



Astana Financial Services Authority

Consultation Paper

AFSA-P-CE-2019-0011

**On the proposed amendments to the
AIFC Financial Services Framework
Regulations, AIFC Glossary, AIFC Co-operation
and Exchange of Information Rules, and AIFC
Conduct of Business Rules**

Unrestricted

September 26, 2019

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the AIFC Financial Services Framework Regulations, AIFC Glossary, AIFC Co-operation and Exchange of Information Rules, and AIFC Conduct of Business Rules.
2. The proposals in this Consultation Paper will be of interest to current and potential AIFC participants who are interested in exercising business activities in or from the AIFC.
3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper AFSA-P-CE-2019-0011” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments. The AFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise. Comments supported by reasoning and evidence will be given more weight by the AFSA.
4. The deadline for providing comments on the proposals is **25 October 2019**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
5. Comments to be addressed by

post: Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik El, building C3.2, Kazakhstan
or emailed to: consultation@afsa.kz

Tel: +8 7172 613781
6. The remainder of this Consultation Paper contains the following:
 - (a) Background to the proposals
 - (b) Key elements of the proposed amendments
 - (c) Annex 1: Draft of proposed amendments to the AIFC Financial Services Framework Regulations
 - (d) Annex 2: Draft of proposed amendments to the AIFC Glossary
 - (e) Annex 3: Draft of proposed amendments the AIFC Co-operation and Exchange of Information Rules
 - (f) Annex 4: Draft of proposed amendments to the AIFC Conduct of Business Rules

Background

On the proposed amendments to the AIFC Financial Services Framework Regulations and AIFC Glossary concerning the appointment of auditors

1. The current wordings of AIFC Financial Services Framework Regulations (FSFR), AIFC Market Rules (MAR) and AIFC Glossary require the Authorised Person and Reporting Entities to appoint auditors who are Ancillary Service Providers. It is proposed to eliminate the requirement for Authorised Person registered as recognised companies or recognised partnerships and Reporting Entities in the AIFC to appoint an auditor who are Ancillary Services Providers by amending FSFR and Glossary.

On the proposed amendments to the AIFC Co-operation and Exchange of Information Rules

2. The AIFC Co-operation and Exchange of Information Rules (CO-OP) envisage that if the AFSA intends to disclose confidential information received from a Financial Services Regulator to Persons specified in the CO-OP it may give notice to the Person(s) to whom the disclosure relates. Current wording of CO-OP 3.2.8 covers providing notice only in relation to information received from Financial Services Regulator and does not cover the information generated by the AFSA. Therefore, it is proposed to delete the wording “received from a Financial Services Regulator” by amending CO-OP.

On the proposed amendments to the AIFC Conduct of Business Rules

3. Under current definition of the Professional Clients, a minimum threshold for net assets of individual clients is not proportionate to the income level in the country. Analysis of laws and regulatory requirements of the professional client classification in the region shows that AIFC threshold is more than 10 times higher than in Russia and more than 20 times than in Kyrgyzstan. It is proposed to reduce current net assets requirement for Assessed Professional Clients by amending AIFC Conduct of Business Rules (COB).

KEY ELEMENTS OF THE PROPOSED AMENDMENTS

On the proposed amendments to the AIFC Financial Services Framework Regulations and AIFC Glossary concerning the appointment of auditor

4. Authorised Persons: The Authorised Person registered in the AIFC in the form of recognized company or recognised partnership shall be allowed to be audited by the auditor of that Authorised Person. Therefore, the definition of Auditor in the AIFC Glossary shall cover two cases:
 - (a) in relation to an Authorised Person which is incorporated in the AIFC – to appoint the auditor who is registered in the AIFC and licensed by the AFSA;
 - (b) in relation to an Authorised Person which is a Recognised Company or Recognised Partnership – to appoint an auditor of that Authorised Person;
5. The AFSA proposes to delete the reference to Ancillary Service Provider and capitalise the term “Auditor” in FSFR 109 and make consequential amendments to the AIFC Glossary. The proposed amendments to the FSFR are set out in Annex 1.
6. Reporting Entities: Given the initial stage of the AIFC development it is proposed to eliminate the requirement for Reporting Entities to audit annual financial statements by Ancillary Services Providers by amending the definition of “Auditor”. The proposed amendments to the AIFC Glossary are set out in Annex 2.
7. The proposed amendments were made based on the international practice. The DIFC has the same approach toward Authorised Persons which are not Domestic Firms. The similar definition of an Auditor is provided in Section 97 of the DIFC Regulatory Law.

On the proposed amendments to the AIFC Co-operation and Exchange of Information Rules

8. CO-OP 3.2.8 envisages that if the AFSA intends to disclose confidential information received from a Financial Services Regulator to Persons specified in the Rules it may give notice to the Person(s) to whom the disclosure relates. Current wording of CO-OP 3.2.8 covers providing notice only in relation to information received from Financial Services Regulator and does not cover the information generated by the AFSA. Therefore, it is proposed to delete the wording “received from a Financial Services Regulator” as set out in Annex 3.
9. The proposed amendments are proposed based on the international practices. The ADGM Confidentiality Policy envisages that the Regulator will not notify affected parties of the request for confidential information in general. The notice to the affected party/parties will be considered only where such notification does not contradict to the public interest and does not frustrate or prejudice of the purpose of the disclosure to the requestor.
10. The DFSA Policy Statement 1/2010 “Confidential regulatory information” provides the list of circumstances under which the DFSA will normally give notice to a Person to whom the disclosure relates and an opportunity to make representations and challenge the disclosure. The list includes criminal proceedings against the person, private civil litigation and circumstances where the fairness of the case requires it. The notice may be appropriate where there are serious and legitimate concerns about the appropriateness of the disclosure.

On the proposed amendments to the AIFC Conduct of Business Rules

11. To ensure the proportionality in the regulation, it is proposed to reduce current net assets requirement for Assessed Professional Clients: Individual Clients from USD 1,000,000 to USD 100,000. The proposed amendments to the AIFC Conduct of Business Rules are set out in Annex 4.

Questions:

1. *Do you have any concerns relating to the proposed amendments to the AIFC Financial Services Regulations, AIFC Glossary, AIFC Co-operation and Exchange of Information Rules regarding the requirement to appoint auditors who are Ancillary Services Providers? If so, what are they, and how should they be addressed?*
2. *Do you have any concerns relating to the proposed amendments AIFC Co-operation and Exchange of Information Rules regarding the notice of disclosure? If so, what are they, and how should they be addressed?*
3. *Do you have any concerns relating to the proposed amendments to AIFC Conduct of Business Rules regarding the net assets for Assessed Professional Clients? If so, what are they, and how should they be addressed?*

**Proposed Amendment
to AIFC Financial Services Framework Regulations**

In this document, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

Chapter 3. Accounting / Auditing

109. Requirement to appoint an ~~auditor~~ Auditor

An Authorised Person must appoint an ~~auditor~~ Auditor ~~who is an Ancillary Service Provider.~~

Proposed Amendment to AIFC Glossary

In this document, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

Auditor	<p>(a) <u>in relation to an Authorised Person which is incorporated in the AIFC</u> has the meaning given in AUD 1;</p> <p>(b) <u>in relation to an Authorised Person which is a Recognised Company or Recognised Partnership – an auditor of that Authorised Person;</u></p> <p>(c) <u>in relation to a Reporting Entity – an auditor.</u></p>
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**Proposed Amendment
to the AIFC Co-operation and Exchange of Information Rules**

In this document, the striking through indicates deleted text
in the proposed amendment

3. CONFIDENTIALITY

(...)

3.2. Requests to obtain information

(...)

3.2.8. Notice of disclosure

If the AFSA intends to disclose confidential information ~~received from a Financial Services Regulator~~ to any of the Persons specified in subsection 2.2, the AFSA may give notice to the Person(s) to whom the disclosure relates in the following circumstances:

- (a) the disclosure relates to a Person's compelled testimony to a law enforcement agency for the purpose of criminal proceedings against that Person;
- (c) the disclosure relates to private civil litigation, in order that the Person may challenge the request according to the Rules of the AIFC Court; or
- (d) there are serious and legitimate concerns about the appropriateness of the disclosure, including where the body requesting the confidential information does not perform a financial service related regulatory function.

Proposed Amendment to the AIFC Conduct of Business Rules

In this document, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

2.5.1. Assessed Professional Clients: Individual Clients

For the purposes of COB 2.3.1, an Authorised Firm may treat an individual Client as an Assessed Professional Client if:

- (a) the Client has net assets of at least USD ~~1 million~~ 100,000;
- (b) either:
 - (i) the Authorised Firm assesses the Client, on reasonable grounds, to have sufficient experience and understanding of relevant Financial Products, Financial Services, Transactions and any associated risks; or
 - (ii) the Client works or has worked in the previous two years in an Authorised Firm or any other authorised or regulated financial institution, including a bank, securities firm or insurance company, in a position that requires knowledge of the type of Financial Products, Financial Services or Transactions envisaged; and
- (c) the following procedure is followed:
 - (i) the Client must confirm in writing to the Authorised Firm that it wishes to be treated as a Professional Client either:
 - (1) generally;
 - (2) in respect of a specific Financial Product, Financial Service, or Transaction; or
 - (3) in respect of a type of Financial Product, Financial Service, or Transaction;
 - (ii) the Authorised Firm must give the Client a clear warning in writing setting out the protections that the Client may lose as a result of giving up its classification as a Retail Client; and
 - (iii) the Client must confirm in writing, in a separate document from the client agreement or other contract, that it is aware of the consequences of losing such protections.

Guidance: Meaning of an "individual"

For the purposes of COB 2.5.1, an "individual" means a Person who is a natural person and not an Undertaking.