

# DMCCA COMPANY REGULATIONS<sup>1</sup>

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<sup>1</sup> Effective date 2 of Jan 2020, unless otherwise advised by DMCC

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## SECTION 1 - DEFINITIONS AND INTERPRETATION

### 1. Definitions used in these Regulations

In these Regulations, unless the context otherwise requires, the following words and expressions have the following meanings:

| Word or expression                  | Meaning in these Regulations   |
|-------------------------------------|--|
| <b>allotment</b>                    | in relation to shares, a transaction by which a person acquires the unconditional right to be included in a Company's Shareholder Register in respect of the shares (and <b>allot</b> has a corresponding meaning) |
| <b>Articles</b>                     | in relation to a Company, its articles of association as originally adopted or as subsequently adopted in accordance with these Regulations  |
| <b>Branch</b>                       | a branch of a Non-DMCC Entity established under these Regulations, having a place of business within the DMCC Free Zone that forms a legally dependent part of the Non-DMCC Entity                                 |
| <b>Branch Parent</b>                | in respect of a Branch, the Non-DMCC Entity which has established that Branch  |
| <b>Business Day</b>                 | a day (other than a Friday, Saturday or public holiday) on which banks are generally open in the UAE for normal business   |
| <b>Certificate of Continuation</b>  | a certificate issued to a Non-DMCC Entity by the Registrar confirming that the Non-DMCC Entity has been continued as a Company in the DMCC Free Zone   |
| <b>Certificate of Establishment</b> | a certificate issued by the Registrar to confirm the establishment of a Branch in the DMCC Free Zone   |
| <b>Certificate of Name Change</b>   | a certificate issued by the Registrar to confirm the change of name of a DMCC Entity   |
| <b>Certificate of Registration</b>  | a certificate issued by the Registrar to confirm the registration of a Company in the DMCC Free Zone   |
| <b>Company</b>                      | a company registered under these Regulations (which, for the avoidance of doubt, excludes a Branch)  |
| <b>Continuation Application</b>     | an application to the Registrar in the form required by DMCCA by a Non-DMCC Entity to become a Company in the DMCC Free Zone   |
| <b>Continuing Entity</b>            | a Non-DMCC Entity in respect of which the Registrar has issued a Certificate of Continuation   |



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| <b>Court</b>                                       | such court of competent jurisdiction as may be specified by DMCCA from time to time  |
| <b>Creditors</b>                                   | includes present, future and contingent creditors of a Company   |
| <b>Director</b>                                    | a person occupying the position of director of a Company, by whatever name called  |
| <b>Dissolved</b>                                   | the cessation of the existence of a Company as a legal entity  |
| <b>DMCC</b>  | the Dubai Multi Commodities Centre   |
| <b>DMCCA</b>                                       | the Dubai Multi Commodities Centre Authority, established pursuant to Law No. 4 of 2001 and by virtue of Decision No. 4 of 2002, each issued in the Emirate of Dubai, which authority has governance over the DMCC Free Zone |
| <b>DMCC Entity</b>                                 | a Company or Branch  |
| <b>DMCC Entity Name Requirements</b>               | the requirements of the Registrar from time to time in respect of the naming of any DMCC Entity  |
| <b>DMCC Entity Number</b>                          | the unique DMCC Entity number allocated to each DMCC Entity by the Registrar   |
| <b>DMCC Free Zone</b>                              | the DMCC free zone, established pursuant to Law No. 4 of 2001 and by virtue of Decision No. 4 of 2002 on Establishing the Dubai Commodities and Metals Centre, each issued in the Emirate of Dubai                           |
| <b>Exempt Entity</b>                               | an entity designated by DMCCA to be an exempt entity by virtue of any rule, regulation, policy or decision of DMCCA  |
| <b>General Meeting</b>                             | a meeting of the Shareholders of a Company   |
| <b>Holding Company</b>                             | has the meaning given to it in Regulation 37.2   |
| <b>Initial Shareholders</b>                        | the persons who sign the application for registration of a Company and become the Shareholders of that Company upon its registration   |
| <b>International Financial Reporting Standards</b> | a set of accounting standards, developed and maintained by the International Accounting Standards Board  |
| <b>liability</b>                                   | includes debt or obligation  |
| <b>Licence</b>                                     | the commercial licence, permit or other authorisation granted to a Company or Branch by the Registrar to undertake certain business activities within the DMCC Free Zone   |
| <b>Licensing Rules</b>                             | the rules relating to Licences, and such other rules as applicable within the DMCC Free Zone as may be specified by DMCCA from time to time  |

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| <b>Liquidation Committee</b>        | has the meaning given to it in Regulation 126  |
| <b>Manager</b>                      | a natural person occupying the position of manager of a DMCC Entity, by whatever name called   |
| <b>Minutes Register</b>             | a register of minutes of all proceedings at General Meetings, resolutions of Shareholders, meetings of any type or class of shares, resolutions of any type or class of Shareholders, meetings of Directors and (if any) of committees of Directors (and any resolutions passed at such meetings) to be entered in books kept for that purpose |
| <b>Non-DMCC Entity</b>              | a company or other legal entity formed outside of the DMCC Free Zone   |
| <b>Officeholder</b>                 | a director, member of a committee of management, manager, chief executive, secretary or other similar officer of the relevant corporate entity or association, or a person purporting to act in such capacity  |
| <b>Officer</b>                      | a Director, Manager or Secretary   |
| <b>Officer Register</b>             | a register of the Directors (in respect of a Company only), Secretary and Manager of a DMCC Entity   |
| <b>Officer Rules</b>                | the rules with which the Directors (in respect of a Company only), Secretary and Manager of a DMCC Entity must comply as may be specified by DMCCA from time to time   |
| <b>Official</b>                     | has the meaning given to it in Regulation 151.2  |
| <b>Ordinary Resolution</b>          | a resolution passed by a simple majority of the votes of such Shareholders as (being entitled to do so) vote in person or by proxy at a General Meeting for which notice specifying the intention to propose the resolution has been given   |
| <b>Paid Up Share Capital</b>        | in respect of a Company, the paid up Share Capital   |
| <b>paid up</b>                      | includes credited as fully paid by the Shareholders of a Company   |
| <b>Previous Company Regulations</b> | Dubai Multi Commodities Centre Company Regulations 2003 (DMCC Regulation No. 1 of 2003), as amended by DMCC Regulation No. 1 of 2007, DMCC Regulation No. 1 of 2009 and DMCC Regulation No. 1 of 2013  |
| <b>Privileged Communication</b>     | a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality  |
| <b>Public Notice</b>                | has the meaning given to it in Regulation 167.3  |

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| <b>Register of DMCC Entities</b> | the register of DMCC Entities maintained by the Registrar  |
| <b>Registers</b>                 | the Shareholder Register, Officer Register and Security Register   |
| <b>Registrar</b>                 | the registrar appointed pursuant to Regulation 3   |
| <b>Regulations</b>               | these Dubai Multi Commodities Centre Authority Regulations 2020  |
| <b>Remove</b>                    | <p>(a) in respect of a Branch, the action by the Registrar of removing the Branch from the category of "active" or "suspended" to the category of "Removed" on the Register of DMCC Entities; and</p> <p>(b) in respect of a Company which is continued as a Non-DMCC Entity, the action by the Registrar of removing the Company from the category of "active", "suspended" or "dormant" to the category of "Removed" on the Register of DMCC Entities,</p> <p>and <b>Removed</b> and <b>Removal</b> have a corresponding meaning</p>   |
| <b>Representative</b>            | any employee, representative or agent of the DMCC Entity acting under the direction or authority of an Officer   |
| <b>Sanction</b>                  | <p>one or all of the following:</p> <p>(a) restriction or suspension of services;</p> <p>(b) a fine or penalty, as specified by DMCCA from time to time in accordance with Regulation 164;</p> <p>(c) suspension of a Licence in accordance with the process set out in Regulation 165;</p> <p>(d) termination of a Licence in accordance with the process set out in Regulation 166;</p> <p>(e) a DMCC Entity being Struck-off, in accordance with the process set out in Regulation 167; and/or</p> <p>(f) such other sanction as DMCCA may deem appropriate from time to time</p> |
| <b>Second Strike Off Notice</b>  | has the meaning given to it in Regulation 167.2  |
| <b>Secretary</b>                 | the secretary of a Company or Branch   |
| <b>Security Register</b>         | the register of all the security granted over shares in a Company  |
| <b>Service</b>                   | the formal delivery of a legal notice or other written communication   |

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| <b>Share Capital</b>              | in relation to a Company, the sum of all the shares issued by that Company  |
| <b>Shareholder</b>                | a person registered in the Shareholder Register of a Company as the holder of a share in that Company   |
| <b>Shareholder Register</b>       | the register of all of the Shareholders of a Company  |
| <b>Shareholders' Request</b>      | has the meaning given to it in Regulation 59.2  |
| <b>shares</b>                     | shares in the capital of a corporate entity and includes stock (except where a distinction between stock and shares is express or implied)  |
| <b>Special Resolution</b>         | a resolution passed by at least 75 per cent. of the votes of such Shareholders as (being entitled to do so) vote in person or by proxy at a General Meeting, for which notice specifying the intention to propose the resolution has been given                         |
| <b>Standard Articles</b>          | model articles of association for a Company prescribed by DMCCA from time to time   |
| <b>Strike-off</b>                 | the striking-off by the Registrar pursuant to Regulation, 13.8, 15.3 or 167 (in the case of Regulation 167, on the instruction of DMCCA) of a DMCC Entity from the Register of DMCC Entities and <b>Striking-off</b> and <b>Struck-off</b> have a corresponding meaning |
| <b>Strike Off Notice</b>          | has the meaning given to it in Regulation 167.1   |
| <b>Subsidiary</b>                 | has the meaning given to it in Regulation 37.1  |
| <b>Termination Notice</b>         | has the meaning given to it in Regulation 166.1   |
| <b>Treasury Share</b>             | has the meaning given to it in Regulation 34.1(a)   |
| <b>Trustee</b>                    | an executor, trustee or administrator for the time being of the estate of a deceased person   |
| <b>UAE</b>                        | United Arab Emirates  |
| <b>UAE Governmental Authority</b> | any authority, court or other body which is, or operates as part of, the Federal Government of the UAE or the Government of an Emirate of the UAE   |
| <b>winding-up</b>                 | the winding-up of the affairs of a Company by a liquidator in accordance with these Regulations   |

## 2. Rules of interpretation used in these Regulations

### 2.1 In these Regulations, a reference to:

- (a) a provision of any law, rule, regulation, policy or decision includes a reference to that law, rule, regulation, policy or decision as amended, extended or re-enacted from time to time;
- (b) a person includes any natural person, corporate entity or unincorporated entity, including a company, partnership, unincorporated association, government or state;
- (c) an obligation to publish, or to cause to be published, a particular document includes, unless expressly provided otherwise in these Regulations, publishing or causing to be published in printed or electronic form;
- (d) day, week or month means a calendar day, week or month;
- (e) a calendar year means a year of the Gregorian calendar;
- (f) a word that suggests one gender includes all genders;
- (g) the singular includes the plural and vice versa, unless the context otherwise requires;
- (h) include or including means without limitation;
- (i) these Regulations includes any regulations made under these Regulations, unless expressly provided otherwise in these Regulations;
- (j) a Section, Regulation or Schedule by number only, and without further identification, is a reference to the section, regulation or schedule of that number in these Regulations; and
- (k) writing or written includes any mode of communication that preserves a record of the information contained in it and is capable of being produced or reproduced in tangible form, including electronic means (and, for the avoidance of doubt, a Company may, with the consent of a Shareholder, communicate with that Shareholder by electronic means).

2.2 The headings in these Regulations do not affect its interpretation.

## **SECTION 2 – THE REGISTRAR**

### **3. Appointment of the Registrar**

- 3.1 DMCCA may, by regulations or decision, appoint, remove or replace a Registrar who will be a public officer and have the powers and authorities conferred on the Registrar, and shall discharge the functions, duties and obligations imposed on the Registrar, by such regulations or decision.
- 3.2 The Registrar may appoint such officers as may be necessary to assist the Registrar in the performance of the Registrar's functions under these Regulations, or under any other regulations, rules, policies or decisions issued by DMCCA from time to time.

- 3.3 Any functions of the Registrar under these Regulations or under any other regulations, rules, policies or decisions issued by DMCCA from time to time may, to the extent authorised by the Registrar, be performed by any officer appointed by the Registrar.
- 3.4 The Registrar has power to do whatever the Registrar deems necessary for, or in connection with, or reasonably incidental to, the performance of the Registrar's functions.
- 3.5 If any approval or consent of the Registrar is required under these Regulations, or under any other regulations, rules, policies or decisions issued by DMCCA from time to time, or if the Registrar takes any decision or exercises any discretion under these Regulations, or under any other regulations, rules, policies or decisions issued by DMCCA from time to time:
- (a) the Registrar may grant such approval or consent or take such decision or exercise such discretion in the Registrar's absolute discretion, including imposing any conditions or other requirements as the Registrar may consider necessary;
  - (b) if the Registrar does not grant such approval or consent, or takes any decision or exercises any discretion, the Registrar is not, unless expressly set out in these Regulations, required to provide any reasons for the refusal to grant the approval or consent or for the decision or the exercise of the discretion; and
  - (c) the Registrar's decision is final (unless expressly set out in these Regulations that a person may appeal to DMCCA) and is not subject to appeal or review in any court.

## **SECTION 3 - COMPANY REGISTRATION, BRANCH ESTABLISHMENT AND LICENSING**

### **4. Types of entity recognised in the DMCC Free Zone**

- 4.1 These Regulations recognise the following types of entities:
- (a) Companies; and
  - (b) Branches.
- 4.2 A Non-DMCC Entity will be recognised as a Company under these Regulations upon its transfer to the DMCC Free Zone in accordance with Regulation 18.

### **5. Status of a Company**

- 5.1 A Company has a separate legal personality from its Shareholders.
- 5.2 Subject to Regulation 15.2 and 168.1, the liability of a Shareholder of a Company is limited to the amount, if any, unpaid on the shares held by that Shareholder in the Company.
- 5.3 A Company may conduct any lawful business subject to the terms of its Licence.
- 5.4 A Company has UAE nationality, but this does not necessarily result in the Company being entitled to those privileges which are reserved for UAE nationals.

## **6. Method of registration of a Company**

- 6.1 Any one or more persons may apply for the registration of a Company by signing and filing with the Registrar an application for registration of a Company.
- 6.2 The application for registration of a Company filed with the Registrar must be signed by the Initial Shareholders and must include:
- (a) the proposed name of the Company, which must immediately be followed by the suffix "DMCC" (which must be stated wherever the Company's name appears, including in all communications) and must comply with the DMCC Entity Name Requirements;
  - (b) the nature of the business to be conducted by the Company;
  - (c) the amount of the Share Capital of the Company to be paid-up upon registration, which must be:
    - (i) denominated in UAE Dirhams;
    - (ii) sufficient for the activities permitted under the Licence of the Company; and
    - (iii) at least equal to any minimum Share Capital required by the Registrar from time to time;
  - (d) the full name, passport number (in the case of an individual shareholder), registration number (in the case of a corporate shareholder) and nationality of each of the Initial Shareholders together with details of their shareholdings;
  - (e) the full name, address and nationality of each of the persons who are to serve as Directors;
  - (f) the full name, address and nationality of the person who is to serve as Secretary;
  - (g) the full name, address and nationality of the person who is to serve as Manager;
  - (h) subject to Regulation 8.4, the proposed Articles of the Company; and
  - (i) any other document or information that the Registrar may require.
- 6.3 The application for registration of a Company filed with the Registrar must be accompanied by payment of the relevant fee, as determined by the Registrar from time to time.

## **7. Registration of a Company**

- 7.1 No Company may be registered without the approval of the Registrar.
- 7.2 On the registration of a Company, the Registrar must:

- (a) issue a Certificate of Registration to confirm that the Company has been registered;
  - (b) register the Articles of the Company filed with the Registrar under Regulation 6.2(h);
  - (c) assign to the Company a number, which will be the DMCC Entity Number; and
  - (d) enter the name of the Company in the Register of DMCC Entities.
- 7.3 From the date of registration contained in the Certificate of Registration, the Initial Shareholders (or such other persons who from time to time become Shareholders) will form a corporate entity, having the name contained in the Certificate of Registration and capable of exercising all of the functions of a company.
- 7.4 A Certificate of Registration is conclusive evidence:
  - (a) of the registration of the Company; and
  - (b) that the requirements of these Regulations have been complied with in respect of the registration of the Company.
- 7.5 The Registrar must maintain a Register of DMCC Entities with the following details in respect of each Company:
  - (a) name;
  - (b) DMCC Entity Number;
  - (c) copy of Certificate of Registration;
  - (d) copy of any Certificate of Name Change;
  - (e) copy of Licence (except in respect of an Exempt Entity);
  - (f) registered office address;
  - (g) names of Directors, Secretary and Manager; and
  - (h) any other details DMCCA considers appropriate from time to time.
- 7.6 The Registrar may make the Register of DMCC Entities in respect of a Company (or parts of it) available for public inspection (including by electronic means).
- 7.7 The Registrar may issue certificates of good standing and certificates of incumbency (in each case, in such form as the Registrar may determine from time to time) in respect of a Company.



## **8. Articles of a Company**

- 8.1 The Articles of a Company must be in the English language or any other language approved by the Registrar.
- 8.2 The Articles of a Company must contain:
- (a) the information set out in Regulations 6.2(a), (c) and (d); and
  - (b) such other matters as the Shareholders wish to include in the Articles,
- provided that the Articles may not contain a provision which is contrary to or inconsistent with these Regulations.
- 8.3 DMCCA may prescribe model articles of association to be known as the Standard Articles and a Company may for its Articles adopt the Standard Articles.
- 8.4 If the Standard Articles are not adopted by a Company, a Company may adopt its own Articles if it provides to the Registrar a legal opinion, in a form satisfactory to the Registrar, that its Articles do not contain a provision which is contrary to or inconsistent with these Regulations.
- 8.5 If at any time the Registrar notifies a Company that, in the opinion of the Registrar, the Articles of that Company contain a provision which is contrary to or inconsistent with these Regulations, that Company must amend its Articles within twenty four hours of such notification in such manner as the Registrar may direct.

## **9. Effect of Articles**

- 9.1 Subject to the provisions of these Regulations, the Articles are legally binding on a Company and its Shareholders to the same extent as if:
- (a) the Articles had been signed by the Company and each Shareholder; and
  - (b) the Articles contained an agreement on the part of the Company and each Shareholder to observe all of the provisions of the Articles.
- 9.2 Any amount payable by a Shareholder to a Company under the Articles is a debt due from that specific Shareholder to the Company and not all Shareholders to the Company.

## **10. Adoption of new Articles**

- 10.1 Subject to the provisions of these Regulations, a Company may adopt new Articles by Special Resolution. The adoption of the new Articles takes effect on their registration by the Registrar.
- 10.2 If a Company proposes to adopt new Articles:
- (a) the new Articles must not contain a provision which is contrary to or inconsistent with these Regulations;

- (b) the new Articles must be deposited with the Registrar within fifteen Business Days of the Special Resolution to adopt the new Articles or such other date approved by the Registrar;
  - (c) the Company must provide to the Registrar a legal opinion, in a form satisfactory to the Registrar, that any new Articles that are not Standard Articles comply with Regulation 10.2(a); and
  - (d) any rights or obligations of the Shareholders and/or the Company, which have arisen under the Articles prior to the date of adoption of the new Articles, will not be affected unless the new Articles specifically provide otherwise.
- 10.3 Notwithstanding anything in the Company's Articles, a Shareholder is not bound by any provision of the Articles adopted after the date on which that Shareholder became a Shareholder to the extent that the provision:
- (a) requires the Shareholder to take or subscribe for more shares than the number held by the Shareholder at the date on which the Articles were adopted;
  - (b) in any way increases the Shareholder's liability as at that date to contribute to the Company's Share Capital; or
  - (c) otherwise requires the Shareholder to pay money to the Company,
- unless the Shareholder agrees in writing, either before or after the Articles are adopted, to be bound by it.
11. **Copies of Articles for Shareholders**
- A Company must, on written request from a Shareholder, send to that Shareholder a copy of the Articles subject to payment of such reasonable sum as the Company may require.
12. **Conduct of business operations in the DMCC Free Zone**
- A person is only permitted to conduct business operations in or from the DMCC Free Zone if the Registrar has issued to that person:
- (a) a Certificate of Registration (in the case of a Company) or Certificate of Establishment (in the case of a Branch); and
  - (b) a Licence (unless the person is an Exempt Entity),
- in each case as provided for in these Regulations and the Licensing Rules.
13. **Establishment of a Branch**
- 13.1 A Non-DMCC Entity may apply to establish a Branch in the DMCC Free Zone by signing and filing an application form with the Registrar. The application form must be accompanied by:

- (a) a copy of the memorandum and articles of association (or equivalent constitutional documentation) for the entity;
  - (b) the full name, address and nationality of the directors of the entity;
  - (c) the proposed name of the Branch which shall comply with the DMCC Entity Name Requirements;
  - (d) the full name, address and nationality of the person who is to serve as Manager;
  - (e) the full name, address and nationality of the person who is to serve as Secretary, if any; and
  - (f) such other document or information as the Registrar may require.
- 13.2 No Branch may be established without the approval of the Registrar.
- 13.3 On the establishment of a Branch, the Registrar must issue a Certificate of Establishment and assign to the Branch a number, which will be the DMCC Entity Number.
- 13.4 A Branch may be established to conduct any lawful business in the DMCC Free Zone subject to the terms of its Licence.
- 13.5 The Registrar must maintain a Register of DMCC Entities with the following details in respect of each Branch:
- (a) name;
  - (b) DMCC Entity Number;
  - (c) copy of Certificate of Establishment and any Certificate of Name Change;
  - (d) copy of Licence (except in respect of an Exempt Entity);
  - (e) registered office address;
  - (f) names of the Manager and any Secretary; and
  - (g) any other details DMCCA considers appropriate from time to time.
- 13.6 The Registrar may make the Register of DMCC Entities in respect of a Branch (or parts of it) available for public inspection (including by electronic means).
- 13.7 The Registrar may issue a certificate of incumbency (in such form as the Registrar may determine from time to time) in respect of a Branch.
- 13.8 If, following its establishment, a Branch has not obtained a Licence within the time period set out in Regulation 15.3, the Registrar may Strike-off the Branch.

- 13.9 Subject to compliance with any rules issued by the Registrar or DMCCA from time to time, a Branch may request, in its own discretion, that it be Removed. The request must include:
- (a) a written confirmation from the Branch Parent that all of the liabilities of the Branch remain the liabilities of the Branch Parent;
  - (b) a resolution of the directors of the Branch Parent authorising the Removal of the Branch;
  - (c) evidence in a form satisfactory to the Registrar that each lease of premises in the DMCC Free Zone entered into by the Branch has been terminated;
  - (d) evidence in a form satisfactory to the Registrar that any bank accounts of the Branch have been closed;
  - (e) to the extent applicable, confirmation from the Dubai Customs Authority that the Branch has no outstanding liabilities for customs duties; and
  - (f) any other document or information as may be required by the Registrar or DMCCA from time to time.

Following satisfaction of the above requirements, the Registrar shall Remove the Branch.

- 13.10 If a Branch has been Struck-off pursuant to Regulation 167, the Registrar or DMCCA may (but is not obliged to) require that the Branch Parent provide the following:
- (a) written confirmation that any liabilities purported to be incurred by the Branch remain the liabilities of the Branch Parent;
  - (b) evidence in a form satisfactory to the Registrar that each lease of premises in the DMCC Free Zone entered into by the Branch has been terminated;
  - (c) evidence in a form satisfactory to the Registrar that any bank accounts of the Branch have been closed;
  - (d) to the extent applicable, confirmation from the Dubai Customs Authority that the Branch has no outstanding liabilities for customs duties; and
  - (e) any other document or information as may be required by the Registrar or DMCCA from time to time.

#### 14. **Requirements of a Branch**

A Branch must:

- (a) have a place of business in the DMCC Free Zone to which all communications and notices may be addressed;
- (b) file with the Registrar notice of:

- (i) appointment of, and details of, persons authorised to accept Service on behalf of the Branch;
  - (ii) address of the principal place of business of the Branch in the DMCC Free Zone;
  - (iii) details of the Branch Parent's shareholders or members;
  - (iv) details of the Branch's Manager and, if any, Secretary; and
  - (v) details of the directors of the Branch Parent.
- (c) appoint and retain at all times at least one person who is authorised to accept Service of any document or notice on behalf of the Branch in the DMCC Free Zone and to undertake any other function as may be required by these Regulations;
- (d) submit to the Registrar on an annual basis a copy of any annual return filed in the jurisdiction of formation of the Branch Parent;
- (e) file a copy of the accounts and auditor's report of its Branch Parent with the Registrar in the manner set out in Regulation 82;
- (f) comply with any other requirements of the Registrar from time to time.

The application for establishment of a Branch filed with the Registrar must be accompanied by payment of the relevant fee, as determined by the Registrar from time to time.

The Registrar may include the information provided pursuant to Regulation 14(b) above on the Register of DMCC Entities.

## **15. Licensing of DMCC Entities**

- 15.1 Each DMCC Entity must, unless exempted by DMCCA, at all times maintain a valid Licence and comply with the terms and requirements as set out in the Licensing Rules.
- 15.2 In respect of the period (if any) prior to a Company obtaining its first Licence, any liabilities or commitments of such Company shall be treated as the liabilities or commitments of the Shareholders. In the event of suspension or termination of the Licence of a Company pursuant to these Regulations, any liabilities or commitments of such Company entered into during such period of suspension or following such termination shall be treated as the liabilities or commitments of the Shareholders. For the avoidance of doubt, all liabilities and commitments of a Branch are the liabilities and commitments of the Branch Parent.
- 15.3 If a DMCC Entity has not obtained a Licence within twenty-four weeks of the date of registration or establishment (as the case may be), the Registrar may Strike-off the DMCC Entity and, in the case of a Company, upon such Striking-off, the Company shall be automatically Dissolved.
- 15.4 A DMCC Entity may only conduct the activities that are permitted under its Licence.

- 15.5 DMCCA may, in its discretion, vary the terms or conditions of the Licence of a DMCC Entity at any time.
- 15.6 If DMCCA decides to exercise the powers of DMCCA under Regulation 15.5, DMCCA must inform the DMCC Entity in writing of:
- (a) the decision; and
  - (b) the date from which the decision will take effect (which may not be a date earlier than the date of the notice).
16. **Change of name of a DMCC Entity**
- 16.1 A Company may, by Special Resolution, change its name, provided that the new name is acceptable to the Registrar.
- 16.2 A Company must file the Special Resolution with the Registrar within seven Business Days of the date of the Special Resolution.
- 16.3 If the name of a Branch Parent has changed, the Branch must notify the Registrar of the resultant change in its name within fourteen Business Days of such change.
- 16.4 Where a DMCC Entity changes its name under this Regulation, the Registrar must enter the new name on the Register of DMCC Entities in place of the former name, and must issue a Certificate of Name Change to reflect the change of name.
- 16.5 A change of name by a DMCC Entity under these Regulations does not affect:
- (a) any rights or obligations of the DMCC Entity; and
  - (b) any legal proceedings by or against the DMCC Entity or any legal proceedings that might have been continued or commenced against the DMCC Entity by its former name. Such proceedings may be continued or commenced against it in its new name.
- 16.6 The change of name takes effect from the date on which the Registrar issues the Certificate of Name Change.
17. **Power of Registrar to require change of name**
- 17.1 If, in the opinion of the Registrar, the name of a DMCC Entity:
- (a) is misleading or undesirable;
  - (b) is contrary to the interests of the DMCC Free Zone, or the reputation and good standing of the Government of Dubai, the Emirate of Dubai or the UAE;
  - (c) infringes or potentially infringes on the intellectual property rights of a third party; and/or

- (d) does not comply with the DMCC Entity Name Requirements,  
the Registrar may direct the DMCC Entity to change its name.

17.2 The DMCC Entity must comply with the direction within thirty Business Days of the date of the direction or such longer period as the Registrar may allow.

#### **SECTION 4 - TRANSFERRING TO AND FROM THE DMCC FREE ZONE**

##### **18. Transfer of formation**

18.1 A Non-DMCC Entity may, if authorised by the laws and regulations of the jurisdiction in which it was formed, make a Continuation Application to the Registrar for it to continue as a Company.

18.2 A Continuation Application must be made to the Registrar, and must:

- (a) be signed as a statutory declaration in the form prescribed by the Registrar from time to time;
- (b) be authorised by a resolution approved by persons holding 75 per cent. or more of the voting interests in the Non-DMCC Entity;
- (c) be accompanied by the Non-DMCC Entity's proposed articles of association which, if the Standard Articles are not proposed to be adopted, must be accompanied by a legal opinion, in a form satisfactory to the Registrar, that the Non-DMCC Entity's proposed articles of association do not contain a provision which is contrary to or inconsistent with these Regulations;
- (d) be accompanied by the relevant fee;
- (e) be accompanied by a letter of no objection from the appropriate official, regulatory or public body in the jurisdiction from which the Non-DMCC Entity is transferring from; and
- (f) include any other document that may be prescribed by the Registrar, from time to time.

18.3 The Registrar may reject the Continuation Application if:

- (a) the Non-DMCC Entity fails to fulfil any of the conditions listed in Regulation 18.2;
- (b) the Non-DMCC Entity is found to have provided false, inaccurate or misleading information in the Continuation Application;
- (c) the Non-DMCC Entity is insolvent, subject to any voluntary or involuntary insolvency or liquidation proceedings (or any equivalent or analogous proceedings by whatever name known) or if a receiver has been appointed over any of the assets of the Non-DMCC Entity;

- (d) the acceptance of the Non-DMCC Entity into the DMCC Free Zone may be prejudicial to the reputation and/or interests of DMCCA, DMCC Free Zone, any other DMCC Entity, the Government of Dubai, the Emirate of Dubai or the UAE; or
- (e) the Registrar otherwise considers it appropriate to do so.

#### 19. **Certificate of Continuation**

If the Registrar approves a Continuation Application, the Registrar must:

- (a) issue a Certificate of Continuation that the Non-DMCC Entity has been continued as a Company;
- (b) register the Articles of the Continuing Entity deposited with the Registrar under Regulation 18.2;
- (c) assign to the Continuing Entity a number, which will be the DMCC Entity Number;
- (d) approve the name of the Continuing Entity and enter it in the Register of DMCC Entities; and
- (e) issue the Continuing Entity with a Licence.

#### 20. **Effect of Certificate of Continuation**

With effect from the date of continuation stated in the Certificate of Continuation:

- (a) the Non-DMCC Entity becomes a Company to which these Regulations apply as if the Non-DMCC Entity had been registered under these Regulations;
- (b) the Articles registered pursuant to Regulation 19(b) apply to the Company, subject to the Company's compliance with Regulation 8; and
- (c) the Certificate of Continuation is treated as the Certificate of Registration.

#### 21. **Copy of Certificate of Continuation**

The Registrar must, if requested by the Company, send a copy of the Certificate of Continuation to the appropriate official or public body in the jurisdiction in which the application for continuation was authorised.

#### 22. **Rights and liabilities**

If a Non-DMCC Entity is continued as a Company under these Regulations, that Company:

- (a) continues to have all the property, rights and privileges and is subject to all the liabilities and debts that it had before the continuation; and
- (b) remains a party in any legal proceedings commenced in any jurisdiction to which it was a party before the continuation.



## **23. Transfer of registration from DMCC Free Zone to another jurisdiction**

23.1 A Company may, if it is authorised by:

- (a) a Special Resolution; and
- (b) the Registrar,

apply to the appropriate official or public body of a jurisdiction outside of the DMCC Free Zone to transfer its registration to that jurisdiction and request that the Company be continued as a Non-DMCC Entity.

23.2 A Company may not apply under Regulation 23.1 unless the laws of the other jurisdiction provide that the Non-DMCC Entity:

- (a) will continue to have all the property, rights and privileges and be subject to all the liabilities and debts that it had before the continuation; and
- (b) will remain a party in any legal proceedings commenced in any jurisdiction to which it was a party before the continuation.

23.3 A Company ceases to be a Company within the meaning of these Regulations when the Company is continued as a Non-DMCC Entity and when the Non-DMCC Entity files with the Registrar a copy of the certificate or instrument of continuation certified by the appropriate official of the other jurisdiction.

23.4 When the Registrar receives the other jurisdiction's certificate or instrument of continuation, the Registrar must Remove the Company.

## **SECTION 5 - CORPORATE CAPACITY AND TRANSACTIONS**

### **24. Capacity of Company**

24.1 A Company has the capacity and rights and privileges of a natural person.

24.2 The capacity of a Company is not limited by anything in its Articles or by any act of its Shareholders.

24.3 No DMCC Entity may carry out any business for which it is not licensed or registered.

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

24.5 If a transaction purports to be entered into by or on behalf of a Company, at a time when the Company has not been registered, the transaction has the effect as if entered into by the person purporting to act for or on behalf of the Company. That person is personally bound by the transaction and entitled to its benefits.

- 24.6 A Company may, within such period as may be specified in the terms of the transaction referred to in Regulation 24.5, or if no period is specified, within a reasonable time after the Company is registered, adopt any such transaction. From that time, the Company will be bound by the transaction and entitled to its benefits. The person who purported to enter into the transaction for or on behalf of the Company, will subsequently cease to be so bound and entitled.

## **SECTION 6 - SHARE CAPITAL, SHAREHOLDERS AND REDUCTION OF SHARE CAPITAL**

### **25. Shareholders**

- 25.1 Upon the issue of a Certificate of Registration, the Initial Shareholders of a Company are treated as having agreed to become Shareholders of the Company, and must be entered as such in the Shareholder Register of the Company.

- 25.2 A person becomes a holder of a share of a Company upon:

- (a) its agreement to become a Shareholder;
- (b) acquisition of a share in the Company; and
- (c) its name being entered in the Shareholder Register of the Company.

### **26. Nature of shares**

- 26.1 The Share Capital of a Company must be divided into shares denominated in UAE Dirhams. Such shares may be paid for in cash or in kind.

- 26.2 The Registrar may, from time to time, specify a minimum amount of Share Capital for a Company.

- 26.3 A share must be paid-up in full by a Shareholder when allotted.

- 26.4 Subject to the Articles, each share will:

- (a) carry the right to vote at a meeting of the Company;
- (b) represent a proportionate interest in the Company; and
- (c) rank in all respects equally with each other share of the same type or class in the Company.

- 26.5 The shares or other interests of a Shareholder of a Company are, subject to Regulation 45, transferable in the manner provided by the Articles.

### **27. Types of shares**

- 27.1 A Company may issue different types or classes of shares, provided that the rights of each type or class of shares must be stipulated in the Articles.

27.2 A Company may also acquire Treasury Shares.

## 28. **Alteration of Share Capital**

28.1 A Company may, by Special Resolution, do any of the following:

- (a) increase its Share Capital by creating new shares of such value as it thinks fit;
- (b) consolidate all or any of its shares into shares of a larger amount than its existing shares; and
- (c) sub-divide all or any of its shares into shares of a smaller amount than its existing shares.

28.2 A Company which alters its Share Capital pursuant to these Regulations (including by way of reduction of Share Capital) is not required to pass a separate Special Resolution to amend its Articles to reflect the alteration.

28.3 A Company may make a bonus issue of shares to its Shareholders, provided that such shares are paid up out of retained earnings.

## 29. **Reduction of Share Capital**

29.1 A Company, if authorised by its Articles and a Special Resolution, may reduce its Share Capital.

29.2 A Company may reduce Share Capital by:

- (a) extinguishing or reducing liability on any of its shares; or
- (b) cancelling any Paid Up Share Capital that is lost or is unrepresented by available assets; or
- (c) reducing the number of such shares; or
- (d) paying off any Paid Up Share Capital that is in excess of the requirements of the Company; or
- (e) reducing its share premium account or other reserves.

29.3 A Company must not reduce the amount of its Share Capital unless it complies with the following:

- (a) on a date between fifteen and thirty Business Days before the date from which the reduction of the Share Capital is to have effect, the Company must cause a notice to be approved by the Registrar and published in the manner prescribed by the Registrar from time to time stating:
  - (i) the amount of the Share Capital prior to the reduction;

- (ii) the nominal value of each share;
  - (iii) the amount to which the Share Capital is to be reduced (which may not be below the minimum specified in Regulation 26.2); and
  - (iv) the date from which the reduction is to have effect; and
- (b) on the date from which the reduction is to have effect a certificate must be signed by at least one Director of the Company declaring that either:
  - (i) on that date the Company is solvent; or
  - (ii) all the Creditors of the Company on that date have consented to the reduction,

and confirming that this Regulation 29 has been duly complied with.

29.4 No Director may issue a certificate pursuant to Regulation 29.3(b) unless the Director has reasonable grounds for the opinion expressed in the certificate.

29.5 If shares are to be cancelled in order to reduce the Share Capital of a Company, the shares must be acquired at the lowest price at which the shares are obtainable in the reasonable opinion of the Directors. The lowest price must not exceed an amount, if any, stated in or determined by the Articles.

29.6 If a Company reduces the amount of its Share Capital the Company must file, within thirty Business Days of the date from which the reduction has taken effect:

- (a) a copy of the notice referred to in Regulation 29.3(a); and
- (b) the certificate referred to in Regulation 29.3(b),

with the Registrar, stating that this Regulation 29 has been duly complied with.

### 30. **Liability of Shareholders on reduced shares**

30.1 If after a certificate is signed in accordance with Regulation 29.3(b):

- (a) a Creditor who did not consent to the reduction has a debt or claim against a Company; and
- (b) the Company is unable to pay that Creditor as a result of the reduction,

every person who was a Shareholder of the Company at the date of the certificate is then liable to contribute for the payment of the debt or claim in question.

30.2 A person is not liable under Regulation 30.1 to contribute any more than it would have if the Company had commenced the process to be wound up one Business Day before the reduction of its Share Capital.

### 31. **Non-cash consideration for shares**

31.1 If a Company allots shares for which the consideration will be other than cash, the Directors of the Company must:

- (a) determine the reasonable cash value of the consideration for the shares;
- (b) resolve that, in its opinion, the consideration for the shares is fair and reasonable to the Company and to all existing Shareholders; and
- (c) resolve that, in its opinion, the present cash value of the consideration to be provided for the shares is not less than the share value to be credited for the issue of the shares.

31.2 The resolutions of the Directors required pursuant to Regulation 31.1 must detail the present cash value of that consideration, as determined by the Directors, and the basis for assessing it.

31.3 Regulation 31.1 does not apply to the following scenarios:

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

### 32. **Bearer shares**

A Company may not issue bearer shares.

### 33. **Power of a Company to purchase its own shares**

33.1 A Company may purchase its own shares.

33.2 A purchase by a Company of its own shares under this Regulation 33 must, unless the Company is a wholly owned Subsidiary, be authorised by a Special Resolution.

33.3 The shares to be purchased by the Company:

- (a) may only be purchased pursuant to a contract approved in advance by a Special Resolution of the Company; and

- (b) do not carry the right to vote on the Special Resolution authorising the purchase (unless the purchase of shares is to be implemented by way of a tender offer in which all Shareholders of the Company are entitled to participate).

33.4 A Company may only purchase its own shares from the following sources:

- (a) in the case of the nominal value of the shares to be purchased, from Paid Up Share Capital, share premium and other reserves of the Company; and
- (b) in the case of any premium on the shares to be purchased, from realised or unrealised profits, share premium or other reserves of the Company.

33.5 If a Company purchases its own shares under this Regulation 33, unless the Company has elected to hold the shares as Treasury Shares, those shares will automatically be cancelled and the amount of the Company's Share Capital will be diminished by the nominal value of those shares.

33.6 If a Company is about to purchase its own shares, it may issue shares up to the nominal value of the shares to be purchased as if the shares to be purchased had never been issued.

33.7 A Company may not purchase its own shares if as a result of the purchase there would no longer be a Shareholder of the Company holding shares.

#### 34. **Treasury Shares**

34.1 If a Company purchases shares in the manner permitted by these Regulations, the Company may:

- (a) hold the shares (or any of them), in which case the shares will be treated as **Treasury Shares**; or
- (b) deal with any of the shares, at any time, in accordance with Regulation 35.

34.2 If a Company holds Treasury Shares, the Company must be entered in the Shareholder Register as a Shareholder holding those Treasury Shares.

34.3 A Company must not exercise any right in respect of Treasury Shares held by it (including any right to attend or vote at meetings). Any purported exercise of such a right is void.

34.4 No dividend may be paid, and no other distribution (whether in cash or otherwise) of a Company's assets (including any distribution of assets to members on a winding-up) may be made to the Company in respect of Treasury Shares held by it.

#### 35. **Treasury Shares: disposal and cancellation**

35.1 If a Company holds Treasury Shares, the Company may at any time:

- (a) sell any of those shares;

- (b) transfer any of those shares for the purposes of or pursuant to an employees' share scheme; or
  - (c) cancel any of those shares.
- 35.2 If under Regulation 35.1(c) a Company cancels shares held as Treasury Shares, the amount of the Company's Share Capital will be diminished by the nominal value of those shares.
- 35.3 If any shares in a Company are cancelled under this Regulation 35:
  - (a) this cancellation is not treated as a reduction of capital for the purposes of Regulation 29; and
  - (b) the Company must give notice of the cancellation to the Registrar, within the period of twenty Business Days beginning with the date on which the shares are cancelled.
- 36. **Treasury Shares: proceeds of sale**
- 36.1 If any shares held as Treasury Shares are sold, the proceeds of sale must be dealt with in accordance with this Regulation 36.
- 36.2 If the proceeds of sale are equal to or less than the purchase price paid by the Company for the shares, the proceeds must be treated as a realised profit of the Company.
- 36.3 If the proceeds of sale exceed the purchase price paid by the Company for the shares:
  - (a) that part of the proceeds of sale that is equal to the purchase price paid must be treated as a realised profit of the Company; and
  - (b) a sum equal to the excess must be transferred to the Company's share premium account.
- 37. **Meaning of Holding Company and Subsidiary**
- 37.1 For the purposes of these Regulations, a corporate entity (**Company A**) is a **Subsidiary** of another corporate entity (**Company B**) only if:
  - (a) it is controlled by:
    - (i) Company B; or
    - (ii) Company B and one or more corporate entities each of which is controlled by Company B; or
  - (b) it is a subsidiary of a subsidiary of Company B.
- 37.2 For the purposes of these Regulations, a corporate entity (**Company C**) is the **Holding Company** of another corporate entity (**Company D**) if Company D is its Subsidiary.

37.3 For the purposes of these Regulations, a corporate entity (**Company E**) is controlled by another corporate entity (**Company F**) or person or by two or more corporate entities only if:

- (a) Company F controls the board of directors of Company E; or
- (b) Company F, a person or two or more corporate entities hold shares (or such shares are held for their benefit), other than by way of security, representing 50 per cent. of the votes for the appointment of Company E's directors,

and the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of Company E.

### 38. **Participation in a Holding Company**

38.1 Except in the cases mentioned in these Regulations, a Subsidiary cannot own shares in its Holding Company and an allotment of shares from a Company to its Subsidiary is void.

38.2 Regulation 38.1 does not prevent a Subsidiary which is, when it becomes a Subsidiary, a Shareholder of its Holding Company, from continuing to be a Shareholder but, subject to Regulation 38.4, the Subsidiary:

- (a) has no right to vote at meetings of the Holding Company or a type or class of its members;
- (b) may not acquire further shares in the Holding Company except on a capitalisation issue; and
- (c) must within twelve months dispose of all of its shares in the Holding Company.

38.3 Regulations 38.1 and 38.2 apply in relation to a nominee for a corporate entity which is a Subsidiary as if references to the corporate entity included a nominee for it.

38.4 Nothing in this Regulation applies where the Subsidiary concerned is a Trustee.

## **SECTION 7 - REGISTERS**

### 39. **Form of Company and Branch records**

39.1 A Company must have:

- (a) a Shareholder Register;
- (b) an Officer Register;
- (c) a Security Register; and
- (d) a Minutes Register,

in a legible form capable of being reproduced within a reasonable time.



39.2 A Branch must have an Officer Register in a legible form capable of being reproduced within a reasonable time.

39.3 The Registrar will maintain and keep possession of:

- (a) the Shareholder Register, the Officer Register and the Security Register for each Company; and
- (b) the Officer Register for each Branch.

39.4 The Company must maintain and keep possession of the Minutes Register.

39.5 A Company must take reasonable precautions to:

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

#### 40. **Shareholder Register**

A Company must provide the Registrar with the following details to allow the Registrar to maintain the Shareholder Register of the Company:

- (a) copy of any share transfer document; and
- (b) any other information the Registrar may require from time to time.

#### 41. **Security Register**

41.1 Subject to the provisions of the Articles and applicable law, a Shareholder may grant security over its shares in a Company. A Company must provide the Registrar with the following details to allow the Registrar to maintain the Security Register of the Company:

- (a) the name and address of the Shareholder granting the security interest;
- (b) the number of shares (and, if applicable, their type or class) affected by the security interest;
- (c) the date on which the security interest over the shares was created;
- (d) the amount of the security interest;
- (e) the name and address of the security holder; and
- (f) a copy of the instrument granting the security interest.

- 41.2 The Company must provide the details referred to in Regulation 41.1, within five Business Days of its receipt of the relevant information.
- 41.3 A security interest shall only be perfected upon its entry into the Security Register.
- 41.4 A Shareholder must report to the Company the creation, modification or discharge of a security interest over any of its shares in the Company within five Business Days of the creation, modification or discharge of such security interest. The report must include the information set out in Regulation 41.1 and include a copy of the instrument granting the security interest.

#### 42. **Officer Register**

The Registrar must maintain in respect of each Company and Branch the Officer Register which must contain such particulars as the Registrar may from time to time determine, including the names of:

- (a) in respect of each Company, the Directors, Secretary and Manager; and
- (b) in respect of each Branch, the Manager and any Secretary.

#### 43. **Inspection of Registers**

- 43.1 DMCCA has absolute discretion as to whether a person who is not a Shareholder of a Company or the Branch Parent of a Branch has the right to receive an extract of a Register.
- 43.2 DMCCA shall be deemed to have delegated such rights to the Registrar, unless DMCCA indicates otherwise.
- 43.3 The Shareholder Register, the Officer Register and the Security Register must during business hours be open to the inspection of a Shareholder of the Company. A Shareholder of a Company may receive an extract of a Shareholder Register, Officer Register and/or Security Register.

#### 44. **Rectification of Registers**

- 44.1 If:
  - (a) the name of a person or the number of shares held is, without sufficient reason, entered in or omitted from the Shareholder Register of a Company;
  - (b) there is a failure or unnecessary delay in entering in the Shareholder Register the fact of a person having ceased to be a Shareholder; or
  - (c) the Security Register of a Company does not accurately reflect the information required under Regulation 41,

the person aggrieved, or a Shareholder of the Company, or the Company, may apply to the Registrar for rectification of the relevant Register.

- 44.2 The Registrar may refuse the application or may rectify the relevant Register. If the Registrar refuses the application, the Registrar shall provide the grounds for such refusal in writing to the applicant.
- 44.3 Whether or not the Registrar exercises power under Regulation 44.2, DMCCA may make one or more of the following orders:
- (a) on application of a person aggrieved, a Shareholder of the Company or the Company, an order directing the Registrar to, or not to, rectify the relevant Register or to do any act or thing; or
  - (b) on application of a person aggrieved, an order requiring the Company to pay a fine or to do any act or thing.
45. **Transfer and registration**
- 45.1 Irrespective of anything in a Company's Articles, the Registrar may only register a transfer of shares in the Company where a share transfer document has been signed by or on behalf of the transferee and transferor. This share transfer document must be delivered to both the Registrar and the Company for the transfer to take effect and the share transfer will be effective from the registration of the transfer by the Registrar.
- 45.2 This Regulation 45 does not prevent the Registrar from registering a person as a Shareholder where such person has been granted a right to shares in the Company by operation of law. Any such person may be registered as a Shareholder upon such evidence being produced as may reasonably be required by the Registrar. An application by any such person to be registered as a Shareholder for all purposes shall be deemed to be a transfer of Shares of the Shareholder and the Registrar shall treat it as such.
- 45.3 A Trustee of a deceased Shareholder must be treated as a Shareholder for, and only for, the purposes of executing the share transfer document in respect of such Shareholder's share or interest.
- 45.4 On the application of the transferor of a share or interest in a Company, the Registrar must enter the name of the transferee in the Shareholder Register in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- 45.5 If the Registrar refuses to register a transfer of shares, the Registrar must provide the transferor and transferee with a notice stating that the transfer of shares has been rejected within a reasonable time period of such application to the Registrar.

## SECTION 8 – DIVIDENDS AND DISTRIBUTIONS

### 46. **Dividends**

A Company may, by an Ordinary Resolution, declare a dividend or resolve to make a distribution at any time.

#### 47. Restrictions on distributions

- 47.1 A Company may only declare a dividend or resolve to make a distribution, if the Directors of the Company have resolved by simply majority, on reasonable grounds, that the Company will, immediately after the dividend is paid or the distribution is made, be able to pay its debts as they fall due in the normal course of business.
- 47.2 A Company may only make a distribution out of its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital.
- 47.3 Whether a distribution may be made by a Company is determined by reference to the following items as stated in the relevant accounts:
- (a) profits, losses, assets and liabilities;
  - (b) provisions of any kind; and
  - (c) Share Capital and reserves (including undistributable reserves).
- 47.4 In this Regulation 47, **distribution** means every description of distribution of a Company's assets to its Shareholders, whether in cash or otherwise, except distribution by way of:
- (a) an issue of bonus shares;
  - (b) the redemption or purchase of any of the Company's own shares out of Share Capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with these Regulations;
  - (c) the reduction of Share Capital either by:
    - (i) extinguishing or reducing the liability of any of the Shareholders in respect of Share Capital not paid up; or
    - (ii) by repaying any Paid Up Share Capital; or
  - (d) a distribution of assets to Shareholders of the Company on its winding up.
- 47.5 In this Regulation 47, **undistributable reserves** means in respect of a Company:
- (a) its share premium account;
  - (b) any capital redemption reserve;
  - (c) the amount by which its accumulated unrealised profits (so far as not previously utilised by capitalisation) exceeds its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made); and

- (d) any other reserve that the Company is prohibited from distributing by its Articles or under any relevant regulation, rule, policy or decision applicable in the DMCC Free Zone.

#### **48. Consequences of unlawful distribution**

- 48.1 Where a distribution, or part of a distribution, made by a Company to any of its Shareholders is made in contravention of Regulation 47 and, at the time of the distribution, the Shareholder knows or has reasonable grounds for believing that it is so made, the Shareholder is liable to repay it, or that part of it, to the Company.
- 48.2 In the case of a distribution made otherwise than in cash, the Shareholder must pay to the Company an amount equal to the value of the distribution.

### **SECTION 9 - DIRECTORS AND CORPORATE GOVERNANCE**

#### **49. Directors**

- 49.1 Subject to any limitations in the Articles, the business and affairs of a Company must be managed by one or more Directors.
- 49.2 The Directors may exercise all the powers of a Company except any powers that these Regulations or the Company's Articles require the Company to exercise in a General Meeting or by other action of the Shareholders.
- 49.3 No person may be a Director who:
  - (a) is under the age of twenty-one years (except, in the case of a person who is not under the age of eighteen years, with the approval of the Court);
  - (b) has been convicted of a criminal offence, involving dishonesty, in any jurisdiction in the past ten years;
  - (c) has been judged disqualified by DMCCA pursuant to Regulation 57 or by any UAE Governmental Authority or any other competent regulatory authority or court in any jurisdiction outside of the UAE; or
  - (d) does not qualify based on a criteria provided in the Articles (as the case may be) or the Officer Rules;
  - (e) is an undischarged bankrupt;
  - (f) is not a natural person, unless otherwise approved by the Registrar; or
  - (g) in the opinion of the Registrar, is not a suitable person to be a Director of a Company.

#### **50. Elections, term and removal of Directors**

- 50.1 The first Directors must be appointed by the Initial Shareholders.

- 50.2 All Directors appointed after the first Directors must be appointed by the Shareholders for such period as the Shareholders may determine.
- 50.3 Each Director holds its position until:
- (a) incapacitation or death;
  - (b) resignation from the position; or
  - (c) removal by an Ordinary Resolution (or any higher threshold as may be set out in the Company's Articles).
- 50.4 A vacancy in the position of a Director pursuant to Regulation 50.3 may be filled by Ordinary Resolution or any higher threshold to the extent set out in the Company's Articles.
- 50.5 If a Director ceases to fulfil the criteria set out in Regulation 49.3, the Shareholders must promptly (and, in any event, within ten Business Days of the date on which the Director ceased to fulfil the criteria set out in Regulation 49.3) remove such Director from office.
- 50.6 The minimum number of Directors is one.
- 50.7 Any change to the Directors of a Company must be notified to the Registrar within fourteen Business Days of the change.
- 50.8 A Director may appoint an alternate who need not be a Director (but may not be a person who would not qualify to be a Director as a result of Regulations 49.3(a) to 49.3(g)). The Director must make any appointment of an alternate in writing and provide a copy of the appointment to the Secretary.
- 50.9 An alternate for a Director appointed under Regulation 50.7 shall be entitled to attend meetings in the absence of the Director who appointed the alternate and to vote in the place of the Director.
- 51. Duties of Directors**
- 51.1 A Director, in exercising the Director's powers and discharging the Director's duties, must act in accordance with the Officer Rules, including acting honestly, in good faith and lawfully, and in the best interests of the Company.
- 51.2 The duties of Directors are set out in the Officer Rules and are owed by a Director of a Company to the Company.
- 51.3 A person who ceases to be a Director continues to be subject to:
- (a) any duty as regards the exploitation of any property, information or opportunity of which the Director became aware when serving as a Director; and
  - (b) any duty as regards things done or omitted to be done by the Director before the Director ceased to be a Director.

**52. Prohibition of financial assistance to Directors**

A Company must not provide financial assistance to a Director.

**53. Validity of acts of Director**

The acts of a Director are valid even if a defect is subsequently found in that Director's appointment or qualification.

**54. Secretary**

54.1 Every Company must have a Secretary. A Branch may have a Secretary.

54.2 The Secretary must be appointed from time to time by resolution of the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch).

54.3 A person cannot be a Secretary who:

- (a) in the case of a natural person, is under the age of twenty-one years (except, in the case of a person who is not under the age of eighteen years, with the approval of the Court);
- (b) has been convicted of a criminal offence, involving dishonesty, in any jurisdiction in the past ten years;
- (c) has been judged disqualified by DMCCA pursuant to Regulation 57 or by any UAE Governmental Authority or any other competent regulatory authority or court in any jurisdiction outside of the UAE;
- (d) does not qualify based on a criteria provided in the Articles (as the case may be) or the Officer Rules; or
- (e) in the opinion of the Registrar, is not a suitable person to be a Secretary of a DMCC Entity.

54.4 A Secretary holds its position until:

- (a) incapacitation or death (if the Secretary is a natural person) or winding-up or dissolution (if the Secretary is not a natural person);
- (b) resignation from the position; or
- (c) removal by resolution of the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch).

54.5 A vacancy in the position of a Secretary pursuant to Regulation 54.4 may be filled by resolution of the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch).

- 54.6 If a Secretary ceases to fulfil the criteria set out in Regulation 54.3, the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch) must promptly (and, in any event, within ten Business Days of the date on which the Secretary ceased to fulfil the criteria set out in Regulation 54.3) remove such Secretary from office and, in the case of a Company, must appoint a new Secretary in accordance with Regulation 54.2.
- 54.7 Any change to the Secretary of a DMCC Entity must be notified to the Registrar within fourteen Business Days of the change.
- 54.8 The Secretary need not be a natural person.
- 54.9 The Secretary is primarily responsible for filing all documents required to be filed with the Registrar under these Regulations.
- 54.10 A Secretary, in exercising the Secretary's functions, must act in accordance with the Officer Rules.
- 54.11 The duties of a Secretary are set out in the Officer Rules and are owed by a Secretary of a DMCC Entity to that DMCC Entity.
55. **Manager**
- 55.1 Every DMCC Entity must have a Manager.
- 55.2 The Manager must be appointed from time to time by resolution of the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch).
- 55.3 A Secretary, Director or Shareholder of a Company may also be appointed as the Manager (if they are a natural person).
- 55.4 The Manager is responsible for the day to day operations of the Company (in accordance with the requirements of the Directors) or the Branch (in accordance with the requirements of the directors of the Branch Parent), as the case may be.
- 55.5 A Manager, in exercising the Manager's functions, must act in accordance with the Officer Rules.
- 55.6 The duties of a Manager are set out in the Officer Rules and are owed by a Manager of a DMCC Entity to that DMCC Entity.
- 55.7 A person cannot be a Manager who:
- (a) is under the age of twenty-one years (except, in the case of a person who is not under the age of eighteen years, with the approval of the Court);
  - (b) has been convicted of a criminal offence, involving dishonesty, in any jurisdiction in the past ten years;



- (c) has been judged disqualified by DMCCA pursuant to Regulation 57 or by any UAE Governmental Authority or any other competent regulatory authority or court in any jurisdiction outside of the UAE;
- (d) is not a natural person;
- (e) does not qualify based on a criteria provided in the Articles (as the case may be) or the Officer Rules; or
- (f) in the opinion of the Registrar, is not a suitable person to be a Manager of a DMCC Entity.

55.8 A Manager holds its position until:

- (a) incapacitation or death;
- (b) resignation from the position; or
- (c) removal by resolution of the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch).

55.9 A vacancy in the position of a Manager pursuant to Regulation 55.8 may be filled by resolution of the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch).

55.10 If a Manager ceases to fulfil the criteria set out in Regulation 55.7, the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch) must promptly (and, in any event, within ten Business Days of the date on which the Manager ceased to fulfil the criteria set out in Regulation 55.7) remove such Manager from office and must appoint a new Manager in accordance with Regulation 55.2 and 55.12.

55.11 Any change to the Manager of a DMCC Entity must be notified to the Registrar within fourteen Business Days of the change.

55.12 If a Manager resigns or is removed from office, dies or is incapacitated, the DMCC Entity must promptly notify the Registrar (and in any event within five Business Days) and the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch) shall automatically assume the responsibilities of the Manager from the date of such resignation, removal, death or incapacity until such time as a new Manager is appointed. Such new Manager must be appointed by the DMCC Entity within ten Business Days of the date of such resignation, removal, death or incapacity.

## 56. **Assumptions in relation to Officers**

56.1 Subject to Regulation 56.3, a person dealing with a DMCC Entity is entitled to assume that anyone who appears, from information made properly available to them pursuant to Regulation 7.6 or 43, to be an Officer of the DMCC Entity:

- (a) has been duly appointed; and

- (b) has the authority to exercise the powers and perform the duties customarily exercised or performed by a director, company secretary or manager of a similar DMCC Entity.
- 56.2 A DMCC Entity is not entitled to assert in proceedings in relation to dealings of the DMCC Entity that any such assumption is incorrect.
- 56.3 A person is not entitled to make an assumption under Regulation 56.1 if at the time of the dealing that person knew or suspected that the assumption was incorrect.
- 56.4 Where any provision of these Regulations requires a Company or Branch to make any filing or notification to DMCCA or the Registrar, the Officers (in the case of a Company) or the Secretary (if any) and Manager (in the case of a Branch) must procure that the Company or Branch makes such filing or notification in accordance with the relevant time limit set out in these Regulations.
- 57. **Disqualification of Officers**
- 57.1 If at any time:
  - (a) the Registrar:
    - (i) has any concerns regarding a person's suitability as an Officer; or
    - (ii) is aware that, or has evidence that, an Officer has breached one of his or her duties; or
    - (iii) is aware that, or has evidence that, an Officer has been convicted of a criminal offence or any other offence involving fraud or dishonesty; or
    - (iv) believes that an Officer has acted or is acting in a manner which is detrimental to or prejudicial to the reputation and interests of the DMCC Free Zone, DMCCA, any other DMCC Entity or the general public; and/or
  - (b) an Officer is or has been disqualified from acting as a director, manager or secretary or otherwise disqualified from acting in a position of management, in each case by any UAE Governmental Authority or any other competent regulatory authority or court in any jurisdiction outside of the UAE,

the Registrar may apply to DMCCA for an order of disqualification and request DMCCA to impose a Sanction on such person and/or the relevant DMCC Entity.
- 57.2 On such an application referred to in Regulation 57.1, DMCCA may issue an order if it is satisfied that the person's conduct makes that person unfit to be an Officer or otherwise be involved in the management of a DMCC Entity and impose a Sanction on such person and/or the relevant DMCC Entity.
- 57.3 If a Director is disqualified pursuant to Regulation 57.2, the Shareholders must promptly (and, in any event, within ten Business Days of the date of the disqualification order issued by DMCCA) remove such Director from office.

- 57.4 If a Secretary is disqualified pursuant to Regulation 57.2, the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch) must promptly (and, in any event, within ten Business Days of the date of the disqualification order issued by DMCCA) remove such Secretary from office.
- 57.5 If a Manager is disqualified pursuant to Regulation 57.2, the Directors (in the case of a Company) or the directors of the Branch Parent (in the case of a Branch) must promptly (and, in any event, within ten Business Days of the date of the disqualification order issued by DMCCA) remove such Manager from office and must appoint a new Manager in accordance with Regulation 55.12.
- 57.6 An order under Regulation 57.2 may be made for such period as DMCCA considers appropriate but not exceeding fifteen years.
- 57.7 DMCCA may publish any order made under Regulation 57.2.

## **SECTION 10 - GENERAL MEETINGS**

### **58. Annual General Meetings**

- 58.1 Unless a shorter duration is provided in a Company's Articles, a Company must hold a General Meeting as its annual General Meeting within eighteen months from the date of its registration and once every twelve months after that event.
- 58.2 A meeting of the Shareholders, other than the annual General Meeting, is an extraordinary General Meeting.

### **59. Request of meetings**

- 59.1 Notwithstanding anything in the Company's Articles, upon a Shareholders' Request, the Directors or Secretary must, in accordance with the request, call:
- (a) an extraordinary General Meeting; or
  - (b) a meeting of Shareholders of the relevant type or class of shares,
- to be held as soon as possible but in any case not later than sixty Business Days after the date of the Shareholders' Request.
- 59.2 A **Shareholders' Request** is:
- (a) in respect of Regulation 59.1(a), a request of Shareholders holding shares representing 10 per cent. or more of the Share Capital of the Company; and
  - (b) in respect of Regulation 59.1(b), a request of Shareholders holding shares representing 10 per cent. or more of the voting rights for the relevant type or class of shares of the Company.
- 59.3 A Shareholders' Request must:

- (a) state the purpose of the meeting;
- (b) be signed by or on behalf of the Shareholders making the Shareholders' Request; and
- (c) be delivered at the registered office of the Company.

59.4 A Shareholders' Request may be signed in any number of documents which are in similar form each signed by or on behalf of one or more of such Shareholders.

59.5 If the Directors or Secretary do not within ten Business Days from the date of the deposit of the Shareholders' Request issue a notice for the relevant meeting, the Shareholders who made the Shareholders' Request may call the relevant meeting.

59.6 A meeting called in accordance with Regulation 59.5 must:

- (a) be held within ninety Business Days from the date of the Shareholders' Request; and
- (b) be called, as soon as reasonably practicable, in the same manner as a meeting called by the Directors or Secretary in accordance with these Regulations.

## 60. **Registrar's power to call meeting in default**

If a meeting is not held in accordance with Regulation 58 or 59, the Registrar may, on the application of any Director, Secretary or Shareholder, call, or direct the calling of, a General Meeting of the Company.

## 61. **Notice of meetings**

61.1 Any meeting of a Company (other than an adjourned meeting) may be called by giving ten Business Days' notice in writing.

61.2 If a meeting is called by shorter notice than that specified in Regulation 61.1, it will be treated as having been duly called if it is so agreed by Shareholders holding not less than 95 per cent. of the total voting rights permitted to vote at the meeting.

61.3 A notice of a General Meeting of a Company must:

- (a) set out the time, place and date for the General Meeting;
- (b) state the nature of the General Meeting's business;
- (c) set out the intention to propose any Ordinary Resolution or Special Resolution and state the contents of such resolution; and
- (d) include a copy of any accounts and auditor's reports that are to be laid before the General Meeting, if relevant.

**62. Representation of corporate entity at meetings**

A Shareholder who is a corporate entity may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of a Company. In doing so, such representative will be treated as having the authority to exercise all the rights of the Shareholder.

**63. General provisions as to meetings and votes**

Unless the Company's Articles make alternative provision, the following provisions apply to any meeting of the Shareholders:

- (a) notice of the meeting must be given to every Shareholder entitled to receive it by delivering or posting it to the Shareholder's registered address;
- (b) at any General Meeting (other than a meeting adjourned for lack of quorum), the attendance of persons holding (or represented by proxy) more than 50 per cent. of the total voting rights permitted to vote will be a quorum;
- (c) at any General Meeting adjourned for lack of quorum, one person personally present or represented by proxy will be a quorum;
- (d) any Shareholder or Director elected by the Shareholders present at any such meeting may be chairman;
- (e) on a show of hands, every Shareholder present in person at any such meeting has one vote and, on a poll, every Shareholder has one vote for every share held by that Shareholder; and
- (f) unless provided otherwise in these Regulations or the Articles, a resolution of the Shareholders shall be passed if approved by Ordinary Resolution.

**64. Written resolutions**

64.1 Subject to a Company's Articles, anything that may be done by an Ordinary Resolution or Special Resolution passed at a General Meeting may be done by a resolution in writing signed by or on behalf of each Shareholder entitled to vote on the resolution.

64.2 A resolution in writing may be signed in counterparts and is treated as being passed when the last Shareholder signs the resolution or on such later date as is specified in the resolution.

**65. Recording of decisions by sole Shareholder**

65.1 A General Meeting of a Company with a sole Shareholder will be considered to be convened, and a resolution will be considered to be passed at such General Meeting, by the Shareholder issuing a decision in writing. If a decision is not taken in writing, the Shareholder must provide the Company with a record in writing of the decision within twenty Business Days of such decision.

65.2 A failure to comply with Regulation 65.1 does not affect the validity of the decision.

**66. Proxies**

66.1 A Shareholder entitled to attend and vote at a General Meeting is entitled to appoint, by notice to the Company in writing, another person (whether a Shareholder or not) as that Shareholder's proxy to attend and vote instead of that Shareholder.

66.2 A proxy appointed to attend and vote instead of a Shareholder has the same rights as the Shareholder to speak at the meeting, including the right to attend and vote at the meeting.

66.3 In every notice calling a General Meeting, there must appear with reasonable prominence a statement that a Shareholder entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of that Shareholder, and that a proxy does not need to be a Shareholder.

**67. Demand for poll**

67.1 A provision contained in a Company's Articles is void if it would have the effect either:

- (a) of excluding the right to demand a poll at a General Meeting, or at a meeting of any type or class of shares, on a question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either:
  - (i) by not less than five Shareholders having the right to vote on the question; or
  - (ii) by a Shareholder or Shareholders representing not less than 10 per cent. of the total voting rights of all the Shareholders having the right to vote on the question.

67.2 On a poll taken at such a meeting, a Shareholder entitled to more than one vote may vote once by indicating that it is casting all of its votes in the same way.

**68. Participation in meetings**

68.1 Subject to a Company's Articles, a Shareholder may attend and participate in a meeting by phone or other similar means of communication provided that each Shareholder present at the meeting can hear what is said by any other Shareholder present at the meeting.

68.2 Subject to a Company's Articles, a Director may attend and participate in a meeting by phone or other similar means of communication provided that each Director present at the meeting can hear what is said by any other Director present at the meeting.

**69. Minutes**

- 69.1 Every Company must maintain a Minutes Register which is to be kept at the Company's registered office.
- 69.2 The Minutes Register must contain the minutes of all meetings and the names of each person present at any such meeting.
- 69.3 The minutes of a meeting will be evidence of the meeting unless the contrary is proven.
- 69.4 The books containing the minutes of a General Meeting or of a meeting of the holders of a type or class of shares must be kept at the Company's registered office, and must during business hours be open to the inspection of a Shareholder without charge.

**SECTION 11 - ACCOUNTS AND AUDIT**

**70. Application of this Section**

Regulations 71 to 81 apply to a Company.

**71. Preparation of accounts**

- 71.1 The Directors of every Company must procure the preparation of accounts for each financial year of the Company.
- 71.2 The accounts must:
  - (a) be prepared in accordance with and comply with International Financial Reporting Standards;
  - (b) show a true and fair view of the profit and loss of the Company for the period and of the state of the Company's affairs at the end of the period; and
  - (c) be approved by the Directors and signed on their behalf by at least one of them.
- 71.3 Within six months, or such other period prescribed by DMCCA, after the end of the financial year of the Company, the accounts for that period must be:
  - (a) prepared and approved by the Directors;
  - (b) examined and reported on by an auditor approved by DMCCA; and
  - (c) laid before a General Meeting for discussion and, if thought fit, approved by its Shareholders together with a copy of the auditor's report.
- 71.4 Each Company must file a copy of the accounts and the auditor's report with the Registrar within five Business Days of the relevant General Meeting, providing such additional information as requested by the Registrar.

71.5 In this Section, references to "accounts" are to those prepared in accordance with this Regulation 71.

## **72. Maintenance of accounts**

72.1 Every Company must keep accounting records including underlying documents which are sufficient to show and explain its transactions so as to:

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

72.2 Each Company's accounting records must be:

- (a) kept at the Company's registered office or such other place that the Directors think fit;
- (b) be open to inspection by an Officer or auditor of the Company at all reasonable times;
- (c) preserved by the Company for:
  - (i) in the case of a Company which is a taxable person for the purposes of the tax laws applicable in the UAE from time to time, at least five years from the end of the applicable tax period to which they relate;
  - (ii) in the case of a Company which is not a taxable person for the purposes of the tax laws applicable in the UAE from time to time, at least five years from the end of the calendar year to which they relate; and
  - (iii) in the case of accounting records relating to real estate, at least fifteen years from the end of the calendar year to which they relate,or such longer period as may be required from time to time pursuant to any tax law applicable in the UAE; and
- (d) otherwise kept and maintained in such manner as prescribed by DMCCA from time to time.

## **73. Financial year**

73.1 Subject to Regulation 73.2, the first financial year of a Company starts on the day on which it is registered and lasts for a period determined by the Directors, which period must be at least six months and not longer than eighteen months.

73.2 Where a Non-DMCC Entity has become a Company pursuant to Regulation 18, the Directors may elect to commence such a Company's first financial year as a DMCC Entity from the end of the previous financial year in the jurisdiction from which it transferred. In



such circumstance, a Company's first financial year will last for twelve months from the date it is treated as having commenced.

73.3 The second and any subsequent financial year will start at the end of the previous financial year and will last for twelve months or some other period which is within five Business Days either shorter or longer than twelve months as may be determined by the Directors.

73.4 A Company may apply to the Registrar to extend or shorten its financial year, including to facilitate synchronisation of group accounts. The Registrar may grant such approval or consent in the Registrar's absolute discretion.

#### **74. Copies of accounts**

74.1 All Shareholders of a Company are entitled, on written request made to the Company and without charge, to be furnished with a copy of the Company's latest audited accounts and auditor's report.

74.2 A Company must comply with such a request within five Business Days.

#### **75. Waiver and modification as to accounts**

75.1 DMCCA may, without limiting DMCCA's powers, extend, waive or modify the application of the provisions of this Section 11 in its absolute discretion.

75.2 In particular, such extension, waiver or modification may provide for:

- (a) the inclusion in accounts of group accounts dealing with the affairs of a Company and its Subsidiaries;
- (b) the inclusion in accounts of a report by the Directors dealing with such matters as may be specified;
- (c) the appointment, qualifications, remuneration, removal, resignation, rights and duties of auditors;
- (d) the creation or adoption of auditing standards or codes of practice; and
- (e) the waiver of the requirement for the preparation of accounts and examination and reporting thereupon by auditors.

#### **76. Appointment and removal of auditors**

76.1 A Company must appoint a firm of auditors who must examine and report on the accounts prepared pursuant to Regulation 71, in accordance with these Regulations. A Company may, in its discretion, appoint an auditor solely to report on its accounts and not on a general retainer basis.

76.2 A Company must appoint its auditor at a General Meeting.

76.3 The Company must not appoint an auditor under these Regulations unless:

- (a) the auditor has been registered by DMCCA as an approved auditor;
  - (b) the auditor has, prior to the appointment, consented in writing to the appointment; and
  - (c) the Company is not, on reasonable enquiry, aware of any matter which should preclude the auditor from giving its consent.
- 76.4 An auditor must be registered by DMCCA as an approved auditor pursuant to approved auditor rules published by DMCCA from time to time.
- 76.5 The appointment of a firm as an auditor of a Company is taken to be an appointment of all persons who are partners or owners of the firm and are registered as an auditor under this Section 11.
- 76.6 Where the auditor of a Company has not completed its term of appointment, the Directors of that Company may fill such a vacancy on such terms as they see fit, and the appointee will hold office to the conclusion of the next annual General Meeting.
- 76.7 Subject to Regulation 76.6, the Company in a General Meeting may fix the auditor's remuneration.
- 76.8 A Company may by Ordinary Resolution at any time remove an auditor notwithstanding anything in any agreement between it and the auditor.
- 76.9 DMCCA may order the termination of appointment of a Company's auditor and, if it does so, shall provide its grounds for such order in writing to the Company.
- 76.10 Nothing in this Regulation 76 is to be taken as depriving an auditor removed under it of compensation or damages payable to the auditor in respect of the termination of appointment as auditor.
- 77. Auditors' report to the Company**
- 77.1 A Company's auditor must make a report to the Company's Shareholders on the accounts examined by the auditor.
- 77.2 The auditor's report must state:
- (a) whether in the auditor's opinion the accounts have been properly prepared in accordance with International Financial Reporting Standards;
  - (b) that the accounts give a true and fair view of the profit or loss of the Company for the financial year;
  - (c) that the accounts give a true and fair view of the state of the Company's affairs at the end of the financial year;
  - (d) that the Company is undertaking only activities permitted under its Licence; and

- (e) any other matter or opinion required by DMCCA from time to time.

## **78. Auditors' duties and powers**

78.1 A Company's auditor must carry out such investigations as will enable the auditor to form an opinion as to the following matters:

- (a) whether proper accounting records have been kept by the Company;
- (b) whether proper returns adequate for the audit have been received from offices not visited by the auditor;
- (c) whether the Company's accounts are in agreement with the accounting records and returns; and
- (d) whether the Company's accounts have been prepared in compliance with International Financial Reporting Standards.

78.2 If the auditor is of the opinion that the conditions in Regulation 78.1(a) to (d) have not been satisfied, the auditor must state that fact in the report.

78.3 The auditor has a right of access, at all reasonable times, to the Company's records.

78.4 The auditor is entitled to require from the Company's Officers such information and explanations as the auditor considers necessary for the performance of the duties of the auditor.

78.5 Every auditor is entitled to receive notice of, and attend, any meeting of Shareholders and to be heard on any part of the business of the meeting which concerns the auditor.

78.6 If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief are necessary for the purposes of the audit, the auditor must state that fact in the report.

## **79. Resignation of an auditor**

79.1 An auditor of a Company may resign from office by depositing a notice in writing to that effect together with a statement under Regulation 79.3 at the Company's registered office.

79.2 Any such notice under Regulation 79.1 operates to bring the auditor's term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.

79.3 When an auditor ceases for any reason to hold office the auditor must deposit at the Company's registered office:

- (a) a statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the notice of the Shareholders or Creditors of the Company; or

- (b) a statement of any circumstances as mentioned above.

79.4 Where a statement under Regulation 79.3 falls within Regulation 79.3(b), the Company must within ten Business Days send a copy of the statement to every Shareholder of the Company and to every person entitled to receive notice of General Meetings.

## 80. **Cooperation with auditors**

A Company, or any Officer of a Company, or any Representative of such a Company must not:

- (a) knowingly or recklessly:
  - (i) provide false, misleading or deceptive statement to the Company's auditor; or
  - (ii) omit information where the omission of such information is likely to mislead or deceive the auditor;
- (b) destroy or conceal documents;
- (c) coerce, manipulate, mislead, or influence the auditor;
- (d) fail to provide access to information or documents specified by the auditor; or
- (e) fail to give any information or explanation to the auditor which the person is able to give.

## 81. **Obligation to disclose to the Registrar**

81.1 An auditor is subject to the obligations of disclosure under Regulation 176.

81.2 Without limiting the application of any other provision of these Regulations, an auditor does not contravene any duty to which the auditor is subject merely because the auditor gives to the Registrar:

- (a) a notification as required under Regulation 176; or
- (b) any other information or opinion in relation to any such matter,

if the auditor is acting in good faith.

## 82. **Branches**

Each Branch must file a copy of the accounts and auditor's report of its Branch Parent with the Registrar within five Business Days of the relevant shareholder meeting (or meeting of the relevant governing body of the Branch Parent, if applicable) to approve, review or receive those accounts and auditor's report.

## SECTION 12 - INSPECTION AND REMEDIES

### 83. Appointment of inspectors

83.1 DMCCA may, on being satisfied that there is good reason to do so, appoint one or more inspectors to investigate the affairs of a DMCC Entity and to report on them as DMCCA may direct.

83.2 An inspector appointed by DMCCA, pursuant to Regulation 83.1, may:

- (a) perform on-site inspections;
- (b) require prompt attendance by employees or Officers of a DMCC Entity at meetings and/or interviews;
- (c) require the DMCC Entity to provide promptly such documentation as the inspector reasonably requires;
- (d) report conclusions and findings to DMCCA;
- (e) make recommendations regarding the status of the DMCC Entity to DMCCA;
- (f) seek information from such third party regulatory authorities as may be required;
- (g) apply or enforce Sanctions as specified by DMCCA from time to time; and
- (h) take such other steps as reasonably required to investigate the affairs of the DMCC Entity.

83.3 If a DMCC Entity or any Shareholder, Officer or Creditor of a DMCC Entity requests DMCCA to appoint an inspector, DMCCA may, before appointing an inspector, require the applicant to give security, to an amount equivalent to the reasonably estimated costs of the investigation.

### 84. Powers of inspectors

84.1 If an inspector appointed under Regulation 83.1 to investigate the affairs of a DMCC Entity (**Entity A**) thinks it necessary for the purposes of its investigation to also investigate the affairs of another corporate entity which is or at any relevant time has been:

- (a) Entity A's Subsidiary;
- (b) Entity A's Holding Company; or
- (c) a Subsidiary of Entity A's Holding Company,

(each, **Entity B**) they will with the approval of DMCCA have power to do so.

84.2 Where Regulation 84.1 applies, the inspector must report on the affairs of Entity B so far as it thinks that the results of the investigation of the affairs of Entity B are relevant to the investigation of the affairs of Entity A.

84.3 An inspector so appointed may at any time in the course of its investigation inform DMCCA of matters coming to its knowledge as a result of the investigation which it believes indicate that a contravention has been committed.

## 85. **Production of records and evidence to inspectors**

85.1 An inspector appointed under Regulation 83.1 may require that a person:

- (i) produces and makes available to it all records in that person's custody or power relating to that matter;
- (ii) at reasonable times and on reasonable notice, attends before the inspector; and
- (iii) gives the inspector all assistance in connection with the investigation, which that person is reasonably able to give,

if the inspector considers that the person is or may be in possession of information relating to a matter, which it believes to be relevant to the investigation.

85.2 A Director must produce and make available to an inspector all records in the Director's possession or under the Director's control (whether alone or jointly with another person) relating to any bank account(s) into which the inspector has reasonable grounds for believing there has been money paid which has been in any way connected with an act or omission which constitutes misconduct (whether fraudulent or not) on the part of that Director.

## 86. **Inspector's reports**

86.1 An inspector may, and if so directed by DMCCA must, make interim reports to DMCCA and, on the conclusion of its investigation, must make a final report to DMCCA.

86.2 DMCCA may:

- (a) forward a copy of any report made by an inspector to the registered office of the DMCC Entity; and
- (b) furnish a copy on request and on payment of the prescribed fee to any person whom the Registrar deems appropriate.

## 87. **Expenses of investigating a DMCC Entity's affairs**

The expenses of, and incidental to, an investigation by an inspector will be paid in the first instance by DMCCA, but the Registrar may in the Registrar's absolute discretion order any person or corporate entity to make repayment to DMCCA to the extent specified in the Registrar's order.

## **88. Directions to DMCC Entity to comply with these Regulations**

88.1 If a DMCC Entity or an Officer or any Representative of a DMCC Entity fails to comply with:

- (a) a provision of these Regulations or of any other regulation, rule, policy or decision applicable in the DMCC Free Zone; or
- (b) a requirement made by the Registrar pursuant to any power under these Regulations, or other regulation, rule, policy or decision applicable in the DMCC Free Zone, which requires either or both of them to deliver to or file with the Registrar any document or to give notice to the Registrar of any matter,

the Registrar may issue a direction that the DMCC Entity or any Officer of it make good the failure within a time specified in the direction.

88.2 If the Registrar considers that the DMCC Entity or any Officer or any Representative of it has failed to comply with the direction, the Registrar may apply to DMCCA for one or more of the following orders:

- (a) an order directing the DMCC Entity or any Officer or any Representative to comply with the direction or with any provision of these Regulations or of any other regulation, rule, policy or decision applicable in the DMCC Free Zone relevant to the issue of the direction;
- (b) an order directing the DMCC Entity or any Officer or any Representative to pay any costs incurred by the Registrar or other person relating to the issue of the direction by the Registrar or the contravention of these Regulations or other regulation, rule, policy or decision relevant to the issue of the direction; or
- (c) any other order that DMCCA considers appropriate in the circumstances.

88.3 Nothing in this Regulation 88 prejudices the operation of any Section imposing any other Sanction, nor any powers that the Registrar or DMCCA or any other person may have under any other provision of these Regulations.

## **SECTION 13 - AMALGAMATION**

### **89. Amalgamation of Companies**

Two or more Companies may, subject to the consent of the Registrar given in the Registrar's absolute discretion and pursuant to the provisions of these Regulations, amalgamate and continue as one Company and, if a Licence has been granted to one or more of these Companies, the Licence shall continue in effect for the surviving Company.

### **90. Amalgamation of Companies and Non-DMCC Entities with continuation in the DMCC Free Zone**

90.1 One or more Companies and one or more Non-DMCC Entities may apply to the Registrar for consent to amalgamate and continue as a Company to which these Regulations and

any other regulations, rules, policies or decisions issued by DMCCA from time to time shall apply.

- 90.2 An application for consent under Regulation 90.1 shall be in such form, and be accompanied by an application fee and such documents, as the Registrar may determine, including documentary proof, satisfactory to the Registrar, that the Non-DMCC Entity has obtained all necessary authorisations required under the laws of the country in which it is incorporated to enable it to make the application.

**91. Amalgamation of Companies and Non-DMCC Entities with continuation outside of the DMCC Free Zone**

- 91.1 One or more Companies and one or more Non-DMCC Entities (referred to in this Regulation 91 as the “amalgamating entities”) may apply to the Registrar for consent to amalgamate and continue as a Non-DMCC Entity (referred to in this Regulation 91 as the “surviving entity”) to which the provisions of the laws of the jurisdiction of incorporation of the surviving entity shall apply.

- 91.2 An application for consent under Regulation 91.1 shall be in such form, and shall be accompanied by an application fee and supported by such documents, as the Registrar may determine and such documents shall include:

- (a) a certified copy of a resolution of the shareholders of each amalgamating entity approving the amalgamation and naming the jurisdiction of incorporation of the surviving entity; or
- (b) if so authorised by the articles of association (or other constitutional documents), a certified copy of a resolution of the board of directors of each amalgamating entity approving the amalgamation and naming the jurisdiction of incorporation of the surviving entity; and
- (c) a declaration signed by an Officer of each amalgamating entity declaring that there are reasonable grounds for believing that:
  - (i) the amalgamating entity is, and the surviving entity will be, able to pay its liabilities as they become due;
  - (ii) the realisable value of the surviving entity's assets will not be less than the aggregate of its liabilities and issued capital of all types and classes; and
  - (iii) either no creditor will be prejudiced by the amalgamation or adequate notice has been given to all known creditors of such entity and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious; and
- (d) documentary proof, satisfactory to the Registrar, that each amalgamating entity which is a Company has obtained all necessary authorisations required under the laws of the DMCC Free Zone to enable it to make the application.



**92. Registrar's refusal to grant consent**

Where the Registrar refuses to grant its consent under Regulations 89, 90 or 91 it shall not be bound to assign any reason therefore, and its decision shall not be subject to appeal or review in any court.

**SECTION 14 - WINDING UP - GENERAL**

**93. Modes of winding-up**

93.1 The winding-up of a Company shall be made in accordance with these Regulations.

93.2 The winding-up of a Company may be:

- (a) a solvent winding-up in accordance with Section 17;
- (b) a summary winding-up in accordance with Section 18;
- (c) an insolvent winding-up in accordance with Section 19; or
- (d) an involuntary winding-up by the competent court in accordance with Section 20.

**94. Bankruptcy**

The provisions of the Federal Law No. 9 of 2016 (and any replacement or amending legislation) relating to the bankruptcy of companies generally shall be applicable to Companies.

**SECTION 15 - PRE-INSOLVENCY MATTERS**

**95. Pre-insolvency reporting requirements**

In the event that:

- (a) the purpose of the Company as set out in the Articles has expired or the Company has no further business;
- (b) the losses of the Company exceed 85 per cent. of the Share Capital;
- (c) the total liabilities of the Company exceed its total assets; or
- (d) some or all of the employees of the Company have not been paid for a period of three consecutive months,

the Directors of the Company shall, within ten Business Days upon becoming aware, submit to the Registrar a report summarising the status of the Company and the action that the Company is proposing to take in respect of the relevant matter referred to in (a) to (d) above.

## 96. **Losses of a Company**

- 96.1 If the losses of a Company reach 75 per cent. or more of the Company's Share Capital, the Company shall within 21 days of becoming aware of the extent of its losses, call for a General Meeting, at which a resolution for a voluntary winding-up, or alternatively for the recapitalisation of the Company to the extent of its losses (in accordance with Regulation 28), shall be proposed.
- 96.2 If the losses of the Company reach 75 per cent. or more but less than 85 per cent. of the Company's Share Capital, the threshold for passing a resolution for the winding-up of the Company proposed in accordance with Regulation 96.1 shall be at least 75 per cent. of the votes of such Shareholders (being entitled to do so) voting in person or by proxy (unless the Articles provide for a lesser majority).
- 96.3 If the losses of the Company reach 85 per cent. or more of the Company's Share Capital, the threshold for passing a resolution for the winding-up of the Company proposed in accordance with Regulation 96.1 shall be at least 25 per cent. of the votes of such Shareholders (being entitled to do so) voting in person or by proxy (unless the Articles provide for a lesser majority).

## **SECTION 16 - PROVISIONS OF APPLICATION TO VOLUNTARY WINDING-UP PROCEDURES**

### 97. **Application of this Section**

This Section 16 applies in relation to a solvent winding-up, a summary winding-up and an insolvent winding-up.

### 98. **Distinction between "solvent", "summary" and "insolvent" voluntary winding-up**

For the purpose of these Regulations:

- (a) a winding-up in the case where a Directors' declaration under Regulation 107 has been made shall be treated as a "*solvent winding-up*";
- (b) a winding-up in the case where a Directors' declaration under Regulation 115 has been made shall be treated as a "*summary winding-up*"; and
- (c) a winding-up in the case where a declaration has not been made shall be treated as an "*insolvent winding-up*".

### 99. **Circumstances in which a Company may be wound-up voluntarily**

A Company may be wound-up voluntarily:

- (a) in circumstances provided for in the Articles of the Company; or
- (b) if the Company resolves by unanimous resolution at a General Meeting that it shall be wound-up voluntarily; or

- (c) where Regulation 96 applies.

#### 100. **Commencement of winding-up**

A voluntary winding-up is deemed to commence:

- (a) in the case of a solvent or summary winding up, at the time of passing the resolution for voluntary winding-up by the Company in accordance with Regulation 99; and
- (b) in the case of an insolvent winding up, at the time of the certification of the notice of appointment of liquidators, in accordance with Regulation 123.6.

#### 101. **Notice by liquidator of appointment**

The liquidator shall within ten Business Days of appointment sign a notice of such appointment and provide it to the Shareholders and the Creditors (with a copy to the Registrar) by reputable courier or such other method approved by the Registrar.

#### 102. **Effect on status of Company**

- 102.1 In the case of a voluntary winding-up, the Company shall from the commencement of the winding-up cease to carry on its business, except so far as may be required to effect its winding-up.
- 102.2 Notwithstanding anything to the contrary in the Company's Articles, the status and powers of the Company shall continue until the Company is Dissolved.

#### 103. **Avoidance of share transfers after winding-up resolution**

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator and any alteration in the status of the Company's Shareholders made after the commencement of a voluntary winding-up, is void.

#### 104. **Court's power to control proceedings**

- 104.1 If the Court, on the application of the liquidator in a voluntary winding-up, so directs, no action or proceeding shall be proceeded with or commenced against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.
- 104.2 If for any reason there is no liquidator acting, the Court may on the application of the Registrar, appoint a liquidator.

#### 105. **Effect of Company's insolvency**

- 105.1 This Regulation 105 applies where:

- (a) no declaration has been made under Regulation 107; or

- (b) the liquidator appointed in a solvent winding-up is of the opinion that the Company will be unable to pay its debts in full within the period stated in the Directors' declaration made under Regulation 107.
- 105.2 The liquidator shall summon a meeting of Creditors within twenty Business Days of forming the opinion referred to in Regulation 105.1(b) above, and send notices of the Creditors' meeting to all Creditors by reputable courier or such other method as approved by the Registrar at least five Business Days before the day on which the meeting is to be held.
- 105.3 Subject to any legal or regulatory restrictions, the liquidator shall provide the Creditors free of charge with such information concerning the affairs of the Company as they may reasonably require. The notice of the Creditors' meeting shall state this duty.
- 105.4 The liquidator shall prepare a statement of affairs and present that statement before the Creditors' meeting.

## **SECTION 17 - SOLVENT WINDING UP**

### **106. Application of this Section**

This Section 17 applies in relation to a solvent winding-up.

### **107. Declaration of solvency**

- 107.1 Where it is proposed to commence a solvent winding-up, a declaration of solvency in a form prescribed from time to time by the Registrar shall be signed by the Directors (or in the case of a Company having more than one Director, the majority of the Directors).
- 107.2 The declaration of solvency shall state that, having made full inquiry into the affairs of the Company:
  - (a) the Company has no assets and no liabilities; or
  - (b) the Company has assets and no liabilities; or
  - (c) the Company has liabilities and will be able to discharge those liabilities in full within twelve months after the commencement of the winding-up.
- 107.3 The declaration of solvency must be made within the period of twenty Business Days before the date of passing the resolution for winding-up, or on that date but before passing the resolution.

### **108. Appointment of liquidator**

- 108.1 In a solvent winding-up, the Company at a General Meeting shall appoint one or more liquidators for the purpose of winding-up the Company's affairs and distributing its property.

108.2 The chairman of the General Meeting held in accordance with Regulation 108.1 (or, if there was no chairman, one of the liquidators) shall prepare a notice of appointment of liquidators in a form prescribed from time to time by the Registrar, which shall be signed by the liquidator or liquidators appointed at the General Meeting.

108.3 The person preparing the notice of appointment of liquidators in accordance with Regulation 108.2 shall send such notice, together with the declaration of solvency made in accordance with Regulation 107 and a copy of the minutes of the General Meeting, to the Registrar within fifteen Business Days of the date of the General Meeting.

#### 109. **Directors' powers**

On the appointment of a liquidator, all the powers of the Directors cease, except so far as the Company at a General Meeting or the liquidator sanction their continuance.

#### 110. **Vacancy in office of liquidator**

If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the Company at a General Meeting may, subject to any arrangement with its Creditors, fill the vacancy. For that purpose, a General Meeting may be convened by any Shareholder or, if there was more than one liquidator, by a continuing liquidator.

#### 111. **Progress report to Shareholders at year's end**

111.1 If the winding-up of the Company continues for more than twelve months, the liquidator must, within three months of each anniversary of his appointment, until ceasing to act:

- (a) prepare a progress report providing a summary of his acts and dealings, and of the conduct of the winding-up, during the preceding year; and
- (b) send a copy of the progress report to the Shareholders and to the Registrar.

111.2 A progress report is not required for any period which ends after the liquidator has sent a final report to Shareholders under Regulation 112.

#### 112. **Final meeting prior to Company being Dissolved**

112.1 As soon as the Company's affairs are fully wound-up and prior to the Company being Dissolved, the liquidator shall prepare a summary of the winding-up, showing how it has been conducted and how the Company's property has been disposed of.

112.2 The liquidator shall subsequently call a General Meeting of the Company for the purpose of presenting the summary and giving an explanation of it.

112.3 Notice specifying the time, place and object of the General Meeting shall be published in a manner prescribed by the Registrar from time to time at least fifteen Business Days prior to the date of the meeting.

112.4 Within five Business Days of the date of the meeting, the liquidator shall submit to the Registrar a copy of the summary and minutes of the General Meeting.

### **113. Conversion from solvent to insolvent winding-up**

- 113.1 If the liquidator or liquidators at any time following appointment, in a solvent winding-up conclude that the Company will be unable to pay its debts in full they shall, promptly, call for a Creditors' meeting in accordance with Regulation 113.2.
- 113.2 From the day that the Creditors' meeting is held under Regulation 113.1, this Regulation 113 has effect as if:
- (a) the Directors' declaration under Regulation 107 had not been made (save for any offences committed under that Regulation); and
  - (b) the Creditors' meeting held under Regulation 113.1 and the General Meeting at which it was resolved that the Company be wound-up voluntarily were the meetings held in accordance with Regulation 122, and accordingly the winding-up becomes an insolvent winding-up.

## **SECTION 18 - SUMMARY WINDING-UP**

### **114. Application of this Section**

This Section 18 applies in relation to a summary winding-up.

### **115. Declaration of solvency**

- 115.1 Where it is proposed to commence a summary winding-up, a declaration of solvency in a form prescribed from time to time by the Registrar shall be signed by the Directors (or in the case of a Company having more than one Director, the majority of them).
- 115.2 The declaration of solvency shall state that, having made full inquiry into the affairs of the Company:
- (a) the Company has no assets and no liabilities; or
  - (b) the Company has assets and no liabilities; and
  - (c) the affairs of the Company are capable of being finally wound-up within six months of the commencement of the summary winding-up.
- 115.3 The declaration of solvency must be made within the period of twenty Business Days before the date of passing the resolution for winding-up, or on that date but before passing the resolution.

### **116. Appointment of liquidator**

- 116.1 In a summary winding-up, the Company at a General Meeting shall appoint one or more liquidators for the purpose of winding-up the Company's affairs and distributing its property.

116.2 The chairman of the General Meeting held in accordance with Regulation 116.1 (or, if there was no chairman, one of the liquidators) shall prepare a notice of appointment of liquidators in a form prescribed from time to time by the Registrar, which shall be signed by the liquidator or liquidators appointed at the General Meeting.

116.3 The person preparing the notice of appointment of liquidators in accordance with Regulation 116.2 shall send such notice, together with the declaration of solvency made in accordance with Regulation 115 and a copy of the minutes of the General Meeting, to the Registrar within fifteen Business Days of the date of the General Meeting.

**117. Directors' powers**

On the appointment of a liquidator, all the powers of the Directors cease, except so far as the Company at a General Meeting or the liquidator sanction their continuance.

**118. Vacancy in office of liquidator**

If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the Company at a General Meeting may fill the vacancy. For that purpose, a General Meeting may be convened by any Shareholder or, if there was more than one liquidator, by a continuing liquidator.

**119. Conversion to solvent voluntary winding up**

119.1 If the liquidator, in a summary winding-up, has not submitted an application for the Company to be Dissolved under Regulation 161 within six months from the date of the Directors' declaration under Regulation 115, this Regulation 119.1 has the effect that:

- (a) the Directors' declaration made under Regulation 115 had instead been made under Regulation 107; and
- (b) the summary winding-up becomes a solvent winding-up.

**120. Conversion from summary to insolvent winding-up**

120.1 If the liquidator or liquidators at any time following appointment, in a summary winding-up conclude that the Company will be unable to pay its debts in full they shall, promptly, call for a Creditors' meeting in accordance with Regulation 122 below.

120.2 From the day that the Creditors' meeting is held under Regulation 120.1, this Regulation 120.2 has effect as if:

- (a) the Directors' declaration under Regulation 115 had not been made (save for any offences committed under that Regulation); and
- (b) the Creditors' meeting held under Regulation 120.1 and the General Meeting at which it was resolved that the Company be wound-up voluntarily were the meetings held in accordance with Regulation 122, and accordingly the winding-up becomes an insolvent winding-up.

## **SECTION 19 - INSOLVENT VOLUNTARY WINDING UP**

### **121. Application of this Section**

121.1 Subject to Regulation 121.2, this Section 19 applies in relation to an insolvent voluntary winding up.

121.2 Regulations 122 and 123 do not apply where, under Regulations 113 or 120 a winding-up has become an insolvent winding-up.

### **122. Initial meetings of the Company and Creditors**

122.1 The Company shall:

- (a) call a General Meeting at which the resolution for an insolvent winding-up is to be proposed;
- (b) call a meeting of its Creditors within ten Business Days of the General Meeting in Regulation 122.1(a);
- (c) distribute notices of the Creditors' meeting by reputable courier or such other method as approved by the Registrar to each known Creditor and by publication in a manner prescribed by the Registrar from time to time at least eight Business Days before the day for which that meeting has been called;
- (d) appoint a person to act as chairman of the Creditors' meeting; and
- (e) propose a person or persons to act as liquidator of the Company.

122.2 The Directors of the Company shall:

- (a) produce a statement of affairs of the Company, signed by at least one Director and present that statement before the Creditors' meeting; and
- (b) appoint a Director to attend at the meeting, and that Director shall attend the meeting.

### **123. Appointment of liquidator**

123.1 The Creditors and the Company at their respective meetings referred to in Regulations 122.1(a) and 122.1(b) may each nominate one or more persons to act as liquidator.

123.2 The Creditors shall appoint the liquidator at their meeting referred to in Regulation 122.1(b) by a simple majority by value of claims by Creditors in attendance and by formally submitted proxies.

123.3 The chairman of the Creditors' meeting shall have complete discretion to reject or attach a nominal value to any claim submitted by a Creditor (for the purposes of voting at that meeting).



- 123.4 The chairman of the Creditors' meeting shall prepare a notice of appointment of liquidators in a form prescribed from time to time by the Registrar, which shall be signed by the liquidator or liquidators appointed at the Creditors' meeting.
- 123.5 The chairman of the Creditors' meeting shall send the notice of appointment of liquidators, together with a copy of the minutes of the General Meeting and the Creditors' meeting, to the Registrar within five Business Days of the date of the Creditors' meeting.
- 123.6 The liquidator's appointment shall be effective from the date on which the notice of appointment prepared in accordance with Regulation 123.4 is certified by the chairman of the Creditors' meeting and the date of certification shall be endorsed on such notice.

**124. Directors' powers**

- 124.1 During the period following the commencement of the winding-up but prior to the appointment of a liquidator, the powers of the Directors shall not be exercised except:
- (a) with the consent of the Registrar; or
  - (b) to secure compliance with Regulation 122; or
  - (c) to protect the Company's assets.
- 124.2 On the appointment of a liquidator, all the powers of the Directors cease, except so far as the Liquidation Committee (or, if there is no such Liquidation Committee, a meeting of the Creditors) permits their continuance.

**125. Vacancy in office of liquidator**

If a vacancy occurs in the office of a liquidator, by death, resignation or otherwise, (other than a liquidator appointed by, or by the direction of, the Court) the Creditors may resolve at a meeting of Creditors to fill the vacancy.

**126. Appointment of Liquidation Committee**

- 126.1 The Creditors at a meeting held in accordance with Regulation 122 may vote to appoint a committee (the **Liquidation Committee**) consisting of a minimum of three and a maximum of five members eligible under Regulation 128 to exercise the functions conferred on it by, or under, these Regulations.
- 126.2 If a Liquidation Committee is appointed, the Company may by resolution nominate Creditors to be members of a Liquidation Committee.
- 126.3 The Creditors may resolve that all or any of the persons nominated by the Company ought not to be members of the Liquidation Committee. If the Creditors so resolve, the persons nominated by the Company shall not (unless otherwise directed by the Registrar) act as members of the Liquidation Committee.

## **127. Functions of Liquidation Committee**

In addition to any functions conferred on a Liquidation Committee by any provision of these Regulations, a Liquidation Committee shall assist the liquidator in discharging the liquidator's functions and act in relation to the liquidator in such a manner as may be agreed from time to time.

## **128. Eligibility to be a member of Liquidation Committee**

A person claiming to be a Creditor is eligible to be a member of the Liquidation Committee if:

- (a) that person has delivered a proof of debt;
- (b) the proof of debt has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distributions or dividends; and
- (c) the debt is not fully secured.

## **129. Meetings of the Liquidation Committee**

129.1 Subject to the subsections of this Regulation 129, meetings of the Liquidation Committee shall be held when and where reasonably determined by the liquidator.

129.2 The liquidator shall call a first meeting of the Liquidation Committee to take place within three months of his appointment or of the Liquidation Committee's establishment (whichever is the later).

129.3 Thereafter the liquidator shall call a meeting:

- (a) if so requested by a member of the Liquidation Committee or his representative (the meeting then to be held within fifteen Business Days of the request being received by the liquidator);
- (b) for a specified date, if the Liquidation Committee has previously resolved that a meeting be held on that date; and
- (c) at least once in any six month period.

129.4 The liquidator shall give at least five Business Days' written notice of the venue of a meeting to every member of the Liquidation Committee (or his representative, if designated for that purpose), unless the requirement of the notice has been waived by or on behalf of any member.

129.5 Waiver may be signified either at or before the meeting.

129.6 The chairman at any meeting of the Liquidation Committee shall be the liquidator, or a person nominated by him to act.

- 129.7 A person nominated in accordance with Regulation 129.6 to act as chairman must be either:
- (a) a person who is qualified to act as a liquidator in relation to the Company under Regulation 145; or
  - (b) an employee of the liquidator or his firm who is experienced in insolvency matters.
- 129.8 A meeting of the Liquidation Committee is duly constituted if due notice of it has been given to all the members, and at least two Creditor members are present or represented.
- 129.9 A member of the Liquidation Committee may, in relation to the business of the Liquidation Committee, be represented by another person duly authorised by him for that purpose.
- 129.10 No person shall:
- (a) on the same Liquidation Committee, act at the same time as representative of more than one committee-member; or
  - (b) act both as a member of the Liquidation Committee and as representative of another member.
- 129.11 Where a member's representative signs any document on that member's behalf, the fact that he so signs must be stated below his signature.

**130. Obligations of the liquidator to Liquidation Committee**

- 130.1 Subject to Regulation 130.2, it is the duty of the liquidator to report to the members of the Liquidation Committee all such matters as appear to him to be, or as they have indicated to him as being, of material concern to them with respect to the winding-up.
- 130.2 In the case of matters so indicated to the liquidator by the Liquidation Committee, the liquidator shall not be required to comply with any request for information where it appears to him that:
- (a) the request is frivolous or unreasonable; or
  - (b) the cost of complying would be excessive, having regard to the relative importance of the information; or
  - (c) there are not sufficient assets to enable the liquidator to comply; or
  - (d) in the opinion of the liquidator, compliance would prejudice the position of other Creditors; or
  - (e) there is a legal or regulatory duty not to do so; or
  - (f) compliance would otherwise constrain the liquidator in the performance of his duties in the winding-up.

### **131. Voting rights and resolutions of Liquidation Committee**

- 131.1 At any meeting of the Liquidation Committee, each member of it (whether present, or by his representative) has one vote; and a resolution is passed when a simple majority of the Creditor members present or represented have voted in favour of it.
- 131.2 If a member of the Liquidation Committee is considered by the liquidator to have an interest in conflict with the general body of Creditors, the votes of that member shall not be counted towards the number required for passing a resolution relating to such conflict but the way in which that member has voted shall be recorded.
- 131.3 The liquidator shall within ten Business Days of determining a conflict submit to the Registrar a report detailing the nature of the member's conflict and any action taken.
- 131.4 Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman of such meetings of the Liquidation Committee and kept with the records of the liquidation.

### **132. Termination of Liquidation Committee membership**

- 132.1 A Creditor's membership of a Liquidation Committee is automatically terminated if:
  - (a) that member has ceased to be eligible to be a member of the Liquidation Committee under Regulation 128;
  - (b) that member is neither present nor represented at three consecutive meetings of the Liquidation Committee (unless at the third of those meetings it is resolved that this Regulation 132 is not to apply in that member's case); or
  - (c) that member ceases to be a Creditor or is found never to have been a Creditor.
- 132.2 A member of the Liquidation Committee may resign by notice in writing delivered to the liquidator.
- 132.3 A member of the Liquidation Committee may be removed by resolution at a meeting of Creditors.
- 132.4 A member of the Liquidation Committee may be removed by an order of the Court following a petition by the liquidator or Registrar.

### **133. Vacancy on Liquidation Committee**

- 133.1 If there is a vacancy in or among the members of the Liquidation Committee, the vacancy need not be filled if the liquidator and a majority of the remaining Creditor members so agree, provided that the total number of members does not fall below three members.
- 133.2 The liquidator may appoint any qualified Creditor to fill the vacancy, if a majority of the other Creditor members agree to the appointment, and the appointed Creditor consents to act.

133.3 Alternatively, a meeting of Creditors may resolve that a Creditor be appointed (with his consent) to fill the vacancy. In this case, at least ten Business Days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

**134. Progress report to Shareholders and Creditors at year's end**

134.1 If an insolvent winding-up continues for more than twelve months, the liquidator must, within three months of each anniversary of his appointment, until ceasing to act:

- (a) prepare a progress report providing a summary of his acts and dealings, and of the conduct of the winding-up, during the preceding year; and
- (b) send a copy of the progress report to the Shareholders and Creditors of the Company and to the Registrar.

134.2 A progress report is not required for any period which ends after the liquidator has sent a final report to Shareholders under Regulation 136.

**135. Meeting of the Company and Creditors at each year's end**

135.1 If an insolvent winding-up continues for more than twelve months, the liquidator shall call a General Meeting of the Company and a meeting of the Creditors to be held within three months of the anniversary of the commencement of the winding-up, or such longer period as the Registrar may allow.

135.2 At each annual General Meeting of the Company and meeting of the Creditors the liquidator shall present a summary of his acts and dealings and of the conduct of the winding-up during the preceding twelve months.

**136. Final meeting prior to the Company being Dissolved**

136.1 As soon as the Company's affairs are fully wound-up and prior to the Company being Dissolved, the liquidator shall prepare a summary of the winding-up, showing how it has been conducted and how the Company's property has been disposed of, following which the liquidator shall call a General Meeting of the Company and meeting of the Creditors for the purpose of presenting the summary and giving an explanation of it.

136.2 Notice specifying the time, place and object of the meetings shall be published in a manner prescribed by the Registrar from time to time, at least fifteen Business Days prior to the date of the relevant meeting.

136.3 Within five Business Days of the date of the relevant meeting, the liquidator shall submit to the Registrar a copy of the summary and minutes of that meeting.

## **SECTION 20 - INVOLUNTARY WINDING UP**

### **137. Circumstances in which a Company may be wound-up by the Court**

A Company may be wound-up by the Court if the Court makes such an order following a petition to wind-up a Company by the Registrar in accordance with Regulation 138.

### **138. Petition for winding-up by the Registrar**

The Registrar may (but is not obliged to) present a petition to the Court for a Company to be wound-up if the Registrar (in its sole discretion) determines that:

- (a) the Company has been Struck-off under Regulation 167; or
- (b) the Company has committed a serious or repeated contravention of any of these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone.

### **139. Powers of Court on hearing of petition**

139.1 On hearing a winding-up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit.

139.2 Where the Court orders that the Company be wound-up, the Court shall identify in the winding-up order the person who is to act as liquidator of the Company, and that person shall take office immediately upon the order being made.

### **140. Commencement of winding-up**

The winding-up of a Company by the Court is deemed to commence at the time of the presentation of the petition for the winding-up by the Registrar.

### **141. Notice of winding-up order**

On the making of a winding-up order by the Court, the liquidator must within five Business Days:

- (a) send a copy of the order to the Registrar; and
- (b) publish notice of the order in a manner prescribed by the Registrar from time to time.

### **142. Progress report to Shareholders and Creditors at year's end**

142.1 If the winding-up of the Company continues for more than twelve months, the liquidator must, within three months of each anniversary of his appointment, until ceasing to act:

- (a) prepare a progress report providing a summary of his acts and dealings, and of the conduct of the winding-up, during the preceding year; and

- (b) send a copy of the progress report to the Shareholders and Creditors of the Company and to the Registrar.

142.2 A progress report is not required for any period which ends after the liquidator has sent a final report to Shareholders under Regulation 143.

**143. Final meeting prior to the Company being Dissolved**

143.1 As soon as the Company's affairs are fully wound-up and prior to the Company being Dissolved, the liquidator shall prepare a summary of the winding-up, showing how it has been conducted and how the Company's property has been disposed of.

143.2 Following completion of the summary prepared under Regulation 143.1 the liquidator shall call a General Meeting of the Company and meeting of the Creditors for the purpose of presenting the summary and giving an explanation of it.

143.3 Notice specifying the time, place and object of the meetings shall be published in a manner prescribed by the Registrar from time to time at least fifteen Business Days prior to the date of the relevant meeting.

143.4 Within five Business Days of the date of the relevant meeting, the liquidator shall issue a summary and minutes of that meeting and shall submit to the Registrar on request.

**SECTION 21 - PROVISIONS OF GENERAL APPLICATION IN EACH METHOD OF WINDING-UP**

**144. Notification that Company is in liquidation**

When a Company is being wound-up, every document on or in which the name of the Company appears, issued by or on behalf of the Company, shall contain a statement that the Company is in liquidation.

**145. Qualification of liquidator**

145.1 No person may be appointed to act as a liquidator unless that person:

- (a) is an individual;
- (b) is a member in good standing of a professional body recognised by the Registrar; and
- (c) meets any other requirement which may be prescribed by the Registrar in accordance with Regulation 145.4.

145.2 A liquidator's appointment made in contravention of this Regulation 145 is void.

145.3 A liquidator shall vacate office if he ceases to be a person qualified to act as liquidator.

145.4 The Registrar may prescribe guidelines for any person to act as a liquidator. Such guidelines may include requirements relating to the qualifications, experience, fitness and propriety of persons qualified to act as liquidators.

145.5 The Registrar may in his absolute discretion refuse to recognise the appointment of a liquidator.

**146. Powers of liquidator**

A liquidator may exercise any of the powers set out in Schedule 1.

**147. Settling list of contributories, debts and calls**

At any time after a winding-up order has been made, the liquidator:

- (a) shall settle a list of contributories, with power to amend the register of Shareholders in all cases where required, and shall cause the Company's property to be collected and applied in discharge of its liabilities;
- (b) may make an order on any contributory to pay, in the manner directed by the order, any money due from him to the Company, exclusive of any money payable by virtue of any call;
- (c) may make calls on all or any of the contributories to the extent of their liability, for payment of:
  - (i) any money which the liquidator considers necessary to satisfy the Company's debts and liabilities;
  - (ii) the expenses of the winding-up;
- (d) may make calls for the adjustment of the rights of the contributories among themselves and make an order for payment of any calls so made; and
- (e) shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

**148. Remuneration of liquidator**

148.1 A liquidator is entitled to receive remuneration for his services.

148.2 The remuneration shall be fixed either:

- (a) as a percentage of the value of assets which are realised and/or distributed; or
- (b) by reference to the time properly given by the liquidator and his staff in attending to matters arising in the winding-up.



148.3 In a solvent winding-up and a summary winding-up, such remuneration shall be agreed between the Company and the liquidator prior to the appointment of the liquidator or as subsequently approved by the Company in General Meeting.

148.4 In an insolvent winding-up, the Liquidation Committee or a meeting of the Creditors (if there is no Liquidation Committee) shall determine whether the remuneration is to be fixed under Regulation 148.2(a) or 148.2(b), and, if under Regulation 148.2(a), to determine the percentage to be applied.

148.5 In the event that no remuneration has been fixed under Regulation 148.4, the liquidator may petition the Court to fix his remuneration.

**149. Resignation or removal from office of liquidator**

149.1 A liquidator may at any time resign by giving notice to the Company if there has been a change in personal circumstances which precludes or makes impracticable the further discharge by him of the duties of the liquidator.

149.2 The Court may, on cause shown, remove a liquidator or provisional liquidator from office.

149.3 A liquidator in a solvent winding-up or summary winding-up may be removed from office by an Ordinary Resolution of the Company and shall vacate office if he ceases to be qualified to hold that office.

149.4 The Creditors may at any time resolve in accordance with Regulation 152 to remove a liquidator in an insolvent winding-up.

**150. Notification by liquidator of resignation or removal from office**

150.1 A liquidator who resigns, is removed, or for any other reason vacates office, shall within ten Business Days from the resignation give notice of the resignation, signed by him, to the Registrar.

150.2 In the case of an insolvent winding-up (except where removal is pursuant to Regulation 149.4), the notice of resignation shall be provided to the Creditors.

**151. Duty to cooperate with liquidator**

151.1 An Official of a Company shall:

- (a) comply with the reasonable requests of the liquidator to act in assistance with the winding-up;
- (b) comply with any reasonable direction given to the Official by the liquidator pursuant to these Regulations;
- (c) not take any action to hinder or obstruct a liquidator in the performance of his powers or functions.

151.2 In this Regulation 151, an **Official** in relation to a Company means a person who is, or has been but is no longer, an Officer or an employee involved in the management of the Company, or a liquidator or provisional liquidator.

## 152. **General provisions on voting**

152.1 Unless otherwise specified in these Regulations, any vote of:

- (a) a meeting of the Creditors shall be determined by a simple majority by value of each Creditor's claim in accordance with an accepted proof of debt;
- (b) a meeting of the Company shall be determined by a simple majority of Shareholders present; and
- (c) a meeting of the Liquidation Committee shall be determined by a simple majority of members present.

152.2 With the exception of the meetings of Creditors under Regulation 122, Regulation 135, Regulation 136 and Regulation 143, any meeting of the Creditors may be held by votes submitted by reputable courier or electronic communication.

## 153. **Proofs of debt in liquidation**

153.1 Where a Company is being wound-up, a person claiming to be a Creditor of the Company and wishing to recover his debt in whole or in part must submit his claim in writing to the liquidator. A Creditor who seeks to establish his claim shall submit a proof of debt in the prescribed form.

153.2 The following must be stated in a Creditor's proof of debt:

- (a) the Creditor's name and address, and, if a company, its company registration number or equivalent;
- (b) the total amount of his claim (including any applicable tax) as at the date on which the Company went into liquidation;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) particulars of how and when the debt was incurred by the Company;
- (e) particulars of any security interest held, including the value and date it was given;
- (f) details of any reservation of title in respect to goods to which the debt refers; and
- (g) the name, address and authority of the person signing the proof of debt.

153.3 A proof of debt shall specify any documents by reference to which the debt can be substantiated.

153.4 The liquidator may call for any document or other evidence which he thinks necessary for the purpose of substantiating the whole or part of the claim made in the proof of debt.

**154. Admission and rejection of proofs of debt for dividend**

154.1 A proof of debt may be admitted for a dividend either for the whole amount claimed by the Creditor or for any part of that amount.

154.2 If the liquidator rejects a proof of debt in whole or in part, he shall prepare a written statement of his reasons for doing so and provide it to the Creditor.

**155. Withdrawal or variation of proof of debt**

A Creditor may at any time, by agreement between himself and the liquidator, withdraw or vary a proof of debt.

**156. Intention to declare and distribute dividend**

156.1 Where a liquidator intends to declare a dividend, the liquidator must deliver a notice of that fact to all known Creditors and, unless it has previously published a notice in accordance with Regulation 157, invite Creditors to prove for their debts.

156.2 The notice:

- (a) must be published in a manner prescribed by the Registrar from time to time; and
- (b) may be advertised in such other manner (if any) as the liquidator sees fit.

156.3 Following the expiry of the time period specified in the notice, proofs of debts received by the liquidator shall be accepted at the discretion of the liquidator.

**157. Contents of notice**

A notice under Regulation 156 must:

- (a) specify a date at least fifteen Business Days from the date of the notice by which proofs of debt must be delivered;
- (b) state that it is the intention of the liquidator to make a distribution to Creditors within the period of two months from that date;
- (c) specify whether the dividend is interim or final; and
- (d) specify the place to which proofs of debt must be delivered.

**158. General priority of expenses**

The expenses of the winding-up are payable out of the available assets of the Company in the following order of priority:

- (a) expenses or costs of the liquidator which are properly chargeable or incurred by the liquidator in conducting his duties, including, without limitation, legal, professional or other costs;
- (b) the remuneration of the liquidator;
- (c) any amounts payable to secured Creditors to the extent of their security;
- (d) any amount which is owed by the Company to a person who is or has been an employee of the Company which are unpaid as at the date of the commencement of winding-up, provided that the total does not exceed a sum equivalent to the salary of that person for a period of three months as a maximum;
- (e) any amounts payable to DMCCA, DMCC or any other government authority. For the purposes of this Regulation 158, any amounts held by DMCCA or the DMCC Free Zone may be used to set-off against sums due to it;
- (f) any amounts payable to general unsecured creditors.

#### **159. Distribution of Company's property**

- 159.1 Subject to Regulation 158, a Company's property shall on winding-up be realised and applied in satisfaction of the Company's liabilities *pari passu*.
- 159.2 Subject to the application in Regulation 159.1, the Company's property shall (unless the Articles or applicable law otherwise provide) be distributed among the Shareholders according to their rights and interests in the Company.

#### **160. Reference of questions to Court**

- 160.1 The liquidator or any contributory or Creditor may apply to the Court to determine any question arising in the winding-up of a Company.
- 160.2 In addition, the Court may, on the liquidator's application, relieve him of any duty imposed on him by these Regulations, or authorise him to carry out the duty in a way other than as required by these Regulations.
- 160.3 In considering whether to act under Regulation 160.2, the Court shall have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of Creditors or Shareholders, or any particular type or class of them.
- 160.4 The Court may make such order on the application as it thinks just.

#### **161. Dissolution**

- 161.1 Following the date of dispatch of the final summary and return, the liquidator shall submit an application to the Registrar for the Company to be Dissolved.

161.2 Where the realisable assets of the Company are insufficient to cover the expenses of the winding-up, and the affairs of the Company do not require any further investigation, the liquidator may at any time apply to the Registrar for the early dissolution of the Company.

161.3 Before making an application under Regulation 161.1, the liquidator shall give at least twenty Business Days' notice of his intention to do so to the Company's Creditors and contributories.

161.4 The Company shall be Dissolved upon confirmation from the Registrar.

#### **162. Property and records of Dissolved Company**

162.1 Where a Company has been Dissolved in accordance with these Regulations, its remaining property and records shall be disposed of:

- (a) in the case of a solvent winding-up or summary winding-up, in accordance with the directions of a resolution of the Shareholders; and
- (b) in the case of an insolvent winding-up, in accordance with the directions of the Liquidation Committee or, where there is no Liquidation Committee, the Creditors of the Company.

162.2 Where the Registrar, in its sole discretion, determines that a direction has not been made under Regulations 162.1(a) or 162.1(b), the Registrar may petition the Court to determine the disposal of any remaining property.

162.3 After ten years from the Company being Dissolved, no responsibility rests on the Company, a liquidator, or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

162.4 The Registrar may direct that for such period as it thinks proper (but not exceeding ten years from the Company being Dissolved), the records of a Company which has been wound-up shall not be destroyed.

## **SECTION 22 - SANCTIONS**

### **163. Sanctions**

A person who commits a contravention of these Regulations or any other regulation, rule, policy or decision administered by DMCCA will, at the absolute discretion of DMCCA, be subject to a Sanction.

### **164. Administrative imposition of fines or penalties**

164.1 Where DMCCA considers that a person has committed a contravention of these Regulations or any other regulation, rule, policy or decision administered by DMCCA, DMCCA may impose on such person a fine or penalty up to the amount specified by DMCCA from time to time.

164.2 For the purposes of this Regulation 164, DMCCA may prescribe the applicable procedures in relation to the imposition, publication, collection and recovery of fines or penalties.

**165. Power of DMCCA to suspend Licence**

165.1 Where it appears to DMCCA that:

- (a) a DMCC Entity (other than an Exempt Entity) has ceased to carry out business for a period of more than three months other than in accordance with Section 23;
- (b) a DMCC Entity (other than an Exempt Entity) has failed to comply with the provisions of these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone;
- (c) a DMCC Entity (other than an Exempt Entity) has acted in breach of restrictions on its activities;
- (d) a DMCC Entity (other than an Exempt Entity) or any Officer or Representative of a DMCC Entity (other than an Exempt Entity) has failed to pay any fine, penalty, fee or other charge imposed under these Regulations or under any other regulation, rule, policy or decision applicable in the DMCC Free Zone within ten Business Days of the due date for payment of such fine, penalty, fee or other charge; or
- (e) it is otherwise necessary to protect the reputation of the DMCC Free Zone, the Emirate of Dubai or the UAE as a centre of business activities,

DMCCA may (but is not obliged to) by written notice to a DMCC Entity suspend a Licence of a DMCC Entity for such period as DMCCA may determine (including, without limitation, until a DMCC Entity has remedied the circumstances leading to the suspension to the satisfaction of DMCCA). If DMCCA suspends a Licence of a DMCC Entity pursuant to this Regulation 165.1, and subsequently reactivates the Licence, the fact that a Licence of the DMCC Entity has been suspended shall be included on the Licence(s) of the DMCC Entity at the discretion of DMCCA.

165.2 If DMCCA suspends the Licence of a DMCC Entity, it may also in its discretion suspend the Licence of any other DMCC Entity which is related to the DMCC Entity whose Licence has been suspended (whether by reason of mutual directors, managers, shareholders or otherwise).

165.3 If the Licence of a DMCC Entity is suspended, that DMCC Entity must not carry out any activities in or from the DMCC Free Zone pursuant to that suspended Licence during the period of such suspension, save meeting its obligations to Creditors.

**166. Power of DMCCA to terminate Licence**

166.1 Without limitation to Regulation 15.3, where it appears to DMCCA that:

- (a) a DMCC Entity (other than an Exempt Entity) has ceased to carry out business for a period of more than three months (including by reason of the Licence of the DMCC Entity having been suspended pursuant to Regulation 165.1(a)) other than in accordance with Section 23;
- (b) a DMCC Entity has failed to comply with the provisions of these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone;
- (c) a DMCC Entity has carried out any business for which it is not registered or licensed to carry out under its Licence;
- (d) a DMCC Entity or any Officer or Representative of a DMCC Entity has failed to comply with any Sanction imposed under these Regulations within thirty Business Days of the Sanction being imposed;
- (e) an Officer of a DMCC Entity has been convicted of criminal offence or any other offence involving fraud or dishonesty and has not been removed from office within ten Business Days of such conviction;
- (f) an Officer of a DMCC Entity has been disqualified pursuant to Regulation 57 and has not been removed from office within ten Business Days of the date of the disqualification order issued by DMCCA;
- (g) a Director has been disqualified pursuant to Regulation 57 and that Director is also the sole Shareholder of the relevant Company;
- (h) a DMCC Entity has failed to comply with any direction from DMCCA or the Registrar issued pursuant to these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone;
- (i) a DMCC Entity has provided false, incorrect or misleading information to DMCCA or the Registrar;
- (j) a DMCC Entity has failed to pay some or all of its employees in the DMCC Free Zone without reasonable cause for a period of forty-five Business Days;
- (k) any amount due and payable from a DMCC Entity to the DMCC Free Zone, DMCCA or the Registrar remains unpaid and outstanding for a period of thirty Business Days beyond the due date for payment;
- (l) a DMCC Entity is infringing any intellectual property rights of the DMCC Free Zone or DMCCA;
- (m) in the sole opinion of DMCCA, the operations of a DMCC Entity are endangering, or may endanger, the health, safety or security of any other person; or
- (n) it is otherwise necessary to protect the reputation and interests of the DMCC Free Zone, the Emirate of Dubai or the UAE as a centre of business activities,

DMCCA may (but is not obliged to) send to:



- (a) the DMCC Entity (other than an Exempt Entity) a notice of termination stating that the Licence of the DMCC Entity is to be terminated with immediate effect; and
- (b) an Exempt Entity, a notice of termination stating that the registration of the Exempt Entity is to be terminated with immediate effect,

in each case a **Termination Notice**. DMCCA may (but is not obliged to) notify the DMCC Entity in writing of the grounds for the issuance of the Termination Notice.

166.2 Upon receipt of the Termination Notice, a DMCC Entity must immediately cease its operations and close its premises.

#### 167. **Power of DMCCA to Strike-Off**

167.1 Following delivery of a Termination Notice to the DMCC Entity, DMCCA may (but is not obliged to) request that the DMCC Entity provide reasons why it should not be Struck-off (a **Strike Off Notice**).

167.2 If within twenty Business Days after sending the Strike Off Notice a response to the satisfaction of DMCCA has not been received, DMCCA may (but is not obliged to) send to the DMCC Entity a second notice (**Second Strike Off Notice**) stating that at the end of sixty Business Days (or such longer or shorter period as DMCCA in its sole discretion determines) from the date of the Second Strike Off Notice, the DMCC Entity will be Struck-off unless DMCCA has been provided with a justifiable reason as to why the DMCC Entity should not be Struck-off.

167.3 If DMCCA issues a Second Strike Off Notice, it shall publish a notice (a **Public Notice**) on the website of DMCCA):

- (a) that it intends to Strike-off the DMCC Entity after expiry of the point stated in the Second Strike of Notice;
- (b) that, if the DMCC Entity is a Company, it intends to cause the Company to be Dissolved; and
- (c) inviting any person to show cause why the DMCC Entity should not be Struck-off.

167.4 Subject to the issue of a Public Notice and after the end of the period mentioned in the Second Strike Off Notice, DMCCA may in its absolute discretion instruct the Registrar to Strike-off the DMCC Entity.

#### 168. **Implications of Strike-off**

168.1 On the Striking-off of a Company, the liability (if any) of every Officer and Shareholder of the Company continues and may be enforced as if the Company had not been Struck-off. If such Company purports to enter into any obligation following it being Struck-off, any person purporting to bind such Company in respect of such obligation shall be personally liable for that obligation.



168.2 On the Striking-off of a Company pursuant to Regulation 167, the Shareholders must immediately commence winding-up proceedings in respect of that Company in accordance with Sections 14 to 21 of these Regulations.

168.3 If a Company has been Struck-off pursuant to Regulation 167, DMCCA may (but is not obliged to) submit to the Court a petition for the winding-up of the Company.

168.4 On the Striking-off of a Branch, any liabilities purported to be incurred by the Branch shall remain the liabilities of the Branch Parent.

#### 169. **General contraventions provision**

169.1 A person who:

- (a) does an act or thing that the person is prohibited from doing by or under these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone;
- (b) does not do an act or thing that the person is required or directed to do under these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone; or
- (c) otherwise contravenes these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone,

commits a contravention of these Regulations.

169.2 Under this Regulation 169, a person does not include DMCCA or the Registrar.

#### 170. **Involvement in contraventions**

170.1 If a person is knowingly concerned in (**Person A**) a contravention of these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone, Person A commits a contravention.

170.2 For the purposes of Regulation 170.1, if Person A is an Officeholder of a corporate entity, the Officeholder as well as the corporate entity commits a contravention.

170.3 If the affairs of a corporate entity are managed by its Shareholders, Regulation 170.2 applies in relation to the acts and defaults of a Shareholder in connection with that Shareholder's functions of management as if that Shareholder were an Officeholder of the corporate entity.

170.4 For the purposes of this Regulation 170, a person is knowingly concerned in a contravention if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention;
- (b) has induced the contravention, whether by threat or promise or otherwise;

- (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to the contravention;
- (d) has conspired with another or others to effect the contravention; or
- (e) has, alone or in concert with others, directly or indirectly, done, attempted or planned any of the following:
  - (i) conceal the existence or extent or nature of a contravention; or
  - (ii) obstruct, impede or prevent competent authorities within the DMCC Free Zone from detecting, investigating or prosecuting a contravention.

170.5 In this Regulation 170, "person" does not include DMCCA or the Registrar.

#### **171. Unfair prejudice**

171.1 If a Company's affairs are being or have been conducted in a manner whereby the conduct is unfairly prejudicial to the interests of one or more Shareholders, or an actual or proposed act or omission of the Company (including an act or omission on its behalf) is or would be so prejudicial, the Court may, on application of one or more Shareholders of the Company, make one or more of the following orders:

- (a) an order regulating the conduct of the Company's affairs in the future;
- (b) an order requiring a person to do, or refrain from doing, any act or thing;
- (c) an order authorising proceedings to be brought in the name of and on behalf of the Company by such person or persons and on such terms as the Court may direct;
- (d) an order providing for the purchase of the rights of any Shareholder of the Company by other Shareholders or by the Company itself; or
- (e) any other order as the Court sees fit.

171.2 If an order under this Regulation requires the Company not to make any, or any specified, alterations in its Articles, the Company must not then without leave of the Court make any such alteration.

171.3 An alteration in the Company's Articles made by virtue of an order under this Regulation 171 is of the same effect as if duly made by Special Resolution of the Company, and the provisions of these Regulations apply to the Articles as so altered accordingly.

171.4 The order of the Court recording the making of an order under this Regulation altering, or giving leave to alter, a Company's Articles must, within fourteen Business Days from the making of the order or such longer period as the Court may allow, be delivered by the Company to the Registrar for registration.

171.5 Nothing in this Regulation affects the powers that any person or the Court may have apart from this Regulation.

## **SECTION 23 – DORMANCY**

### **172. Voluntary suspension of Licence**

- 172.1 Subject to compliance with any rules issued by the Registrar or DMCCA from time to time, a Company (other than an Exempt Entity) may request, following approval by an Ordinary Resolution, the Registrar to suspend its Licence for a period of up to twelve months or longer period approved by the Registrar.
- 172.2 With effect from the suspension of its Licence following a request made under Regulation 172.1, the relevant Company (other than an Exempt Entity) must not trade in or from the DMCC Free Zone pursuant to that Licence until such time as the Registrar has reactivated the Licence of that Company.

### **173. Additional rules in respect of dormant Companies**

The Registrar or DMCCA may from time to time issue additional rules in respect of dormant Companies who have voluntarily suspended their Licence.

## **SECTION 24 - MISCELLANEOUS PROVISIONS**

### **174. Removal of a Company from the Register of DMCC Entities**

- 174.1 The Registrar may Remove a DMCC Entity from the Register of DMCC Entities in the following circumstances:
- (a) the Branch is struck-off pursuant to Regulation 15.2 or 167;
  - (b) the Branch Parent has requested that the Branch be Removed, pursuant to Regulation 13.9;
  - (c) the Company is continued as a Non-DMCC Entity, pursuant to Regulation 23.4.; and
  - (d) the Company is Dissolved, pursuant to Regulation 161.4, at the same time that Company is Dissolved.

### **175. Waivers and modifications of Regulations**

- 175.1 In this Regulation 175, a reference to a **relevant provision** is a reference to any provision of these Regulations which is expressed to be capable of waiver or modification by DMCCA or the Registrar.
- 175.2 DMCCA may:
- (a) on the application of a person; or
  - (b) with the consent of a person,
- by means of a written notice provide that one or more relevant provisions either:

- (i) does not apply in relation to such person; or
- (ii) applies to such person with such modifications as are set out in the written notice.

175.3 A written notice may be given subject to conditions.

175.4 A person to whom a condition specified in a written notice applies must comply with the condition.

175.5 In the event of failure to comply with a condition, the Registrar may, without limiting any other powers that the Registrar may have, apply to DMCCA for an order, including an order that the person must comply with the condition in a specified way.

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

- (a) those likely to be affected by it; and
- (b) others who may be likely to become subject to a similar notice.

175.7 The Registrar may:

- (a) on the Registrar's own initiative or on the application of the person to whom it applies, withdraw a written notice; or
- (b) on the application of, or with the consent of, the person to whom it applies, vary a written notice.

175.8 DMCCA may make further regulations in connection with the provision of a written notice under this Regulation 175 including prescribing procedures for the making of applications and providing of consents.

## 176. **Obligations to disclose to the Registrar**

176.1 Subject to Regulation 176.2, a DMCC Entity or an auditor of a DMCC Entity (if it has an auditor) must disclose to the Registrar any matter which reasonably tends to show one of the following:

- (a) a contravention or likely contravention of a provision of these Regulations or other regulation, rule, policy or decision applicable in the DMCC Free Zone;
- (b) a failure, or likely failure, to comply with any obligation to which a person is subject under such regulation, rule, policy or decision; or
- (c) any other matter as DMCCA may prescribe,

which may be attributable to the conduct of the relevant DMCC Entity or of its Officers and/or Representatives.

- 176.2 Regulation 176.1 does not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- 176.3 A DMCC Entity must establish and implement appropriate systems and internal procedures to enable its compliance with Regulation 176.1.
- 176.4 Any provision in an agreement between a DMCC Entity and an Officer, Representative or auditor is void if it purports to hinder any person from causing or assisting a DMCC Entity to comply with an obligation under Regulation 176.1.
- 176.5 No person may be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist a DMCC Entity to comply with an obligation under Regulation 176.1.

**177. Disclosures to DMCCA or the Registrar**

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

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

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

**178. Irregularities**

178.1 In this Regulation 178:

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

178.2 A procedure under these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone administered by DMCCA or the Registrar is not invalidated because of any procedural irregularity unless the Court declares the procedure to be invalid.

178.3 A person may apply to the Court for an order:

- (a) declaring that:
  - (i) any act or thing purporting to have been done; or

(ii) any procedure purporting to have been commenced or undertaken, under these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone administered by the Registrar is not invalid by reason of any contravention of a provision of such Regulations or other regulation, rule, policy or decision; or

- (b) extending or shortening the period for doing any act, matter or thing or commencing or undertaking any procedure under these Regulations or any other regulation, rule, policy or decision applicable in the DMCC Free Zone,

where any such act or thing, or procedure, is essentially of a procedural nature.

**179. False or misleading information**

A person must not:

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

**180. Compliance with an order or direction of DMCCA or the Registrar**

Where DMCCA or the Registrar makes an order, issues a direction or makes a requirement in relation to a person pursuant to a provision of these Regulations or other regulation, rule, policy or decision applicable in the DMCC Free Zone, that person must comply with such order, direction or requirement.

**181. Language**

The Registrar may require communication to which it is a party to be conducted in the English or Arabic language.

**SECTION 25 - GENERAL**

**182. Title**

These Regulations are to be referred to as the Dubai Multi Commodities Centre Authority Company Regulations 2020.

**183. Legislative authority**

These Regulations are issued by DMCCA under Rule No. 4 of 2002 for Organising Operations at the Dubai Metals and Commodities Centre, as amended from time to time.

#### 184. Application of these Regulations

184.1 These Regulations are made on and come into force on the effective date notified by DMCCA.

184.2 These Regulations repeal and replace the Previous Company Regulations.

184.3 Except where otherwise provided in these Regulations, anything done or omitted to be done pursuant to or for the purposes of the Previous Company Regulations (or any rule, regulation, policy or decision made under the Previous Company Regulations) is treated as being done or omitted to be done pursuant to or for the purposes of these Regulations.

184.4 Without limiting the generality of Regulation 184.3, and subject only to Regulation 184.5, such repeal and replacement does not affect:

- (a) any right, privilege, remedy, obligation or liability accrued to or incurred by any person; or
- (b) any investigation or legal or administrative proceeding commenced or to be commenced in respect of any such right, remedy, privilege, obligation or liability,

under the Previous Company Regulations (or any rule, regulation, policy or decision made under the Previous Company Regulations) and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under these Regulations.

184.5 Where:

- (a) a subject matter is not addressed in these Regulations but is addressed in the Previous Company Regulations (or any rule, regulation, policy or decision made under the Previous Company Regulations); and
- (b) there is an investigation or legal or administrative proceeding as specified in Regulation 184.4(b),

the relevant provision from the Previous Company Regulations (or any rule, regulation, policy or decision made under the Previous Company Regulations) is treated as surviving the repeal and replacement under this Regulation 184 until such time as the matter is addressed.

184.6 DMCCA may establish any transitional or saving provisions as it deems necessary so as to give effect to, or to facilitate, the transition from the Previous Company Regulations (and any rule, regulation, policy or decision made under the Previous Company Regulations) to these Regulations.

184.7 Each Company must within twenty-four months from the date the Regulations come into force (or such other period as may be agreed with the Registrar), amend its Articles to the extent that the provisions of its Articles are contrary to or inconsistent with these Regulations.

184.8 These Regulations apply in the jurisdiction of the DMCC Free Zone.

184.9 For the avoidance of doubt, the provisions of Federal Law No. 2 of 2015 Concerning Commercial Companies do not apply to any DMCC Entity.



## SCHEDULE 1

### POWERS OF LIQUIDATOR IN A WINDING UP

1. Power to pay any class of Creditors in part or in full to the extent that funds are available.
2. Power to make any compromise or arrangement with Creditors or persons claiming to be Creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company, or whereby the Company may be rendered liable.
3. Power to compromise, on such terms as may be agreed:
  - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Company and a Shareholder or other person liable to contribute to the assets of the Company or person alleged to be such or other debtor or person apprehending liability to the Company; and
  - (b) all questions in any way relating to or affecting the assets or the winding-up of the Company, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the Company.
5. Power to summon General Meetings of the Company and/or Creditors for the purpose of obtaining its sanction by resolution or any for any other purpose he may think fit.
6. Power to carry on the business of the Company so far as may be necessary for its beneficial winding-up.
7. Power to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
8. Power to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company's seal.
9. Power to prove, rank and claim in the bankruptcy, insolvency, liquidation or sequestration of any Shareholder or other person liable to contribute to the assets of the Company for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from that party, and rateably with the other separate Creditors.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with respect to the Company's

liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the Company in the course of its business.

11. Power to raise monies on the security of the assets of the Company any money requisite.
12. Power to take out in his official name letters of administration to any deceased Shareholder or other person liable to contribute to the assets of the Company, and to do in his official name any other law necessary for obtaining payment of any money due from such person's estate which cannot conveniently be done in the name of the Company.

In all such cases the money due is considered, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

13. Power to appoint an agent to do any business which the liquidator is unable to do himself.
14. Power to do all such other things as may be necessary for winding-up the Company's affairs and distributing its assets.