power to appoint or remove any Guardian;
- (f) the power to add or exclude any Beneficiary;
- (g) the power to amend the rights, entitlements or restrictions of a Beneficiary;
- (h) the power to effect the continuation of an Overseas Foundation,

provided that any disposition of any Assets of a Foundation must be made through a Resolution of Councillors which shall give effect to the exercise of reserved powers as provided in the Charter or By-laws.

## **PART 5 – FOUNDATION OFFICIALS**

### *Company Service Provider<sup>9</sup>*

#### **18. Non-Exempt Foundations to have a Company Service Provider<sup>10</sup>**

- (1) Subject to subsections (2), (3) and (4), a Foundation must at all times have a Company Service Provider, licensed pursuant to the Commercial Licensing Regulations 2015 to carry out the controlled activity of providing company services, as defined in Rule 7 of the Commercial Licensing Regulations 2015 (Controlled Activities) Rules 2021.
- (2) Notwithstanding subsection (1), a Foundation that has demonstrated to the satisfaction of the Registrar to have—
  - (a) substantial resources, experience and personnel in the United Arab Emirates, and
  - (b) adequate governance policies and procedures, in each case as may be specified by rules made by the Board or guidance issued by the Registrar,need not have a Company Service Provider.
- (3) The requirement for a Non-Exempt Foundation registered in ADGM to appoint a Company Service Provider in accordance with subsection (1) takes effect from the Effective Date.
- (4) Any Non-Exempt Foundation registered in ADGM –
  - (a) *prior to or on the date on which the Foundations (Amendment No. 1) Regulations 2021 comes into force*, must have a Company Service Provider in accordance with subsection (1) at the earlier of its next Commercial Licence renewal date or the end of 12 months from the Effective Date;
  - (b) *after the date on which the Foundations (Amendment No. 1) Regulations 2021 came into force and before the Effective Date*, must have a Company Service Provider in

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<sup>9</sup> Amended 17 March 2021

<sup>10</sup> Amended 17 March 2021

accordance with subsection (1) at, or by no later than, its first Commercial Licence renewal date, and

- (c) *after the Effective Date*, must have a Company Service Provider in accordance with subsection (1) from the registration date.
- (5) Prior to the registration of a Foundation, the Founder or Founders may appoint a Company Service Provider by including the name and address (in the Abu Dhabi Global Market) of such Person in the Charter forming part of the Foundation's Registration Application. References in the Charter or By-laws of all Foundations registered under these Regulations to a "registered agent" shall be construed as references to a Company Service Provider.
- (6) A Foundation may appoint and remove from office a Company Service Provider by Resolution of Councillors.
- (7) A Non-Exempt Foundation must, within the period of 14 days from a person becoming or ceasing to be a Company Service Provider of the Non-Exempt Foundation, give notice to the Registrar of the change and of the date on which it occurred.
- (8) Notice of a person having become a Company Service Provider of the Non-Exempt Foundation must be accompanied by that person's consent in the prescribed form to act in that capacity.
- (9) If default is made in complying with subsection (1), a contravention of these Regulations is committed by–
  - (a) the Non-Exempt Foundation; and
  - (b) every Councillor who is in default.
- (10) A Person who commits the contravention referred to in subsection (9) is liable to a fine not exceeding level 7.
- (11) If default is made in complying with subsection (7), a contravention of these Regulations is committed by–
  - (a) the Non-Exempt Foundation; and
  - (b) every Councillor who is in default.
- (12) A Person who commits the contravention referred to in subsection (11) is liable to a level 2 fine.



**18A. Obligations of Company Service Provider and Non-Exempt Foundation<sup>11</sup>**

- (1) The Company Service Provider of a Non-Exempt Foundation shall maintain the records that the Non-Exempt Foundation is required to maintain under or in accordance with any enactment or subordinate legislation applicable to the Non-Exempt Foundation, including
  - (a) these Regulations;
  - (b) the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2021 and any licence granted thereunder; and
  - (c) the Beneficial Ownership and Control Regulations 2018.
- (2) The Company Service Provider of a Non-Exempt Foundation –
  - (a) must act as a Registered Office Provider to that Foundation, unless a different registered office is otherwise expressly permitted by the Registrar,
  - (b) is authorised to represent the Non-Exempt Foundation in its dealings with the Registrar, and
  - (c) shall give all notices and make all filings that the Non-Exempt Foundation is obliged to make to the Registrar under any enactment or subordinate legislation applicable to it, including–
    - (i) these Regulations;
    - (ii) the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2021 and any licence granted thereunder; and
    - (iii) the Beneficial Ownership and Control Regulations 2018.
- (3) A Non-Exempt Foundation must make available to its Company Service Provider such documents and information as is required to enable the Company Service Provider to comply with its obligations under this section.
- (4) If a default is made in complying with subsection (3), a contravention of these Regulations is committed by–
  - (a) the Foundation, and
  - (b) every Councillor who is in default.
- (5) A Person who commits the contravention referred to in subsection (4) is liable to a fine not exceeding level 6.

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<sup>11</sup> Amended 17 March 2021

## **18B. Service of Documents on Foundation<sup>12</sup>**

A document may be served on a Foundation registered under these Regulations by leaving it at, or sending it by post to, the Foundation's registered office or the office of its Company Service Provider appointed in accordance with section 18.

### *Foundation Council*

## **19. Foundation Council**

- (1) A Foundation is required to have a Council which consists of at least two Councillors.
- (2) The Founder or a Legal Person may be appointed as Councillor.
- (3) The duties of a Council are –
  - (a) to carry out the objects of the Foundation;
  - (b) to manage and administer the Assets of the Foundation; and
  - (c) to do any other acts which may be required by the Charter, By-laws or under these Regulations.
- (4) The duties of the Councillors are –
  - (a) to act in accordance with the Foundation's Charter;
  - (b) to only exercise powers for the purposes for which they are conferred;
  - (c) to act honestly, in good faith and in the best interests of the Foundation;
  - (d) to exercise independent judgment. This duty is not infringed by a Councillor acting in accordance with an agreement duly entered into by the Foundation that restricts the future exercise of discretion by its Councillors, or in a way authorised by the Foundation's Charter;
  - (e) to exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent Person with the general knowledge, skill and experience that may reasonably be expected of a Person carrying out the functions carried out by the Councillor in relation to the Foundation, and the general knowledge, skill and experience that the Councillor has;

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<sup>12</sup> Amended 17 March 2021

- (f) to not act on behalf of a Foundation, or exercise any of his powers as a Councillor, in relation to any matter in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Foundation;
- i. This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the Foundation could take advantage of the property, information or opportunity).
  - ii. This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the Foundation.
  - iii. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised by the Councillors who do not have a direct or indirect interest that conflicts with the interests of the Foundation in such matter (“Non-conflicted Councillors”).
  - iv. Where nothing in the Foundation’s Charter invalidates such authorisation, authorisation may be given by the matter being proposed to and authorised by the Non-conflicted Councillors. Where the Foundation’s Charter includes a provision enabling the Non-conflicted Councillors to authorise the matter, authorisation may be given by the matter being proposed to and authorised by the Non-conflicted Councillors in accordance with the Charter.
  - v. Any reference in this paragraph (f) to a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (g) to not accept a benefit from a third party conferred by reason of his being a Councillor, or his doing (or not doing) anything as Councillor;
- i. A “third party” means a Person other than the Foundation or a Person acting on behalf of the Foundation.
  - ii. Benefits received by a Councillor from a Person by whom his services (as a Councillor or otherwise) are provided to the Foundation are not regarded as conferred by a third party.
  - iii. This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
  - iv. Any reference in this paragraph (g) to a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (h) to declare to the other Councillors the nature and extent of any direct or indirect interest in a proposed transaction or arrangement with the Foundation;

- i. The declaration may (but need not) be made at a meeting of the Councillors.
- ii. If a declaration of interest under this paragraph (h) proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- iii. Any declaration required by this paragraph (h) must be made before the Foundation enters into the transaction or arrangement.
- iv. This paragraph (h) does not require a declaration of an interest of which the Councillor is not aware or where the Councillor is not aware of the transaction or arrangement in question. For this purpose a Councillor is treated as being aware of matters of which he ought reasonably to be aware.
- v. A Councillor need not declare an interest if it cannot reasonably be regarded as likely to give rise to a conflict of interest; if, or to the extent that, the other Councillors are already aware of it (and for this purpose the other Councillors are treated as aware of anything of which they ought reasonably to be aware); or if, or to the extent that, it concerns terms of his service contract that have been or are to be considered by a meeting of the Councillors, or by a committee of the Councillors appointed for the purpose under the Foundation's Charter; and
  - (i) to ensure compliance with section 20.

## **20. Accounting Records**

- (1) Every Foundation must keep adequate Accounting Records.
- (2) If a Foundation fails to comply with subsection (1), a contravention of these Regulations is committed by every Councillor of the Foundation who is in default.
- (3) A Person does not commit the contravention referred to in subsection (2) if he shows that he acted honestly and that in the circumstances in which the Foundation's activities were carried on the default was excusable.
- (4) A Person who commits the contravention referred to in subsection (2) shall be liable to a fine of up to level 5.
- (5) A Foundation's Accounting Records—
  - (a) must be kept at its registered office or such other place as the Councillors think fit; and

- (b) must at all times be open to inspection by the Foundation's Councillors and any Guardian.
- (6) If Accounting Records are kept at a place outside the Abu Dhabi Global Market, copies of Accounting Records, such that would:
- (a) disclose with reasonable accuracy the financial position of the Foundation at intervals of not more than six months; and
  - (b) enable the Councillors to ensure that the accounts required to be prepared under this Part comply with the requirements of these Regulations,
- must be sent to, and kept at, a place in the Abu Dhabi Global Market, and must at all times be open to inspection by the Foundation's Councillors and any Guardian.
- (7) If a Foundation fails to comply with any provision of subsections (5) or (6), a contravention of these Regulations is committed by every Councillor of the Foundation who is in default.
- (8) A Person does not commit the contravention referred to in subsection (7) if he shows that he acted honestly and that in the circumstances in which the Foundation's activities were carried on the default was excusable.
- (9) Subject to subsection (8), a Person who commits the contraventions referred to in subsection (7) shall be liable to a level 2 fine.

## **21. Maintaining Records**

- (1) Accounting Records that a Foundation is required by subsection 20(1) to keep must be preserved by it for ten years from the date on which they are made.
- (2) Subsection (1) is subject to any provision contained in other regulation or law applicable in the Abu Dhabi Global Market.
- (3) If a Foundation fails to comply with subsection (1), a contravention of these Regulations is committed by every Councillor of the Foundation who is in default.
- (4) A Person does not commit the contravention referred to in subsection (3) if he shows that he acted honestly and that in the circumstances in which the Foundation's activities were carried on the default was excusable.
- (5) A Councillor of a Foundation commits a contravention of these Regulations if he—
  - (a) fails to take all reasonable steps for securing compliance by the Foundation with subsection (1), or

- (b) intentionally causes any default by the Foundation under that subsection.
- (6) Subject to subsection (4), a Person who commits the contraventions referred to in subsection (3) shall be liable to a level 2 fine.
- (7) A Person who commits the contraventions referred to in subsection (5) shall be liable to a fine of up to level 5.
- (8) Not later than 14 days after the Registrar sends a written request to the Foundation's registered office, the Foundation must deliver to the Registrar a copy of all requested Accounting Records and/or accounts and returns.
- (9) Upon the written request of the Registrar delivered to the Foundation's registered office, the Foundation must obtain an audit of such Accounting Records and/or accounts and returns as the Registrar may request. The results of such audit shall be delivered to the Registrar within such time period as the Registrar may specify.
- (10) If the requirements of subsections (8) or (9) are not complied with, the Foundation and every Councillor commits a contravention of these Regulations.
- (11) A person does not commit the contravention referred to in subsection (10) if he proves that he took all reasonable steps for securing that those requirements would be complied with, and for this purpose, it is not enough to prove that the documents in question were not in fact prepared as required by this section.
- (12) A person who commits the contravention referred to in subsection (10) shall be liable to a fine of up to level 5.
- (13) The Accounting Records and accounts and returns of a Foundation will not be subject to public disclosure by the Registrar.

## **22. Appointment of Councillors**

- (1) Prior to registration of a Foundation, a Councillor shall be appointed by the Founder or Founders. Following registration, a Councillor shall be appointed in accordance with the relevant provisions of the Charter or By-laws.
- (2) In circumstances where the number of Councillors falls below the number required in subsection 19(1) or required in the Charter or By-laws, the necessary additional Councillors shall be appointed as soon as practicable as provided for in the Charter or By-laws, or, in the

absence of any express provisions in the Charter or By-laws, in accordance with subsection (3) below.

- (3) Where the Charter or By-laws of a Foundation contain no provision for the appointment of a new or additional Councillor, or such provision has lapsed or failed, or the Person or Persons required to exercise such power fail to do so for whatever reason, the Founder, a Guardian or a Beneficiary may make an application to the Court for the appointment of one or more Councillors in order that the Foundation complies with the requirements of the Charter or By-laws or these Regulations.
- (4) The appointment of a Person as a Councillor is personal to that Person and may not be assigned or delegated, except that a Councillor that is a Legal Person may act through its authorized officers or agents.
- (5) Every Person appointed, or to be appointed, as a Councillor shall be a fit and proper Person to hold that position.
  - (a) In determining whether a Person is a fit and proper Person to be appointed as a Councillor, regard shall be had to –
    - i. his probity, competence, solvency and soundness of judgement for fulfilling the responsibilities of that position;
    - ii. the diligence with which he is fulfilling or likely to fulfil those responsibilities;
    - iii. whether the interests of the Founder or any Beneficiaries are, or are likely to be, in any way threatened by his holding that position;
    - iv. the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority; and
    - v. his record of compliance with these Regulations in acting as a Councillor.
  - (b) Without prejudice to the generality of the foregoing subsections, regard may be had to the previous conduct and activities in business or financial matters of the Person in question.

#### *Disqualification*

### **23. Persons Disqualified from Being Councillors**

No Person shall be appointed or be permitted to remain as a Councillor –

- (a) in the case of a natural person, if the Person is a Minor or mentally incapacitated or has an undischarged bankruptcy;
- (b) in the case of a Legal Person, if the Person is dissolved.

#### **24. Notice of Appointment of Councillor**

- (1) A Foundation must give written notice of the appointment of a Councillor, including the full name and address of the Councillor, to its Company Service Provider<sup>13</sup>, if any, and the Registrar within 14 days of such appointment.
- (2) A Foundation that contravenes subsection (1) is liable for a level 1 fine.

#### *Councillors*

#### **25. Liability of Councillors for Breach of Duty**

- (1) Subject to the provisions of these Regulations and the provision of the Charter and By-laws, a Councillor who commits a breach of duty is liable for any loss in value of the Foundation Assets resulting from the breach.
- (2) A Councillor is not liable for breach of duty committed by another Councillor unless –
  - (a) he becomes or ought to have become aware of the breach or of the intention to commit a breach; and
  - (b) he actively conceals the breach or intention, or fails within a reasonable time to take proper steps to protect or restore the Foundation Assets or to prevent the breach.
- (3) The provisions of the Charter or By-laws of a Foundation may not –
  - (a) relieve a Councillor of liability for a breach of duty arising from his own fraud, wilful misconduct or gross negligence; or
  - (b) grant him any indemnity against the Foundation Assets in respect of any such liability.

#### *Guardian*

#### **26. Guardian**

- (1) In the event that there is no surviving Founder, a Guardian must be appointed. Such appointment shall be made by any Person empowered to do so in the Charter or By-laws or otherwise in writing, and if there is no such Person, a Councillor shall make application to the

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<sup>13</sup> Amended 17 March 2021



Court for the appointment of a Person to be the Guardian and the Court shall duly appoint a consenting Person to act as a Guardian.

- (2) While there is a surviving Founder –
  - (a) These Regulations defer to the Charter or By-laws of a Foundation as to whether a Guardian is to be appointed.
  - (b) A Guardian may be appointed by the Founder or any other Person empowered to do so in the Charter or By-laws or otherwise in writing.
  - (c) Where the Charter or By-laws provide for the appointment of a Guardian and no such appointment is made, a Founder or Councillor may make application to the Court for the appointment of a Person to be the Guardian and in circumstances where the Court determined the application is justified it may duly appoint a consenting Person to act as a Guardian.
- (3) A Guardian may be a Beneficiary and may be a Legal Person, but may not be a Founder, Councillor or sole Beneficiary.
- (4) The appointment of a Person to act as a Guardian is personal to that Person and may not be assigned or delegated except that a Guardian that is a Legal Person may act through its authorized officers or agents.
- (5) Every Person appointed, or to be appointed, as a Guardian shall be a fit and proper Person to hold that position.
  - (a) In determining whether a Person is a fit and proper Person to be appointed as a Guardian, regard shall be had to –
    - i. his probity, competence, solvency and soundness of judgement for fulfilling the responsibilities of that position;
    - ii. the diligence with which he is fulfilling or likely to fulfil those responsibilities;
    - iii. whether the interests of the Founder or any Beneficiaries are, or are likely to be, in any way threatened by his holding that position;
    - iv. the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority; and
    - v. his record of compliance with these Regulations in acting as a Guardian.

- (b) Without prejudice to the generality of the foregoing subsections, regard may be had to the previous conduct and activities in business or financial matters of the Person in question.
- (6) The duties of a Guardian are –
- (a) to act in accordance with the Foundation’s Charter;
  - (b) to only exercise powers for the purposes for which they are conferred;
  - (c) to act honestly, in good faith and in the best interests of the Foundation;
  - (d) to exercise independent judgment. This duty is not infringed by a Guardian acting in accordance with an agreement duly entered into by the Foundation that restricts the future exercise of discretion by a Guardian, or in a way authorised by the Foundation’s Charter;
  - (e) to exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent Person with the general knowledge, skill and experience that may reasonably be expected of a Person carrying out the functions carried out by the Guardian in relation to the Foundation, and the general knowledge, skill and experience that the Guardian has;
  - (f) to not act on behalf of a Foundation, or exercise any of his powers as a Guardian, in relation to any matter in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Foundation;
    - i. This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the Foundation could take advantage of the property, information or opportunity).
    - ii. This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the Foundation.
    - iii. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest.
    - iv. Where nothing in the Foundation’s Charter invalidates such authorisation, authorisation may be given by the matter being proposed to and authorised by the Councillors. Where the Foundation’s Charter includes a provision enabling the Councillors to authorise the matter, authorisation may be given by the matter being proposed to and authorised by the Councillors in accordance with the Charter.

- v. Any reference in this paragraph (f) to a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (g) to not accept a benefit from a third party conferred by reason of his being a Guardian, or his doing (or not doing) anything as Guardian;
  - i. A “third party” means a Person other than the Foundation or a Person acting on behalf of the Foundation.
  - ii. Benefits received by a Guardian from a Person by whom his services (as a Guardian or otherwise) are provided to the Foundation are not regarded as conferred by a third party.
  - iii. This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
  - iv. Any reference in this paragraph (g) to a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (h) to declare to the Councillors the nature and extent of any direct or indirect interest in a proposed transaction or arrangement with the Foundation;
  - i. The declaration may (but need not) be made at a meeting of the Councillors.
  - ii. If a declaration of interest under this paragraph (h) proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
  - iii. Any declaration required by this paragraph (h) must be made before the Foundation enters into the transaction or arrangement.
  - iv. This paragraph (h) does not require a declaration of an interest of which the Guardian is not aware or where the Guardian is not aware of the transaction or arrangement in question. For this purpose a Guardian is treated as being aware of matters of which he ought reasonably to be aware.
  - v. A Guardian need not declare an interest if it cannot reasonably be regarded as likely to give rise to a conflict of interest; if, or to the extent that, the Councillors are already aware of it (and for this purpose the Councillors are treated as aware of anything of which they ought reasonably to be aware); or if, or to the extent that, it concerns terms of his service contract that have been or are to be considered by a meeting of the Councillors, or by a committee of the Councillors appointed for the purpose under the Foundation's Charter; and
- (i) to ensure compliance with section 20.

## **27. Persons Disqualified from Being Guardian**

No Person shall be appointed or be permitted to remain as a Guardian –

- (a) in the case of a natural person, if the Person is a Minor or mentally incapacitated or has an undischarged bankruptcy;
- (b) in the case of a Legal Person, if the Person is dissolved.

## **28. Liability of a Guardian for Breach of Duty**

- (1) Subject to the provisions of these Regulations and the provision of the Charter and By-laws, a Guardian who commits a breach of duty is liable for any loss in value of the Foundation Assets resulting from the breach.
- (2) The provisions of the Charter or By-laws of a Foundation may not –
  - (a) relieve a Guardian of liability for a breach of duty arising from his own fraud, wilful misconduct or gross negligence; or
  - (b) grant him any indemnity against the Foundation Assets in respect of any such liability.

### *Guardian Powers*

## **29. Powers of the Guardian**

- (1) The powers of a Guardian may be set out in the Charter or By-laws of a Foundation and may be greater or more limited than those set out in these Regulations.
- (2) Subject to the terms of the Charter or By-laws a Guardian shall –
  - (a) be responsible for ensuring compliance by the Foundation and its counsel with the Charter, By-laws and the provisions of these Regulations; and
  - (b) supervise the activities of the Council in managing the Foundation.
- (3) The Guardian shall have access to all information necessary for the exercise of its powers, in particular to the Accounting Records, accounts and returns of the Foundation.
- (4) The Guardian should be given due notice of meetings of the Foundation Council in order that he may table business, attend and participate in such meetings (although he will not have any entitlement to vote) and receive all papers circulated to Councillors including any copies of written resolutions of Councillors.

*Circumstances in which a Guardian Ceases to Act*

**30. Guardian Ceasing to Act**

- (1) A Guardian shall cease to act as the Guardian in the event of –
  - (a) the Guardian's resignation;
  - (b) the proper removal of the Guardian in accordance with the Charter, By-laws or the provisions of these Regulations;
  - (c) the dissolution of the Foundation; or
  - (d) the death, incapacity or bankruptcy of the Guardian where the Guardian is a natural person and, in the case of a Legal Person, the dissolution of such Person.
- (2) Removal of a Guardian must be notified to the Registrar in accordance with subsection 10(8).
- (3) A Foundation that contravenes subsection (2) is liable for a level 1 fine.
- (4) Subject to the Charter or By-laws, a Founder or Councillor may apply to the Court to seek the removal of a Guardian for failure to properly carry out the duties required of a Guardian in the Charter, By-laws or the provisions of these Regulations and the Court may, if it deems fit, order the removal of the Guardian and the appointment of a fit and proper Person to act as Guardian.
- (5) In the absence of bad faith, a Guardian shall not be liable in damages for anything done or omitted to be done in the discharge of the duties of a Guardian under the Charter, By-laws or the provisions of these Regulations.

**PART 6 – BENEFICIARIES**

*Beneficiaries*

**31. Beneficiaries of Foundations**

- (1) A Beneficiary is a natural person or Legal Person who may benefit from a Foundation who is –
  - (a) identified in the Charter or By-laws by name; or
  - (b) whose identity is ascertainable by reference to a class or a relationship to another Person, whether or not living, at the time that the Foundation is established or at the time, according to the terms of the Charter or By-laws, members of a class are to be determined.

- (2) A Foundation may appoint a Beneficiary or Beneficiaries, as detailed in the Charter or By-laws.
- (3) A Foundation created to carry on a specified purpose pursuant to these Regulations may, but is not required to, appoint a Beneficiary or Beneficiaries.
- (4) A Founder may be a Beneficiary, but may be the sole Beneficiary only during his lifetime.
- (5) In circumstances where a Foundation purports to appoint a Beneficiary or Beneficiaries, and no Beneficiary has been named in the Charter or By-laws, the Designee, shall become the Beneficiary.
- (6) The By-laws may provide for the addition or removal of a Person as a Beneficiary or the exclusion of a Beneficiary from benefit, either revocably or irrevocably.
- (7) The By-laws may impose an obligation on a Beneficiary as a condition of benefit.
- (8) The By-laws may provide that some or all of the Beneficiaries are entitled to information about the Foundation, including copies of the Charter and By-laws, Accounting Records, accounts and returns of the Foundation upon written request to the Council or the Company Service Provider<sup>14</sup>, if any.
- (9) The By-laws may further provide some or all of the Beneficiaries with the right to petition the Court to prohibit a change to the purpose of the Foundation or its dissolution.

## **PART 7 – FOREIGN LAWS**

### *(Foundation Property)*

#### **32. Foundation Property**

- (1) Subject to sections 32, 33 and 34, Assets transferred to a Foundation or otherwise vested in it shall be the Assets of the Foundation with full legal and beneficial title and such Assets are no longer the property of the Founder or Subsequent Transferor and are not the Assets of any Beneficiary until such time as the Assets are distributed to such Beneficiary in accordance with the Charter or By-laws or these Regulations.
- (2) A transfer or other disposition of property to a Foundation registered under these Regulations shall not be void, voidable or liable to be set aside by reference to a foreign rule of forced heirship or any other law of a foreign jurisdiction.
- (3) In this section, “foreign rule of forced heirship” means any rule of any jurisdiction other than the Abu Dhabi Global Market which, in order to protect the rights of any Person or class of

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<sup>14</sup> Amended 17 March 2021

Persons to inherit, succeed or share in the property of a Founder, Subsequent Transferor or Beneficiary in the event of their death, purports to remove or restrict the Founder, Subsequent Transferor or Beneficiary's right to transfer, dispose of, encumber or otherwise deal in property belonging to such Founder, Subsequent Transferor or Beneficiary during their lifetime and includes any judicial or administrative order or directive of a jurisdiction other than the Abu Dhabi Global Market seeking to implement or enforce such a role.

- (4) A transfer of property to or the vesting of property in a Foundation, or the making of a distribution to a Beneficiary of a Foundation in accordance with the Charter, By-laws or the provisions of these Regulations, shall not be set aside or rendered void or voidable as a result of -
- (a) a foreign statute that prohibits or does not recognize the concept of a Foundation; or
  - (b) a transfer of property to a Foundation or any term of its Charter or By-laws avoids or defeats rights, claims or any interest in property conferred by a foreign statute on any Person by reason of any personal relationship to the Founder or Subsequent Transferor or by way of heirship rights; or
  - (c) the transfer of property to the Foundation or any term of its Charter or By-laws contravenes any foreign statute, foreign rule of heirship or foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interest.
- (5) A judgement of a foreign court shall not be recognised or enforced insofar as it is inconsistent with subsections (3) and (4).

### **33. Bankruptcy of a Founder or Subsequent Transferor**

- (1) Subject to subsection (2), a Foundation or a transfer of property to a Foundation shall not be void, voidable or liable to be set aside by reason of a Founder or Subsequent Transferor's bankruptcy, the liquidation of a Founder or Subsequent Transferor's property or any action or claims made against a Founder or Subsequent Transferor by any creditor, notwithstanding any foreign statute providing otherwise.
- (2) Notwithstanding subsection (1), where the Court determines that, at the time when the property was transferred to the Foundation, the Founder or Subsequent Transferor, as applicable, was insolvent or intended to defraud any creditor of the Founder or Subsequent Transferor, as

applicable, it may declare that the transfer of property was void to the extent of the creditor's claim.

- (3) In making claims to set aside transfers of property to a Foundation under subsection (2), the burden of proof shall rest with the creditor.

#### *Alienation of Property*

### **34. Restriction on Alienation of Foundation Property**

- (1) No Beneficiary or object of a Foundation shall have any rights in specie against the Assets of the Foundation, notwithstanding any foreign statute or law to the contrary, and, subject to the terms of the Charter or By-laws, any Assets of the Foundation available for distribution to a Beneficiary shall not be –
  - (a) capable of being alienated in the bankruptcy, insolvency or liquidation of a Beneficiary;  
or
  - (b) liable to be seized, sold, attached or otherwise taken in execution by process of law.

## **PART 6 – MIGRATION, REVOCATION AND DISSOLUTION**

### *Registration of Overseas Foundation as an Abu Dhabi Global Market Foundation*

### **35. Overseas Foundation Migrating to the Abu Dhabi Global Market**

- (1) If its charter or by-laws so permit, a Foundation having legal personality and property established under the laws of a jurisdiction other than the Abu Dhabi Global Market (an "Overseas Foundation") may apply to the Registrar to be registered as an Abu Dhabi Global Market Foundation in accordance with the provision of these Regulations.
- (2) Upon registration in the Abu Dhabi Global Market the Overseas Foundation must cease to be registered in the jurisdiction in which it was established or where it is currently registered, if different.

### **36. Requirements for an Overseas Foundation to Register in Abu Dhabi Global Market**

In order to register as a Foundation in Abu Dhabi Global Market the Overseas Foundation must be able to migrate under the law of the place in which it is currently established and must comply with the requirements of that law in relation to its registration in Abu Dhabi Global Market.



### **37. Prohibition on Registration of Overseas Foundations**

No Overseas Foundation may be registered as an Abu Dhabi Global Market Foundation if –

- (a) the Foundation is bankrupt or in the process of being dissolved, or a liquidator, receiver or administrator has been appointed in respect of any of its property; or
- (b) any application has been made to any court to commence insolvency proceedings, to approve any arrangement with creditors or for the appointment of any liquidator, receiver or administrator.

### **38. Registration of an Overseas Foundation**

- (1) An application for registration as an Abu Dhabi Global Market Foundation shall be made to the Registrar.
- (2) The applicant shall provide the Registrar with the following documents:
  - (a) A copy of the Foundation's certificate of establishment (if any) in its current place of establishment;
  - (b) a copy of the Foundation's existing Charter and, if different, a copy of the amended Charter which will apply immediately upon its registration in the Abu Dhabi Global Market and which must comply with section 9 of these Regulations;
  - (c) the names and addresses of the Foundation Councillors and Guardian (if any);
  - (d) the name of the Foundation, which must comply with section 6 of these Regulations;
  - (e) the address of the Foundation's registered office in the Abu Dhabi Global Market;
  - (f) the name and address (in the Abu Dhabi Global Market) of the Company Service Provider <sup>15</sup> of the Foundation, if any;
  - (g) all other information and documents included in the Registration Application;
  - (h) evidence that migration is permitted under the law in which the Foundation is established and that the Foundation is in compliance with section 37 of these Regulations;

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<sup>15</sup> Amended 17 March 2021

- (i) confirmation that, on the date of registration, the Foundation will cease to be established and registered under the law of any place other than the Abu Dhabi Global Market;
  - (j) a statement of solvency;
  - (k) evidence that the Foundation has legal personality in the place in which it was established or registered;
  - (l) a declaration of compliance signed by the applicant that all requirements of these Regulations relating to registration have been fulfilled;
  - (m) such other information as the Registrar would require on an application to transfer registration under these Regulations; and
  - (n) such other documents and information as the Registrar may require in respect of a particular application under this section.
- (3) On receipt of the documents and information set out in subsection (2) and the relevant fee the Registrar shall register the Foundation by inscribing its name in the Foundations Register and issuing a certificate of registration.

#### *Transfer of Registration*

### **39. Facility to Transfer Registration**

- (1) If the Charter or By-laws of a Foundation so permit, a Foundation representative may submit to the Registrar an application on behalf of a Foundation to remove the Foundation from the Foundations Register in order to become established as a foundation with legal personality under the law of a jurisdiction outside the Abu Dhabi Global Market.
- (2) A Foundation cannot be removed from the Foundations Register if -
  - (a) it is bankrupt or in the process of being dissolved, or a liquidator, receiver or administrator has been appointed in respect of any of its Assets; or
  - (b) an application has been made to any court to commence insolvency proceedings, to approve any arrangement with creditors or for the appointment of any liquidator, receiver or administrator.

- (3) A Foundation must give written notice to its creditors of its intention to be removed from the Foundations Register at least 31 days before making an application to the Registrar for removal.
- (a) The notice—
- i. shall state that the Foundation intends to make the application to the Registrar, and shall specify the jurisdiction in which it proposes to become established as a foundation with legal personality;
  - ii. shall be sent in writing to each creditor of the Foundation;
  - iii. shall be published once in a national newspaper or in such other manner as the Court may on application direct; and
  - iv. shall state that any creditor of the Foundation who objects to the application may within 30 days of the date of the advertisement give notice of his or her objection to the Foundation.
- (b) A creditor who gives notice in accordance with paragraph 39(3)(a)(iv) and whose claim against the Foundation has not been discharged may, within 30 days after the date of the notice, apply to the Court for an order restraining the application by the Foundation under this section 39.
- (c) On the creditor's application the Court, if satisfied that the interests of the creditor would be unfairly prejudiced by the proposed transfer, may make an order (subject to such terms, if any, as it may think fit) restraining the application by the Foundation under this section 39.
- (4) An application to the Registrar must be accompanied by -
- (a) evidence that the removal from the Foundations Register is not prohibited by the provisions of subsection (2) and that subsection (3) has been complied with;
  - (b) evidence that on the date of removal from the Foundations Register the Foundation will be established under the law of the place to which it intends to migrate;
  - (c) confirmation that the Foundation will continue to have legal personality in accordance with the law of the place to which it intends to migrate; and
  - (d) a declaration of compliance signed by the registration agent certifying that all the requirements of these Regulations relation to removal from the Foundations Register have been fulfilled.

- (5) On receipt of the documents and information set out in subsection (4), the Registrar shall remove the name of the Foundation from the Foundations Register, giving such notice as it thinks fit and the Foundation shall cease to be an Abu Dhabi Global Market Foundation and the Registrar shall publish the fact of the removal of the Foundation from the Foundations Register in such manner as it thinks fit.

### *Dissolution*

#### **40. Dissolution of Foundations**

- (1) A Foundation shall be dissolved and removed from the Foundations Register in the following circumstances –
- (a) it is established for a fixed term and such term expires;
  - (b) its object is fulfilled or becomes incapable of fulfilment;
  - (c) the Charter or By-laws require dissolution;
  - (d) it is unable to pay its debts as they fall due;
  - (e) any provision of these Regulations requires that it be dissolved; or
  - (f) the Court orders dissolution.
- (2) Where a Foundation is dissolved-
- (a) under paragraph (1)(d) above, the Foundation Council must appoint a liquidator; and
  - (b) Under paragraphs (1)(a) – (c) and (e) above, the Foundation Council may, in its discretion, appoint a liquidator.
- (3) A liquidator appointed under subsection (2) shall –
- (a) identify the Assets and liabilities of the Foundation;
  - (b) discharge all liabilities of the Foundation;
  - (c) prepare a statement of account in respect of all actions of the liquidation; and
  - (d) distribute the Surplus Assets, if any, to any Remaining Beneficiary in accordance with the Charter or By-laws (and in the absence of any such express provision, equally between the remaining Beneficiaries if more than one) or in the case of a Foundation established to carry on a specified purpose, the Surplus Assets shall be applied to the furtherance of that purpose, and in a case where the Beneficiaries disclaim their

entitlement or there is no specified purpose in the Charter or By-laws, the Surplus Assets shall vest in the Abu Dhabi Global Market.

- (4) During the period of appointment a liquidator may exercise all the powers of a Foundation under these Regulations or in the Charter and may act in the name of the Foundation in the discharge of its duties under subsection (3).
- (5) On completion of the dissolution of the Foundation, the liquidator shall provide written confirmation to the Foundation's registered office that the dissolution is complete and the Foundation shall file a certified copy of the confirmation with the Registrar together with the stipulated fee.
- (6) Upon receipt of the written confirmation referred to in subsection (5) and subject to all the requirements of these Regulations in respect of dissolution being satisfied, the Registrar will strike the Foundation off the Foundations Register and issue a certificate that the Foundation has been dissolved, such dissolution having effect from the date that the Foundation is struck from the Foundations Register.

#### **41. Petition to the Court for Dissolution**

- (1) A Foundation, a Councillor, a Founder, a Guardian, Remaining Beneficiary or creditor may apply to the Court for an order for the dissolution of a Foundation.
- (2) The Court may make an order for dissolution if it believes it is just and equitable to do so.
- (3) If the Court makes an order for the dissolution of a Foundation it shall appoint a liquidator and the provisions of subsections 40 (3)-(5) shall apply to the appointment of the liquidator as if it had been appointed pursuant to a dissolution under section 40.

#### *Striking off*

#### **42. Striking off for Default**

- (1) If the Registrar has reasonable cause to believe that any Foundation registered under these Regulations is in breach of or no longer satisfies the requirements prescribed under these Regulations, or engages in activities which are or may be contrary to the rules and regulations of the Abu Dhabi Global Market or may have a negative effect on its reputation as a financial centre, the Registrar may send to the Foundation a communication inquiring as to the area of concern.
- (2) If the Registrar does not within one month of sending the communication receive any answer to it, the Registrar must within 14 days after the expiration of that month send to the Foundation a second communication referring to the first communication and stating—

- (a) that no answer to it has been received; and
  - (b) that if an answer is not received to the second communication within one month from its date, a notice will be published on the Registrar's website with a view to striking the Foundation's name off the Foundations Register.
- (3) If, within one month after sending the second communication, the Registrar—
- (a) receives an answer to the effect that the Foundation is in breach of or no longer satisfies the requirements prescribed under these Regulations, or engages in activities which are or may be contrary to the rules and regulations of the Abu Dhabi Global Market or may have a negative effect on its reputation as a financial centre; or
  - (b) does not receive any answer,
- the Registrar may publish on the Registrar's website and send to the Foundation, a notice that at the expiration of three months from the date of the notice the name of the Foundation mentioned in it will, unless cause is shown to the contrary, be struck off the Foundations Register and the Foundation will be dissolved.
- (4) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the Foundation, strike its name off the Foundations Register.
- (5) The Registrar must publish notice on the Registrar's website of the Foundation's name having been struck off the Foundations Register.
- (6) On the publication of the notice on the Registrar's website the Foundation is dissolved.
- (7) However –
- (a) the liability (if any) of every Founder, Councillor and Guardian of the Foundation continues and may be enforced as if the Foundation had not been dissolved; and
  - (b) nothing in this section affects the power of the Court.
- (8) A Foundation may also be struck off of the Foundations Register if its annual fees or any penalty amounts are not paid within 180 days of the date on which they fell due.

*Effect of Dissolution*

**43. Consequences of Striking Off**

In the event that the Foundation is struck off the Foundations Register –

- (a) the Foundation remains liable for all of its liabilities and the liabilities of the Councillors is unaffected;
- (b) the Foundation, the Council and the Guardian must cease to continue to act in any way with respect to the affairs of the Foundation.

*Restoration of Name*

**44. Reinstatement on the Foundations Register**

- (1) When a Foundation has been struck off the Foundations Register under subsection 42(3) of these Regulations, the Foundation or its liquidator may apply to have the name of the Foundation reinstated on the Foundations Register, provided such application is made prior to the sixth anniversary of the removal from the Foundations Register.
- (2) Upon payment of all outstanding annual fees and penalties to the Registrar, the Registrar may reinstate the Foundation on the Foundations Register.
- (3) Where the Foundation is reinstated on the Foundations Register under subsection (2), the Foundation is deemed to have continued in existence as if it had not been dissolved or struck off the Foundations Register.

**PART 7 – CITATION, ENTRY INTO FORCE AND INTERPRETATION**

*Citation, commencement and interpretation*

**45.** These Regulations may be cited as the Foundations Regulations 2017.

**46.** These Regulations shall come into force on the date of their publication.

**47. Definitions<sup>16</sup>**

(1) In these Regulations, unless otherwise defined –

“**Accounting Records**” is defined as follows:

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<sup>16</sup> Amended 17 March 2021

- (a) Accounting Records means records that are sufficient–
- i. to show and explain the Foundation's transactions,
  - ii. to disclose with reasonable accuracy, at any time, the financial position of the Foundation at that time, and
  - iii. to enable the Councillors to ensure that any accounts required to be prepared comply with the requirements of these Regulations.
- (b) Accounting Records must, in particular, contain records and underlying documents comprising initial and other accounting entries and associated supporting documents such as cheques; records of electronic fund transfers; invoices; contracts; the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries; work sheets and spread sheets supporting cost allocations, computations, reconciliations and disclosures; and a record of the Assets and liabilities of the Foundation.

**“ADGM Founding Law”** has the meaning set forth in the Interpretation Regulations 2015;

**“Assets”** means any property in which a Foundation has any interest or over which it has any rights;

**“Beneficiary”** has the meaning set forth in section 31;

**“By-laws”** means the by-laws of a Foundation, if any, adopted under section 13, as may be amended from time to time under section 14;

**“Charter”** means the charter of a Foundation adopted under section 2, as may be amended from time to time under section 7;

**“Company Service Provider”**, in relation to a Foundation registered under these Regulations, has the meaning set forth in section 18;

**“Confidential Disclosure”** means the following information, whether or not this information is also included in the Charter:

- (a) the name and address of each of the Councillors;
- (b) the names and addresses of any Beneficiaries;
- (c) the names and addresses of the Guardian (if any); and
- (d) the name and address of each beneficial owner of each Founder which is a Legal Person (if any),



to be held confidentially by the Registrar, subject to any requirement to disclose such information to public authorities as set out in section 3(10), or in any other applicable law or regulations.

“**Council**” means the council of a Foundation referred to under section 19;

“**Councillor**” means a natural person or Legal Person appointed as a member of a Council under section 22;

“**Court**” has the meaning set forth in the Interpretation Regulations 2015;

“**Designee**” has the meaning set forth in section 9(2)(g);

“**Effective Date**”, for the purposes of section 18, means the date commencing 3 months from the date on which the Foundations (Amendment No. 1) Regulations 2021 come into force;

“**Foundation**” means a foundation established under section 1;

“**Foundations Register**” means the register of Foundations kept by the Registrar under section 3;

“**Founder**” means each natural person or Legal Person who subscribes their name to the Charter establishing a Foundation acting on their own account or on behalf of another, and who endows the Foundation with a portion of its Initial Assets;

“**Guardian**”, in relation to a Foundation, means a natural person or Legal Person, if any, appointed under section 26;

“**Initial Assets**”, in relation to a Foundation, means the initial Assets endowed by a Founder which become the property of a Foundation;

“**Legal Person**” means a company, a corporation or any other entity having separate legal personality;

“**Minor**” means an individual who is less than 18 years of age;

“**Non-conflicted Councillors**” has the meaning set forth in section 19(4)(f)(iii);

“**Non-Exempt Foundation**” means a Foundation that is obliged to have a Company Service Provider in accordance with section 18;

“**Overseas Foundation**” has the meaning set forth in section 35(1);

“**Person**” means a natural person or Legal Person;

“**registered**”, in relation to a Foundation, means registered as a Foundation under these Regulations;

“**Registered Office Provider**” has the meaning given to it in the Commercial Licensing Regulations 2015 (Controlled Activities) Rules 2021.

“**Registrar**” has the meaning set forth in the Interpretation Regulations 2015;

“**Registration Application**” has the meaning set forth in section 1(1)(a);

“**Remaining Beneficiary**”, in relation to the Surplus Assets, means a natural person or Legal Person who, according to the Charter or By-laws, is entitled to receive any Surplus Assets;

“**Resolution of Councillors**”, in relation to a Foundation, means –

- (a) a resolution approved at a duly convened and constituted meeting of the Councillors by a simple majority (which in the case of a Foundation with only two Councillors shall mean that both Councillors must assent), or a larger majority as may be specified in the Charter or By-laws, of the Councillors present at the meeting, in person or by alternate or proxy, who voted; or
- (b) a resolution agreed to in writing by a simple majority (which in the case of a Foundation with only two Councillors shall mean that both Councillors must assent), or by such larger majority as may be specified in the Charter or By-laws, of the Councillors;

“**Subsequent Transferor**” means a natural person or Legal Person who endows a Foundation with Supplementary Assets;

“**Supplementary Assets**” means Assets endowed to a Foundation other than the Initial Assets;

“**Surplus Assets**” means the Assets of a Foundation, if any, remaining after its dissolution;

“**to endow**” means to transfer or covenant to transfer, the title in property, absolutely, with or without consideration, to a Foundation so that the property becomes an Asset of the Foundation;

“**Unanimous Resolution of Councillors**” with respect to a Foundation, means –

- (a) a resolution approved unanimously at a duly convened and constituted meeting of the Councillors by a unanimous vote of all the Councillors present at the meeting, in person or by alternate or proxy, who voted; or
  - (b) a resolution agreed to in writing by all of the Councillors.
- (2) Any reference to a level of fine shall be interpreted as a reference to the applicable level set forth in the Commercial Licensing Regulations 2015 (Fines) Rules 2020.

**SCHEDULE 1 - FEES<sup>17</sup>**

The following fees are payable in respect of applications and notifications made in accordance with the Regulations-

<b><u>Application or notification</u></b>	<b><u>Fee Payable (USD)</u></b>
Application for registration of a Foundation	200
Application for renewal of a Foundation (Annual Fee)	200
Notification of appointment and cessation of a Company Service Provider	100
Notification of a change in particulars of the Foundation -	
(i) by a Foundation	100
(ii) by a Foundation with a Company Service Provider appointed, where the change in particulars of the Foundation is a result of a change in particulars of the Company Service Provider	Nil
Notification of an appointment of a Company Service Provider	100
Notification of a cessation of a Company Service Provider	100
Notification of an appointment and cessation of a Councillor	100
Notification of an appointment of a Councillor	100
Notification of a cessation of a Councillor	100
Notification of change of particulars of a Councillor	100
Notification of an appointment and cessation of a Guardian	100
Notification of an appointment of a Guardian	100
Notification of a cessation of a Guardian	100
Notification of change of particulars of a Guardian	100
Notification of a change of name of a Foundation	100
Amendment of the Charter by the Founder(s) or in the event of Founder's death by Court Order	100

<sup>17</sup> Amended 17 March 2021

Beneficiary request for information from the Registrar	100
Continuation to ADGM	500
Continuation from ADGM	500
Application to strike off	100
Reinstatement of a Foundation on the Register	Nil