

Astana Financial Services Authority

Consultation Paper

AFSA-P-CE-2020-0002

**New approach to waivers,
modifications and other reliefs**

7 February 2020

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the AIFC Regulations and Rules which aim at optimising the process on granting waivers, modifications and other reliefs to meet the current needs of business and provide the flexibility needed for companies to operate in an evolving business environment.
2. The proposals in this Consultation Paper will be of interest to current and potential AIFC Participants 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 AFSA-P-CE-2020-0002” 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 **6 March 2020**. Once we receive your comments, we shall consider if any refinements are required to the proposals.
5. Comments to be addressed by:

post: Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik El avenue, block C3.2, Nur-Sultan, Kazakhstan
or emailed to: consultation@afsa.kz
Tel: +7 7172 613626
6. The remainder of this Consultation Paper contains the following:
 - (a) background to the proposals;
 - (b) the list of key elements of the proposed amendments;
 - (c) Annex 1: Draft of proposed amendments to AIFC Financial Services Framework Regulations;
 - (d) Annex 2: Draft of proposed amendments to AIFC Fees Rules;

Background

The Astana Financial Services Authority ("AFSA") proposes to make amendments to the AIFC Financial Services Framework Regulations ("FSFR") which aim at optimising the process on granting waivers, modifications and other reliefs to meet the current needs of business and provide the flexibility needed for companies to operate in an evolving business environment.

Currently, the AFSA can only waive and modify provisions of the Rules made pursuant to FSFR, which significantly limits the powers of the AFSA on providing waivers or modifications direction. At this stage of development such approach does not allow AFSA to provide timely and efficient responses to business needs of AIFC participants.

The proposed amendments would allow to change the approach by granting AFSA's Board of Directors power to enact other types of Rules outside the scope of FSFR and AFSA's CEO the broader power to waive, modify and provide other types of reliefs in order to avoid constant need to amend legislation.

The proposed amendments are intended to apply generally to the AIFC Participants. It is accordingly proposed to amend each of the following AIFC Acts to give effect to the general legal framework:

- 1) AIFC Financial Services Framework Regulations
- 2) AIFC Fees Rules

KEY ELEMENTS OF THE PROPOSED AMENDMENTS

The key aspects of the proposal include:

1. Amendments to the section 8 of the FSFR would provide AFSA's Board of Directors the power to enact Rules that could extend, exclude, waive or modify the application of provisions of FSFR. These will allow to avoid the need to amend FSFR, when new services and markets, which were not envisaged by FSFR, are developed. The regulatory framework for such new services and markets could be then enacted by the Rules adopted by AFSA's BoD.
2. Amendments to the section 9 of the FSFR (AFSA Power to modify or waive Rules) would provide AFSA with executive power to waive and modify a provision of FSFR and other Regulations, the Rules, or any other Legislation Administered by the AFSA, or any provision of other Regulations and Rules where AFSA granted with power to waive and modify.
3. Amendments to the AIFC Fees Rules would provide AFSA's CEO the right to determine the level of fees for consideration of applications for waivers, modifications and other reliefs, depending on their complexity and recourses needed to have thorough review of such applications.

As a result, AFSA will be provided with executive power to waive and modify not only Rules, but Regulations as well, in order to make the regulations much more flexible when it is needed for businesses. Application fees for waivers, modifications and on-action letter will be introduced and such fees shall be determined by the Chief Executive Officer of the AFSA from time to time where he/she considers it appropriate to do so.

In implementing the abovementioned, the AFSA may introduce a public-facing policy on waivers, modifications and other reliefs procedures in the AFSA.

Question

Do you have any concerns related to the proposed amendments to AIFC Rules and Regulations? If so, what are they, and how should they be addressed?

Proposed amendments to AIFC Financial Service Framework Regulations

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

8. AFSA power to make Rules

- (1) Any provision in these Regulations to the effect that the AFSA may make Rules on a particular issue is without prejudice to the general rulemaking power of the AFSA and other Centre Bodies under Article 4(3) of the Constitutional Statute.
- (2) The Rules may extend, exclude, waive or modify the application of provisions of these Regulations, the Rules or any other legislation administered by the AFSA, with the exception of Part 9 (Enforcement) of these Regulations, if the Board of Directors of the AFSA considers it necessary or desirable in order to facilitate the pursuit of AFSA's Regulatory Objectives.

9. AFSA power to modify ~~or~~, waive Rules or grant a relief

- (1) The AFSA may, on the application of a Person or on its own initiative, by written notice, direct that ~~a provision of any Rules made pursuant to these Regulations:~~
 - (a) 1 or more relevant provisions:
 - (i) ~~applies~~ to the Person with the modifications mentioned in the notice; or
 - (ii) ~~does~~ not apply in relation to the Person.
 - (b) the AFSA does not intend to take regulatory action over a particular state of affairs or particular conduct.
- (2) The AFSA must not make a direction under (1) unless it is satisfied that:
 - (a) compliance by the Person with the ~~Rules relevant provisions~~, or with the ~~Rules relevant provisions~~ as unmodified, would be unduly burdensome or would not achieve the purpose for which the ~~Rules relevant provisions~~ were made, and
 - (b) the direction would not adversely affect the advancement of any of the AFSA's Regulatory Objectives.
- (3) A direction under (1) may be given subject to conditions.
- (4) The AFSA, on the application of the Person or on its own initiative, may:
 - (a) revoke a direction; or
 - (b) vary it ~~on the application or with the consent of the Person to whom it relates.~~

- (5) [In this section:](#)

[relevant provision](#) means a provision of these Regulations, the Rules, or any other Legislation Administered by the AFSA, or any provision of other Regulations and Rules declared by the Rules to be a provision to which this section applies.

- (6) [Unless the AFSA is satisfied that it is inappropriate or unnecessary to do so, it must publish a notice under subsection \(1\) in a way the AFSA considers appropriate for bringing the notice to the attention of:](#)

[\(a\) Person\(s\) likely to be affected by it; and](#)

[\(b\) others who may be likely to become subject to a similar notice.](#)

- [\(7\) The application for a direction, revocation of a direction or its variation must be accompanied by the filing fee prescribed in the Rules by the AFSA from time to time.](#)

SCHEDULE 1: Decision-making procedures of the AFSA

1. Interpretation

For the purposes of this Schedule “Relevant Person” means a Person in relation to whom the AFSA exercises or proposes to exercise a power.

2. Application of Schedule

This Schedule applies to the AFSA, subject to paragraph 3, where a provision in these Regulations or Rules made thereunder requires or enables the AFSA to make a decision.

3. Decisions to which procedures do not apply

- (1) The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the AFSA:
- (a) to withdraw a direction, requirement, restriction or prohibition; or
 - (b) to withdraw a condition or restriction imposed in relation to a Licence, registration, authorisation or approval; or
 - (c) in relation to a Person, if the Person has requested, or consented in writing to, the making of the decision; [or](#)
 - (d) [to make, revoke and/or vary a direction under section 9.](#)
- (2) In the cases referred to in sub-paragraph (1), the AFSA must notify the Person in writing of the decision and the date on which it is to take effect.
- (3) If the AFSA makes a decision in relation to a Person after a determination of the AIFC Court relating to the conduct of the Person, the requirement to give the Person an opportunity to make representations under paragraph 4 or 6 (as applicable) does not apply in relation to findings of fact of the AIFC Court.

Proposed amendments to AIFC Fees Rules

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

1. APPLICATION FEES PAYABLE TO THE AFSA

1.1. Application

This Chapter applies to:

- (a) an Authorised Firm, or a Person applying for Authorised Firm status;
- (b) an Authorised Market Institution, or a Person applying for Authorised Market Institution status;
- (c) an Ancillary Service Provider, or a Person applying for Ancillary Service Provider status;
- (d) a Recognised Non-AIFC Market Institution or Recognised Non-AIFC Member, or a Person applying for Recognised Non-AIFC Market Institution or Recognised Non-AIFC Member status;
- (e) a Centre Participant or Person applying for waivers and/or modifications under AIFC Financial Services Framework Regulations;
- (f) a Centre Participant or Person applying for no-action letter under AIFC Financial Services Framework Regulations.

Guidance

FEES 1 deals only with application fees for the AFSA. Centre Participants may also be required to pay application fees to the Registrar of Companies under the Companies Regulations as specified in FEES 2.

1.2. Application fees

1.2.3. Application fees payable to the AFSA in respect of Ancillary Services

An applicant seeking to carry on one or more Ancillary Services or an Authorised Firm applying to modify or withdraw a Licence to carry on Ancillary Services, must pay to the AFSA:

- (a) the application fees specified in Schedule 3; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

Guidance

REC 1.1.1 states that a Person that operates an investment exchange or clearing house outside the AIFC may apply to the AFSA to become a Recognised Non-AIFC Market Institution by providing specified information and records, and by paying the fee prescribed in FEES.

REC 2.1.1 states that a Person located in a jurisdiction other than the AIFC may apply to the AFSA to become a Recognised Non-AIFC Member by completing an application, providing information required, and by paying the fee prescribed in FEES.

1.2.4. Application fees payable in respect of a Recognised Non-AIFC Market Institution or Recognised Non-AIFC Member

An applicant seeking recognition as a Recognised Non-AIFC Market Institution or Recognised Non-AIFC Member must pay:

- (a) the application fees specified in Schedule 4; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

1.2.3. Application fees payable to the AFSA in respect of Ancillary Services

An applicant seeking to carry on one or more Ancillary Services or an Authorised Firm applying to modify or withdraw a Licence to carry on Ancillary Services, must pay to the AFSA:

- (a) the application fees specified in Schedule 3; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

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1.2.4. Application fees payable in respect of a Recognised Non-AIFC Market Institution or Recognised Non-AIFC Member

An applicant seeking recognition as a Recognised Non-AIFC Market Institution or Recognised Non-AIFC Member must pay:

- (a) the application fees specified in Schedule 4; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

1.2.5. Application fees payable to the AFSA in respect of waivers and/or modifications

An applicant seeking AFSA decision on waiver and/or modification under the AIFC Financial Services Framework Regulations, must pay to the AFSA:

- (a) the application fees specified in Schedule 7; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

1.2.6. Application fees payable to the AFSA in respect of no-action letter

An applicant seeking AFSA decision on no-action letter under the AIFC Financial Services Framework Regulations, must pay to the AFSA:

- (a) the application fees specified in Schedule 7; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

1.3. Approved Individuals

Fees are payable in respect of any application for an Approved Individual as specified in Schedules 1, 2, 3 or 4, depending on the nature of the entity on whose behalf the Approved Individual is acting.

1.4. Non-refundable nature of application fees

Any application fees paid, whether in respect of an applicant, Authorised Firm or Approved Individual, are non-refundable, regardless of whether the application is successful or not.

Schedule 7: APPLICATION FEES PAYABLE TO THE AFSA IN RESPECT OF WAIVERS, MODIFICATIONS AND OTHER RELIEFS

The Chief Executive Officer of the AFSA may determine the amount of fee specified in 1.2.5 (a) and 1.2.6. (a) from time to time.