



**Astana Financial Services Authority**

# **Consultation Paper**

**No. 12 of 2018**

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## **Proposed Amendments to AIFC Legal Entities Framework**

**October 11, 2018**

## Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed rules intended to revise the framework for legal entities in the AIFC. The proposed rules are in full compliance with the AIFC legal and regulatory framework. The proposed rules are also consistent with the relevant OECD, IOSCO and FATF standards. The proposed rules and associated guidance are set out in the Annexures to this Paper.
2. The proposals in this Consultation Paper will be of interest to Authorised Persons, Designated Non-Financial Business or Professions, Registered Auditors and individuals, financial organizations and investors who are interested in doing business in 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 No 12" 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 **November 9, 2018**. 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  
Astana Financial Services Authority (AFSA)  
8 Kunayev Street, Building B, Astana, Kazakhstan  
or emailed to: [consultation@afsa.kz](mailto:consultation@afsa.kz)  
Tel: +8 7172 613781
6. The remainder of this Consultation Paper contains the following:
  - (a) background to the proposals;
  - (b) the list of key elements of the amended rules;
  - (c) Annex 1: Proposed amendments to AIFC Companies Regulations.
  - (d) Annex 2: Proposed amendments to AIFC Companies Rules.
  - (e) Annex 3: Proposed amendments to AIFC Special Purpose Company Rules.
  - (f) Annex 4: Proposed amendments to AIFC General Partnership Regulations.
  - (g) Annex 5: Proposed amendments to AIFC Limited Partnership Regulations.
  - (h) Annex 6: Proposed amendments to AIFC Non-Profit Incorporated Organisations Regulations.
  - (i) Annex 7: Proposed amendments to AIFC Market Rules.
  - (j) Annex 8: Proposed amendments to AIFC Financial Services Framework Regulations.
  - (k) Annex 9: Proposed amendments to AIFC Insolvency Rules.

## Background

The Astana Financial Services Authority (AFSA) intends to enhance the legislative framework governing legal entities in the Astana International Financial Centre (AIFC).

This legislation comprises regulations and rules covering the functioning of the AIFC Registrar of Companies (the Registrar) and the operation of different types of entity within the AIFC (that is, companies, partnerships, and non-profit incorporated organisations).

The AFSA's objectives are to ensure that this framework for legal entities:

- (a) reflects a more effective and coherent structure for the Registrar;
- (b) meets international standards set by the Organisation for Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF) and the International Organisation of Securities Commissions (IOSCO), including in relation to beneficial ownership, tax transparency, and co-operation and exchange of information between regulators; and
- (c) meets the needs of AIFC participants by expanding the range of legal entity types available within the AIFC.

The continued development of the legal entities available in the AIFC, and the introduction of new legal entities to the AIFC, is a key policy focus of the AFSA. The AFSA has considered the views of AIFC participants and other key stakeholders in determining what changes to make to the legal entity framework at this stage in the AIFC's evolution. Consequently it is now consulting on the following changes to the legal entities framework:

- (a) the introduction of a Protected Cell Company (PCC) regime for captive insurance business;
- (b) the introduction of a Restricted Scope Company (RSC) regime; and
- (c) the improvement the Special Purpose Company (SPC) Rules.

In addition to the foregoing, AFSA expects to consult on the addition on the introduction of further legal entities and the development of existing regimes shortly.

## KEY ELEMENTS OF THE PROPOSED RULES

### 1. **BENEFICIAL OWNERSHIP REGIME**

- 1.1 The ability to identify the ultimate beneficial owner of a legal entity is crucial to ensuring a transparent financial system, particularly for the purposes of tax transparency, anti-money laundering and counter-terrorist financing.
- 1.2 AFSA is now consulting on proposed amendments to the Companies Regulations to adopt a regime whereby new and existing entities within the AIFC are required to:
- (a) identify their beneficial owners;
  - (b) provide the Registrar with certain particulars of their beneficial owners;
  - (c) maintain a register of their beneficial owners containing specified information on each; and
  - (d) keep a register of Nominee Directors, being directors who are required to act in accordance with the instructions of a third party.

Question 1: Do you agree with the introduction of a beneficial ownership regime in the AIFC?

Question 2: Do you agree that the register of beneficial owners should be provided to the Registrar and kept by the company but not made public?

Question 3: Do you have any comments on the proposed legislation?

### 2. **CORPORATE GOVERNANCE**

- 2.1 In order to ensure a robust, transparent corporate governance regime, the AIFC is proposing certain amendments to:
- (a) extend the duty upon directors to act in good faith to include the concept of honesty, to avoid any lack of clarity as to whether this was implied by the existing language for entities less familiar with the concept;
  - (b) allow the Registrar to punish officers of a company who, whilst not directors, act or fail to act in such a way as to cause a breach of a directors duty by way of compensation order or disqualification order where the Registrar considers this necessary;
  - (c) provide guidance in the AIFC Market Rules as to the relevant test for the duty to promote the success of a company for entities who are less familiar with the concept;

- (d) requiring private companies to provide a copy of the annual return and financial statements to their shareholders on request;
- (e) requiring public company accounts to be lodged with the Registrar and be available for searching by the public, for a fee;
- (f) extend the requirements for public companies to seek shareholder approval prior to a major transaction such that these provisions include reverse takeovers and fundamental changes of businesses; and
- (g) ensuring that all accounting information and underlying documents in particular will remain available after an entity or arrangement ceases to exist.

**Question 4:** Do you agree with each of the enhancements to the governance requirements of the AIFC legislation as set out above?

### 3. **SUPERVISION AND ENFORCEMENT**

- 3.1 The powers given to the Registrar under the relevant AIFC legislation are broad, and allow it to impose sanctions on companies and partnerships for breaches of law. However, AFSA is now seeking to extend these powers to ensure that the AIFC has an effective, streamlined and efficient process available to it to supervise, investigate and sanction misconduct.
- 3.2 AFSA is now consulting on amendments introducing provisions:
  - (a) allowing the Registrar to publish the fact of any undertaking, in the same way it can for a censure or fine, should it consider it appropriate;
  - (b) enabling the Registrar to restore companies to the register where it is satisfied that the company should now be reinstated;
  - (c) enabling the Registrar to strike off a company that has failed to file its annual return or pay a fee that is due after a period of 9 months where that company has failed to respond to correspondence with the Registrar;
  - (d) allowing the Registrar or inspector to have the ability to go to court to test a claim of legal professional privilege where the disclosure of documents is being withheld;
  - (e) extending the sanction for conducting business in the AIFC without a licence such that a contract between a third party and persons who are knowingly in contravention of this provision is voidable at the option of the third party; and

- (f) allow the Registrar to compel disclosure of relevant information to it in considering the affairs of the company from an Auditor or a former auditor of a company.

Question 5: Do you agree with each of the above amendments extending the powers of supervision and enforcement of the Registrar?

#### 4. **FRAMEWORK FOR THE REGISTRAR OF COMPANIES**

- 4.1 In Part 15 of the Companies Regulations as is currently drafted some of the obligations on the Registrar are essentially those which are operated under the auspices of the AFSA. For example, there does not need to be separate financial statements for the Registrar because all finances would be covered within the AFSA, nor is there a need to have an obligation in relation to funding because that would come under the AFSA's general obligation.
- 4.2 As such, AFSA is now proposing the deletion of these provisions in the AIFC Companies Regulations which are, given the structure of the AIFC under the auspices of AFSA, redundant.

Question 6: Do you agree with the deletion of Chapter 2 of Part 15 of the AIFC Companies Regulations?

#### 5. **EXTENSION OF THE RANGE OF LEGAL ENTITIES**

- 5.1 Introduction of a Protected Cell Company (PCC) Regime
- 5.2 AFSA has received feedback from AIFC participants that the availability of a PCC vehicle in the AIFC would facilitate the establishment of captive insurance businesses in the AIFC. PCCs offer the ability to create one or more separately identifiable cells that are legally "ring-fenced" from one another under statute. Consequently, the assets and liabilities of each cell are segregated from those of the other cells and the assets of each cell are therefore protected from the liabilities and creditors of the other cells (notwithstanding the fact that the PCC is a single legal entity).
- 5.3 The AFSA is therefore proposing to establish a PCC regime in the AIFC for captive insurance businesses.

Question 7: Do you have any concerns in relation to the introduction of a PCC regime in the AIFC?

Question 8: Do you have any comments on the proposed legislation?

#### 5.4 **Introduction of a Restricted Scope Company (RSC) Regime**

- 5.5 AFSA has identified an interest from family owned businesses (including single family offices) in establishing themselves in the AIFC. However, AFSA has also identified that such businesses have a strong desire for confidentiality and AFSA wishes to make the AIFC legal framework even more attractive for such businesses in this regard. Consequently, AFSA is proposing to introduce a Restricted Scope Company (RSC) regime. This regime will be open to a private company that is:
- (a) a subsidiary of another body corporate that prepares and publishes group accounts under the AIFC Companies Regulations; or
  - (b) is directly or indirectly wholly-owned by: (i) one person; or (ii) a group of persons who are members of the same family.
- 5.6 Companies which are registered as Restricted Scope Companies will benefit from a reduced amount of information being available to the public (by way of the public register), compared to other private companies incorporated in the AIFC.

Question 9: Do you have any concerns regarding the introduction of a RSC regime in the AIFC?

Question 10: Do you have any comments on the proposed legislation?

#### 5.7 **Improvements to the Special Purpose Company (SPC) Rules**

- 5.8 In order to enhance the utility of the Special Purpose Company regime in the AIFC, AFSA is proposing to make the following changes to the Special Purpose Company Rules:
- (a) removing the requirement for a minimum share capital of US\$100;
  - (b) removing the requirement to have at least two Directors, and permitting SPC to have one or more Directors, each of which may be body corporates;
  - (c) removing the upper limit on the number of Shareholders an SPC may have;
  - (d) abolishing the requirement for a majority of Directors to be employees of the SPC's Corporate Service Provider;
  - (e) abolishing the requirement for the Secretary of the SPC to be a Corporate Service Provider or a Subsidiary thereof; and
  - (f) removing the restriction on which entities can be Shareholders of SPC prior the SPC commencing any activities in order to facilitate the development of a shelf company incorporations for SPC.

Question 11: Do you agree with each of the changes that AFSA is proposing to make to the SPC Rules?

Question 12: In your view, should AFSA consider making any other changes to the SPC Rules to enhance the utility of AIFC Special Purpose Companies?

## 6. WHISTLEBLOWING

- 6.1 The AIFC Companies Regulations currently contain protection for whistleblowers. It is proposed that this framework should be strengthened in order to provide greater protection and be better aligned with international standards. In particular, the proposed rules provide that, in addition to the imposition of a fine, compensation should be payable to the whistleblower in the event of a breach, and that a person should not be required to disclose his or her identity in order to be protected by law.

Question 13: Do you agree with the expansion of the whistleblowing regime in the AIFC Companies Regulations?

Question 14: Do you have any comments on the proposed legislation?

## 7. CO-OPERATION AND EXCHANGE OF INFORMATION

- 7.1 The exchange of information between the AFSA and other regulators will be critical to allowing centre participants to provide cross-border services. In order to assure that other regulatory authorities are able to provide the AFSA with confidential information, new rules contain a framework to allow the flow of information between the AFSA and other regulators on a bilateral and multilateral basis, including by reference to the IOSCO multilateral framework.

Question 15: Do you have any comments on the proposed framework for co-operation and the exchange of information between the AFSA and other regulatory authorities?

## 8. COMMON REPORTING STANDARD

- 8.1 The AFSA proposes to adopt the OECD framework for automatic reporting of tax information, which will become effective in 2020. The *AIFC Companies Regulations* will be amended to incorporate the *text of the model Common Reporting Standard* as well as provisions for its enforcement.

Question 16: Do you have any comments on the proposed framework for the Common Reporting Standard?