



**Astana Financial Services Authority**

# **Consultation Paper**

**No. 22 of 2019**

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## **Amendments to AIFC Cooperation and Exchange of Information Rules**

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**18 April 2019**

## Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to AIFC Cooperation and Exchange of Information Rules (CO-OP Rules) to clarify some provisions related to the AFSA restrictions on regulatory co-operation. The proposed amendments are set out in the Annexure to this Paper.
2. The proposals in this Consultation Paper will be of interest to authorised persons, designated non-financial business or professions who are interested in doing business in the AIFC as well as financial regulators and state authorities who are interested in cooperating and exchanging information with AFSA.
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 22” 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 **18 May 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, Mangylyk El Avenue, block C-3.2, Nur-Sultan, 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 proposal;
  - (b) the list of key elements of the proposed amendments;
  - (c) Annex 1: The proposed amendments to AIFC CO-OP.

## Background

7. The Astana Financial Services Authority (AFSA) intends to become the IOSCO MMOU signatory to consult, cooperate, and exchange information with securities regulators - IOSCO signatories.
8. The IOSCO MMoU sets an international benchmark for cross-border co-operation. Established in 2002, it has provided securities regulators with the tools for combating cross-border fraud and misconduct that can weaken global markets and undermine investor confidence.
9. The IOSCO MMoU represents a common understanding among its signatories of how they should consult, cooperate, and exchange information for the purpose of regulatory enforcement regarding securities markets. The MMoU itself sets out the specific requirements for:
  - (a) what information can be exchanged and how it is to be exchanged;
  - (b) the legal capacity to compel information;
  - (c) the types of information that can be compelled;
  - (d) the legal capacity for sharing information; and
  - (e) the permissible use of information.
10. It also sets out specific requirements regarding the confidentiality of the information exchanged, and ensures that no domestic banking secrecy, blocking laws or regulations will prevent securities regulators from sharing this information with their counterparts in other jurisdictions.
11. Information requests can be made when authorities are in the process of investigating offences relating to the following activities under the relevant laws and regulations of the jurisdictions in question:
  - (a) insider dealing and market manipulation;
  - (b) misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives;
  - (c) solicitation and handling of investor funds, and customer orders;
  - (d) the registration, issuance, offer, or sale of securities and derivatives;
  - (e) the activities of market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
  - (f) the operations of markets, exchanges, and clearing and settlement entities
12. Under the terms of the MMoU, the securities regulators can provide information and assistance, including records:

- (a) to enable reconstruction of all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions;
- (b) that identify the beneficial owner and controller of an account;
- (c) for transactions, including the amount purchased or sold; the time of the transaction; the price of the transaction; and the individual and the bank or broker and brokerage house that handled the transaction; and
- (d) providing information identifying persons who beneficially own or control companies;
- (e) taking or compelling a person's statement or, where permissible, testimony under oath, regarding the potential offence.

## KEY ELEMENTS OF THE PROPOSED AMENDMENTS

13. A framework on cooperation and exchange of information was adopted by the AFSA Board of Directors in December 2018 to ensure that the AFSA meets international standards for co-operation and the exchange of information with regulators, including in particular the IOSCO MMoU and EMMoU.
14. The framework consists of high-level requirements in the AIFC Financial Services Framework Regulations and more detailed requirements in a separate set of rules, the Co-operation and Exchange of Information Rules (CO-OP). The framework specifies:
  - (a) a general prohibition on the disclosure of confidential information by the AFSA;
  - (b) a list of authorities to whom confidential information may be disclosed, or who may require assistance from the AFSA; and
  - (c) legitimate reasons why assistance may be requested.
15. To enhance the framework on cooperation and exchange of information, the AFSA proposes the following amendments to section 2.3 of CO-OP:
  - (a) Delete the “complying with the request would be so burdensome as to prejudice or disrupt the performance of the AFSA’s regulatory functions and duties” provision (2.3(e)) as a ground for refusing a request of the requesting authority;
  - (b) Add the following provisions: “Where a request for assistance is denied, or where assistance is not available under the Acting Law of the AIFC or laws of the Republic of Kazakhstan, the AFSA will provide the reasons for not granting the assistance and consult pursuant to subsection 2.3.-1 (Consultation Regarding Mutual Assistance and the Exchange of Information).”
  - (c) Add new sub-section «2.3.-1. Consultation Regarding Mutual Assistance and the Exchange of Information» to meet the requirement of IOSCO MMOU for the Requesting Authority and Requested Authority to consult with one another in matters relating to specific requests made pursuant to the MMOU. Subsection «2.3.-1. Consultation Regarding Mutual Assistance and the Exchange of Information» contains the following provisions:
    - (i) the AFSA will consult periodically with other authorities, including Financial Services Regulators outside the AIFC, about matters of common concern with a view to improving its operation and resolving any issues that may arise.
    - (ii) the AFSA will consult with the requesting authority in matters relating to specific requests, including but not limited to requests that would be so burdensome as to prejudice or disrupt the performance of the AFSA’s regulatory functions and duties.

**Question: Do you have any comments on the proposed amendments to AIFC CO-OP Rules?**



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

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**AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES**  
**(CO-OP)**  
**AIFC RULES**

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## **1. GENERAL**

### **1.1. Name**

These Rules are the AIFC Co-operation and Exchange of Information Rules (CO-OP).

### **1.2. Commencement**

These Rules will commence on 15 December 2018.

### **1.3. Application of these Rules**

These Rules apply within the jurisdiction of the AIFC.

## **2. FRAMEWORK FOR CO-OPERATION AND EXCHANGE OF INFORMATION**

### **2.1. Arrangements for co-operation and the exchange of information**

The AFSA may at its discretion, and in relation to its obligations under Part 11 (Co-operation and Exchange of Information) of the Framework Regulations enter into memoranda of understanding or other arrangements for co-operation and the exchange of information with other authorities, including Financial Services Regulators.

#### **Guidance: Obligation in Part 11 (Co-operation and Exchange of Information) of the Framework Regulations**

Part 10 of the Framework Regulations requires the AFSA to:

- (a) ensure the confidentiality of information received in the exercise of a regulatory function; and
- (b) assist the exercise by specified persons of their regulatory functions.

### **2.2. Exercise of powers on behalf of other authorities**

Subject to subsection 2.3, the AFSA may exercise its powers, including the power to obtain information from Centre Participants, on behalf of other authorities if the request for assistance is made by:

- (a) the National Bank of the Republic of Kazakhstan;
- (b) a Financial Services Regulator;



- (c) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
- (d) a self-regulatory body or organisation exercising and performing powers and functions in relation to Financial Services;
- (e) a law enforcement agency; or
- (f) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers,

for the purpose of assisting the exercise by any such authority of its regulatory functions.

### 2.3. Restrictions on regulatory co-operation

The AFSA shall not exercise its powers at the request of an authority listed in subsection 2.2 if:

- (a) any exercise of the AFSA's powers would require the AFSA to act in a manner that would violate applicable criminal laws of the Republic of Kazakhstan or Acting Law of the AIFC;
- (b) any request is in relation to criminal or enforcement proceedings that have already been initiated in the AIFC or the Republic of Kazakhstan relating to the same facts or same Persons, or the same Persons have already been penalised or sanctioned on substantively the same allegations or charges and to the same degree by the AFSA or the competent authorities in the Republic of Kazakhstan;
- (c) the request is prejudicial on the grounds of public or national interest;
- (d) the requesting authority refuses to give reciprocal assistance within its jurisdiction in response to a comparable request from the AFSA;
- ~~(e) — complying with the request would be so burdensome as to prejudice or disrupt the performance of the AFSA's regulatory functions and duties; or~~
- (f) the requesting authority fails to demonstrate a legitimate reason for the request.

Where a request for assistance is denied, or where assistance is not available under the Acting Law of the AIFC or laws of the Republic of Kazakhstan, the AFSA will

provide the reasons for not granting the assistance and consult pursuant to subsection 2.3.-1 (Consultation Regarding Mutual Assistance and the Exchange of Information).

### **2.3.-1. Consultation Regarding Mutual Assistance and the Exchange of Information**

a) The AFSA will consult periodically with other authorities, including Financial Services Regulators outside the AIFC, about matters of common concern with a view to improving its operation and resolving any issues that may arise.

(b) The AFSA will consult with the requesting authority in matters relating to specific requests, including but not limited to requests that would be so burdensome as to prejudice or disrupt the performance of the AFSA's regulatory functions and duties.

## **2.4. Legitimate reasons for requesting assistance**

In deciding whether to comply with a request for assistance, including a request to disclose confidential information, the AFSA will assess if:

- (a) there are legitimate reasons for the request; and
- (b) the authority requesting the information has appropriate standards in place for dealing with confidential information.

### **Guidance: Factors determining legitimate requests**

In determining the legitimacy of a request, the AFSA may consider if:

- (a) the request will enable the requesting authority to discharge more effectively its regulatory responsibilities to enforce and secure compliance with the financial services laws administered by the requesting authority;
- (b) the request is for the purpose of actual or possible criminal, civil or administrative enforcement proceedings relating to a violation of financial services laws administered by the requesting authority;
- (c) the requesting authority is governed by laws that are substantially equivalent to those governing the AFSA concerning regulatory confidentiality, data protection, legal privilege and procedural fairness;
- (d) the request involves the administration of justice of a law, regulation or requirement that is related to enforcing and securing compliance with the financial services laws of the requesting jurisdiction;
- (e) any other authority, governmental or non-governmental, is cooperating with the requesting authority or seeking information from the confidential files of the requesting authority; and

- (f) fulfilling the request will foster the integrity of, and confidence in, the financial services industry in the AIFC and the requesting jurisdiction.

## 2.5. Asset freezing

Subject to the restrictions in subsection 2.3, the AFSA may, where appropriate, freeze or sequester funds or assets in the possession or control of a Centre Participant at the request of a Financial Services Regulator, provided that the AFSA and the Financial Services Regulator shall have entered into an MoU that allows either party to request the freezing or sequestration of such funds or assets.

(...)