



AIFC DEMATERIALISED INVESTMENTS RULES

(DIR)

AIFC RULES NO. GR0003 OF 2017

(with amendments as of 26 October 2018, which
commence on 26 October 2018)

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PART 1: GENERAL

1.1 Name

These Rules are the *AIFC Dematerialised Investment Rules 2017* (or DIR).

1.2 Commencement

These Rules commence on 1 January 2018.

1.3 Legislative authority

These Rules are adopted by the Board of Directors of the AFSA under:

- (a) section 181 (Power to adopt rules etc.) of the AIFC Companies Regulations; and
- (b) section 43 (Power to adopt rules etc.) of the AIFC Personal Property Regulations.

1.4 Application of these Rules

These Rules apply within the jurisdiction of the AIFC to any Person to whom the AIFC Companies Regulations apply and any other Issuer of Investments that are or are to be held in Uncertificated form.

1.5 Definitions etc.

1.5.1 Subrule 1.5.4 and Schedule 1 contain definitions used in these Rules.

1.5.2 Terms used in these Rules (other than terms defined in subrule 1.5.4 and Schedule 1) have the same meanings as they have, from time to time, in the AIFC Companies Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Companies Regulations applying to these Rules, see Schedule 1 to those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- AIFC Regulations
- AIFC Rules
- Company
- Document
- Recognised Company
- Registrar of Companies (or Registrar)
- Writing.

1.5.3 Subject to subrule 1.5.2, terms used in these Rules (other than terms defined in Schedule 1 or the AIFC Companies Regulations) have the same meanings as they have, from time to time, in the AIFC Personal Property Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Personal Property Regulations applying to these Rules, see Schedule 1 to those Regulations. The definitions in that Schedule relevant to these Rules include the following:



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- Authorised Market Institution
- Endorsement
- Instruction
- Investment.

1.5.4 For purposes of the AIFC Personal Property Regulations (PPR) and these Rules, the term Investment and the term Security mean, respectively, an Investment and a Security as defined in the AIFC Glossary where, in each case, one or more of the following circumstances applies:

- a) it is issued by a legal entity incorporated or otherwise formed under the Acting Law of the AIFC, or otherwise issued under the Acting Law of the AIFC;
- b) it is offered or placed in or from the AIFC;
- c) it is admitted to the Official List of Securities of an Authorised Market Institution;
- d) it is admitted to trading, clearing or settlement by an Authorised Market Institution;
- e) it is transferred according to the Acting Law of the AIFC; or
- f) the register of its legal title holders is maintained in the AIFC by an AIFC Participant,

except for any such financial product that is declared by any Rules not to be an Investment or Security for purposes of these Rules.

1.6 Administration of these Rules

These Rules are administered by the Registrar of Companies.



PART 2: ISSUE OF UNCERTIFICATED INVESTMENTS AND DEMATERIALISATION

2.1. Issue of Uncertificated Investments

Subject to rule 2.3 (Conditions for issue of Uncertificated Investments and dematerialisation), if an Issuer of Investments permits the issue, registration and transfer of the Investments in Uncertificated form, the Investments may be issued in Uncertificated form in accordance with these Rules.

2.2. Dematerialisation of Investments

Subject to rule 2.3 (Conditions for issue of Uncertificated Investments and dematerialisation), if an Issuer permits the registration and transfer of a class of its existing Certificated Investments in Uncertificated form, the Investments may be converted from Certificated form into Uncertificated form in accordance with these Rules.

2.3. Conditions for issue of Uncertificated Investments and dematerialisation

2.3.1 The Issuer of an Investment must not permit the holding of, or transfer of title to, the Investment in Uncertificated form if the law under which the Investment or the Issuer is constituted, or the Terms of Issue, are in any respect inconsistent with:

- (a) the issue of the Investment in Uncertificated form; or
- (b) the registration or transfer of title to the Investment in Uncertificated form; or
- (c) these Rules.

2.3.2 If Investments are issued in or converted into Uncertificated form, all Investments of the relevant class must be held in Uncertificated form. However, this subrule does not limit the right of the Issuer subsequently to convert Uncertificated Investments to Certificated form under Part 5 (Rematerialisation).

2.3.3 Bearer Investments must not be converted into Uncertificated form.

2.4. Procedure for dematerialisation of Investments

2.4.1 Before an Issuer converts Investments into Uncertificated form, the Issuer must:

- (a) if the Issuer is a Company—obtain the consent of the majority of the holders of the existing Investments that the Issuer proposes to convert into Uncertificated form; and
- (b) comply with any other requirements of applicable AIFC Regulations or AIFC Rules and the Terms of Issue applicable to the Issuer or the Investments relating to the conversion of the Investments into Uncertificated form.

2.4.2 The conversion of Investments into Uncertificated form is effective when the requirements of subrule 2.4.1 are satisfied or, if the Issuer sets a later time, at that time.

2.4.3 If the Issuer of Investments that are converted into Uncertificated form is a Company or Recognised Company, the Issuer must, on the day of the conversion, notify:

- (a) each holder of the Investments in Writing of the conversion of the Investments into Uncertificated form and the date of the conversion; and
- (b) the Registrar of Companies in the form required by the Registrar.

2.4.4 On receiving the notification under subrule 2.4.3, the Registrar of Companies must note the conversion of the Investments into Uncertificated form, and the date of the conversion, on the relevant register kept by the Registrar under the AIFC Companies Regulations.



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- 2.4.5 To remove any doubt, these Rules do not prevent the conversion of Certificated Investments, which have previously been converted from Uncertificated form into Certificated form, back into Uncertificated form.



PART 3: REGISTRATION OF UNCERTIFICATED INVESTMENTS

3.1. Keeping of registers

- 3.1.1 For each class of Uncertificated Investments issued by an Issuer, the Issuer must keep a register of all the Uncertificated Investments in that class.
- 3.1.2 The Issuer must ensure that the register is kept in accordance with these Rules, applicable AIFC Regulations and other applicable AIFC Rules. However, if the requirements of these Rules and applicable AIFC Regulations or other applicable AIFC Rules are inconsistent, the requirements of these Rules must be complied with.
- 3.1.3 To remove any doubt, but subject to subrule 3.1.5, these Rules do not prevent an Issuer from appointing an agent to keep any register under these Rules on behalf of the Issuer.
- 3.1.4 Subrule 3.1.5 applies to an Issuer if the Issuer is:
 - (a) a Company; or
 - (b) a General Partnership under the AIFC General Partnership Regulations; or
 - (c) a Limited Liability Partnership under the AIFC Limited Liability Partnership Regulations.
- 3.1.5 The Issuer must not appoint a Person other than an Authorised Market Institution or another Person authorised (however described) to conduct business in the AIFC to maintain a register of Uncertificated Investments on its behalf.

3.2. Availability of registers

- 3.2.1 An Issuer of Uncertificated Investments must ensure that a register of Uncertificated Investments, and the Terms of Issue of the Investments, are available for inspection in accordance with applicable AIFC Regulations and AIFC Rules and the Terms of Issue.
- 3.2.2 An Issuer that is a Company must ensure that a register of Uncertificated Investments issued by it is available for inspection during business hours without charge
 - (a) at its registered office; or
 - (b) at an office of an agent within the AIFC if the agent is responsible for keeping the register on the Issuer's behalf.



PART 4: EFFECT OF DEMATERIALISATION

4.1. Effect of entries on registers

Subject to any applicable AIFC Regulations or AIFC Rules, a register of Uncertificated Investments kept under these Rules is sufficient evidence of any matter in relation to which an entry has been made in the register.

4.2. Substitution of tangible documentary requirements

4.2.1 This rule applies in relation to any legal or regulatory requirement or restriction (a ***tangible documentary requirement***) relating to:

- (a) the creation, issue or provision; or
- (b) the Endorsement;

of a declaration, certificate, instrument, instruction, or other Document, in tangible form that applies in relation to the creation or issue of, or transfer of title to, Investments or rights in an Uncertificated Investment.

4.2.2 A tangible documentary requirement does not prevent:

- (a) the creation or issue of, or registration of a transfer of title to, an Uncertificated Investment or rights in an Uncertificated Investment in accordance with subrule 4.2.3; or
- (b) the conversion of an Investment into Uncertificated form in accordance with that subrule; or
- (c) any action mentioned in paragraph (a) or (b) being legally valid and binding as if it were made fully in accordance with the tangible documentary requirement.

4.2.3 In relation to an Uncertificated Investment, any tangible documentary requirement is to be taken to be a requirement or restriction:

- (a) if subrule 4.2.1(a) applies to the tangible documentary requirement—relating to the creation, issue or provision, as the case may be, of a record containing the information that the relevant Document is required to contain; and
- (b) if subrule 4.2.1(b) applies to the tangible documentary requirement—relating to the provision of a statement, consent or information required by the tangible documentary requirement in any form (including by electronic means) by the Person to whom the tangible documentary requirement applies.

4.2.4 Where rule 2.3.1 applies, any provision of the law under which the Investment or the Issuer is constituted, or of the Terms of Issue, which is inconsistent for the purposes of that subrule, is not a tangible documentary requirement for the purposes of this rule.

4.3. Instructions to transfer Uncertificated Investments

Without limiting rule 4.2 (Substitution of tangible documentary requirements), an Instruction relating to an Uncertificated Investment given by a Person entitled to give the Instruction may be given in any form (including by electronic means).

4.4. No Certificates of Title in relation to Uncertificated Investments

4.4.1 Notwithstanding any other AIFC Rules, an Issuer must not issue a Certificate of Title in relation to an Uncertificated Investment.



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4.4.2 Subject to Part 5 (Rematerialisation), a Document issued by or on behalf of an Issuer purportedly evidencing title to an Uncertificated Investment is not evidence of title to the Investment and may not be relied on by any Person as evidencing title to the Investment.

4.5. **Liability and sanctions in relation to registers**

If an Issuer Fails to comply with its obligations under these Rules in relation to the keeping of a register, the same liability or sanctions apply as would apply under applicable AIFC Regulations or applicable other AIFC Rules if the Investments to which the obligations related were not Uncertificated Investments.



PART 5: REMATERIALISATION

5.1. Rematerialisation of Investments

Subject to rule 5.2 (Conditions for rematerialisation), if an Issuer permits the registration and transfer of a class of its existing Uncertificated Investments in Certificated form, the Investments may be converted from Uncertificated form into Certificated form in accordance with these Rules.

5.2. Conditions for rematerialisation

5.2.1 The Issuer of an Investment must not permit the holding of, or transfer of title to, the Investment in Certificated form if the law under which the Investment or the Issuer is constituted, or the Terms of Issue, are in any respect inconsistent with:

- (a) the registration or transfer of title to the Investment in Certificated form; or
- (b) these Rules.

5.2.2 If Investments are converted into Certificated form, all Investments of the relevant class after conversion must be held in Certificated form. However, this subrule does not limit the right of the Issuer subsequently to convert Certificated Investments to Uncertificated form under Part 2 (Issue of Uncertificated Investments and dematerialisation).

5.3. Procedure for rematerialisation of Investments

5.3.1 Before an Issuer converts Investments into Certificated form, the Issuer must:

- (a) if the Issuer is a Company—obtain the consent of the majority of the holders of the existing Investments that the Issuer proposes to convert into Certificated form; and
- (b) comply with any other requirements of the Terms of Issue relating to the conversion of the Investments into Certificated form.

5.3.2 Uncertificated Investments are converted into Certificated form by the issue of Certificates of Title in relation to them and the Issuer must issue them on a single day (the **day of the conversion**).

5.3.3 Any issue of Certificates of Title under this Part in relation to Uncertificated Investments must be in accordance with applicable AIFC Regulations and AIFC Rules and the Terms of Issue.

5.3.4 If the Issuer of Investments that are converted into Certificated form is a Company or Recognised Company, the Issuer must, on the day of the conversion, notify:

- (a) each holder of the Investments in Writing of the conversion of the Investments into Certificated form and the date of the conversion; and
- (b) the Registrar of Companies in the form required by the Registrar.

5.3.5 On receiving the notification under subrule 5.3.4, the Registrar of Companies must note the conversion of the Investments into Certificated form, and the date of the conversion, on the relevant register kept by the Registrar under the AIFC Companies Regulations.

5.3.6 From the issue of Certificates of Title in relation to Investments converted to Certificated form:

- (a) the Investments are Certificated Investments; and
- (b) these Rules cease to apply in relation to the Investments unless and until they are, or are to be, subsequently converted into Uncertificated form.

5.3.7 To remove any doubt, these Rules do not prevent the conversion of Uncertificated



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Investments, which have previously been converted from Certificated form into Uncertificated form, into Certificated form.



SCHEDULE 1: INTERPRETATION

1. Definitions for these Rules

Certificate of Title, in relation to an Investment, means a certificate in tangible form evidencing title to the Investment.

Certificated: an Investment is ***Certificated***, or in ***Certificated*** form, if a Certificate of Title is issued for the Investment.

Issuer means a Person issuing or intending to issue Investments.

Terms of Issue, in relation to an Investment issued or intended to be issued by an Issuer, means the terms of issue of the Investment, including the terms set by the Issuer on which the Investment is held and title to it is transferred.

Uncertificated: an Investment is ***Uncertificated***, or in ***Uncertificated*** form, if title to the Investment is recorded on the relevant register, kept in the AIFC or in a jurisdiction outside the AIFC, without issue of a Certificate of Title.