



AMENDMENTS № 16 TO AIFC GENERAL RULES

Approval Date: 10 September 2023

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Astana, Kazakhstan

In this document, underlining indicates a new text and strikethrough indicates a removed text.

Amendments to the AIFC General Rules

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Guidance: Purpose of this rulebook

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- GEN 5 contains the key System and Controls requirements that apply to all Authorised Persons and Ancillary Services Providers.
- GEN 6 complements Part 8 of the Framework Regulations (Supervision of ~~Authorised Persons~~). The chapter begins with guidance setting out a non-exhaustive list of the circumstances in which the AFSA is likely to exercise the supervisory powers granted to it by sections 96 to 101 of the Framework Regulations. GEN 6.1 adds details to section 97 of the Framework Regulations which gives the AFSA the power to require an Authorised Person to provide it with a report on a specified matter. GEN 6.2 identifies a large number of instances in which an Authorised Person is obliged to make a notification to the AFSA. Finally GEN 6.3 contains requirements relating to accounting and auditors, including requirements to prepare financial reports, keep accounting records, make certain notifications to the AFSA and cooperate with an auditor.

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1.2.1. Form and content of application for a Licence

A Person may apply to the AFSA for a Licence for a Centre Participant to carry on one or more Market Activities in the AIFC by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules to the AFSA.

1.3.2. Form and content of application for a Licence

A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Ancillary Services in the AIFC by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules to the AFSA.

1.3.3-1 Effective supervision

In assessing whether an applicant is capable of being effectively supervised by the AFSA for the purposes of section 41(1) of the Framework Regulations, the AFSA will consider:

- (a) the nature, including the complexity, of the Ancillary Services that the applicant will carry on; and
- (b) the way in which the applicant's business is organised; and
- (c) (if the applicant is a member of a Group) whether membership of the Group is likely to prevent the AFSA's effective supervision of the applicant; and
- (d) whether the applicant is subject to consolidated supervision.

2. CONTROLLED AND DESIGNATED FUNCTIONS

2.1. Mandatory appointments

2.1.1. Appointments to be filled by Approved Individuals

(1) Subject to (2) an Authorised Person must make the following appointments and ensure that they are held by one or more Approved Individuals at all times:

- (a) Senior Executive Officer;
- (b) Finance Officer; ~~and~~
- (c) Compliance Officer; and

(d) Money Laundering Reporting Officer.

(2) For an Authorised Person Operating a Representative Office the mandatory appointments in (1) may be carried on by its Principal Representative.

2.1.2. Appointments to be filled by Approved Individuals or Designated Individuals

~~(1) An Authorised Person, except for an Authorised Person Operating a Representative Office, must make the following appointments and ensure that they are held by either an Approved Individual or a Designated Individual at all times: [intentionally omitted]~~

~~(a) Money Laundering Reporting Officer; and [intentionally omitted]~~

~~(b) such other role or function as the AFSA may direct from time to time. [intentionally omitted]~~

~~(...)~~

2.2.5-1. Money Laundering Reporting Officer

The Money Laundering Reporting Officer function must be carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Person and who has responsibility for the implementation of an Authorised Person's anti-money laundering policies, procedures, systems and controls and day to day oversight of its compliance with the Rules in AML and any relevant anti-money laundering Rules.

(...)

2.2.8. Modification or withdrawal of an Approved Individual's registration

An Authorised Person~~Firm~~ or an Approved Individual may apply to the AFSA to modify or withdraw the Approved Individual's status by:

(a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;

(b) providing such further information as the AFSA may require; and

(c) paying the fee prescribed in the Fees Rules to the AFSA.

2.2.9. Dismissal or resignation of an Approved Individual

In the event of an Approved Individual ceasing to be employed by an Authorised Person~~Firm~~ to perform a Controlled Function, the Authorised Person~~Firm~~ must:

(a) request the withdrawal of the Approved Individual status within seven days of the Approved Individual ceasing to be employed;

(b) inform the AFSA of any circumstances which lead the Authorised Person~~Firm~~ to consider that the individual is no longer fit and proper; and

(c) if the Approved Individual was dismissed or requested to resign, provide the AFSA with a statement of the reason, or reasons, for the dismissal or resignation.

2.3.4. Money Laundering Reporting Officer

~~The Money Laundering Reporting Officer function must be carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Person and who has responsibility for the implementation of an Authorised Person's anti-money laundering policies, procedures, systems and controls and day to day oversight of its compliance with the Rules in AML and any relevant anti-money laundering Rules. [intentionally omitted]~~

5.6 Conflicts of interest**5.6.1. Identification of conflicts of interest**

An Authorised Person or Ancillary Service Provider must take all reasonable steps to identify conflicts of interest that may arise between:

(a) the Authorised Person or Ancillary Service Provider; (including its managers and Employees;) and the Clients of the Authorised Person or Ancillary Service Provider, or any Person directly or indirectly linked to the Authorised Persons or Ancillary Service Providers~~them~~ by control; or

(b) one Client of the Authorised Person or Ancillary Service Provider and another Client, in the course of the Authorised Person carrying on any Regulated Activity or Market Activity or Ancillary Service Provider carrying on Ancillary Services.

5.6.2. Factors relevant to the existence of a conflict of interest in the provision of a service

For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a Client, an Authorised Person or an Ancillary Service Provider must take into account, as a minimum, whether the Authorised Person or Ancillary Service Provider or a Person directly or indirectly linked by control to the Authorised Person or Ancillary Service Provider:

- (a) is likely to make a financial gain, or avoid a financial loss, at the expense of the Client; or
- (b) has an interest in the outcome of a service provided to the Client or of a transaction carried out on behalf of the Client, which is distinct from the Client's interest in that outcome; or
- (c) has a financial or other incentive to favour the interest of another Client or group of Clients over the interests of the Client; or
- (d) carries on the same business as the Client; or
- (e) receives or will receive from a Person other than the Client an inducement in relation to a service provided to the Client, in the form of monies, goods or services, other than the standard commission or fee for that service.

5.6.3. Management of conflicts of interest

If arrangements made by an Authorised Person or Ancillary Service Provider to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a Client will be prevented, the Authorised Person or Ancillary Service Provider must clearly disclose the general nature and sources of conflicts of interest to the Client before undertaking business for the Client.

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5.9. Recordkeeping

5.9.1. Record keeping obligation

An Authorised Person or Ancillary Service Provider must make and retain records of matters and dealings, including Accounting Records and corporate governance practices which are the subject of requirements and standards under the Framework Regulations and Rules.

5.9.2. Retrieval of records

An Authorised Person or Ancillary Service Provider must ensure that records stored pursuant to GEN 5.9.1 are capable of reproduction on paper within a reasonable period not exceeding five Business Days.

6. SUPERVISION

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Guidance: Exercise of supervisory powers by the AFSA

The AFSA is likely to exercise the supervisory powers in sections 96 to 101 of the Framework Regulations in the following circumstances:

- (a) an Authorised Person or Ancillary Service Provider is failing, or is likely to fail, to satisfy the criteria referred to in sections 34 or 37 or 41 of the Framework Regulations as appropriate (Criteria for the grant of a Licence); or

- (b) an Authorised Person or Ancillary Service Provider has failed, during a period of at least 12 months, to carry on a Regulated Activity or Market Activity or Ancillary Service for which it has a Licence; or
- (c) it is desirable to take such steps to exercise such power in order to protect the interests of Clients or customers of an Authorised Person or Ancillary Service Provider or the financial system; or
- (d) an Authorised Person or Ancillary Service Provider is in breach of, or has been, in breach of one or more conditions, restrictions or requirements applicable to its Licence; or
- (e) an Authorised Person or Ancillary Service Provider is (or has been) otherwise in breach of the AIFC Constitutional ~~Law~~ Statute, the Framework Regulations or any Rules or other relevant legislation; or
- (f) an Authorised Person is in breach of a requirement under section 48 of the Framework Regulations (Requirement for AFSA approval to change in control); or
- (g) a request has been received from a Financial Services Regulator; or
- (h) there is a reasonable likelihood that an Authorised Person or Ancillary Service Provider will contravene a requirement of any Regulations or Rules; or
- (i) an Authorised Person or Ancillary Service Provider has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated; or
- (j) there is loss, risk of loss, or other adverse effect on an Authorised Person's or Ancillary Service Provider's Clients; or
- (k) an investigation is being carried out in relation to an act or omission by an Authorised Person or Ancillary Service Provider that constitutes or may constitute a Contravention of any applicable Regulation or Rule; or
- (l) an enforcement action has commenced against an Authorised Person or Ancillary Service Provider for a Contravention of any applicable Regulation or Rule; or
- (m) civil proceedings have commenced against an Authorised Person or Ancillary Service Provider; or
- (n) an Authorised Person, or Ancillary Service Provider, or any of Its Employees may be or has been engaged in Market Abuse; or
- (o) an Authorised Person or Ancillary Service Provider is subject to a merger; or
- (p) a meeting has been called to consider a resolution for an Authorised Person's or Ancillary Service Provider's winding-up; or
- (q) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country, territory or jurisdiction outside the AIFC for an Authorised Person or Ancillary Service Provider; or
- (r) there is a notification to dissolve an Authorised Person or Ancillary Service Provider or strike it from the register maintained by the Registrar of Companies, or a comparable register in another jurisdiction; or
- (s) there is information to suggest that an Authorised Person or Ancillary Service Provider is involved in Financial Crime; or
- (t) the AFSA considers that the exercise of the power is necessary or desirable to ensure Clients, Authorised Persons, Ancillary Service Providers or the financial system, are not adversely affected.

6.2 Obligation of disclosure to the AFSA

6.2.1. Core information

An Authorised Person or Ancillary Service Provider must provide the AFSA with reasonable advance notice of a change in:

- (a) the Authorised Person's or Ancillary Service Provider's name; or
- (b) any business or trading name under which the Authorised Person or Ancillary Service Provider carries on a Regulated Activity, Market Activity or Ancillary Service; or
- (c) the address of the Authorised Person's or Ancillary Service Provider's principal place of business in the AIFC; or
- (d) in the case of a Branch, its registered office or head office address; or
- (e) its legal structure; or
- (f) an Approved Individual's name or any material matters relating to his fitness and propriety.

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6.2.3. Regulatory impact

An Authorised Person or Ancillary Service Provider must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

- (a) the Authorised Person's or Ancillary Service Provider's failure to satisfy the fit and proper requirements; or
- (b) any matter which could have a significant adverse effect on the Authorised Person's or Ancillary Service Provider's reputation; or
- (c) any matter in relation to the Authorised Person or Ancillary Service Provider which could result in serious adverse financial consequences to the financial system or to other Authorised Persons or Ancillary Service Providers; or
- (d) a significant breach of a Rule by the Authorised Person or Ancillary Service Provider or any of its Employees; or
- (e) a breach by the Authorised Person or Ancillary Service Provider or any of its Employees of any requirement imposed by any applicable law by the Authorised Person or Ancillary Service Provider or any of its Employees; or
- (f) any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the Authorised Person's or Ancillary Service Provider's risk profile or resources; or
- (g) any significant failure in the Authorised Person's or Ancillary Service Provider's systems or controls, including a failure reported to by the Authorised Person's or Ancillary Service Provider's Auditor; or
- (h) any action that would result in a material change in the capital adequacy or solvency of the Authorised Person or Ancillary Service Provider; or
- (i) non-compliance with Rules due to an emergency outside the Authorised Person's or Ancillary Service Provider's control and the steps being taken by the Authorised Person or Ancillary Service Provider.

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6.2.6. Fraud and errors

An Authorised Person or Ancillary Service Provider must notify the AFSA immediately if one of the following events arises in relation to its activities:

- (a) it becomes aware that an Employee may have committed a fraud against one of its or another Person's Clients; or
- (b) a fraud has been committed against it; or
- (c) it has reason to believe that a Person is acting with intent to commit a serious fraud against it; or
- (d) it identifies significant irregularities in its accounting or other records, whether or not there is evidence of fraud; or
- (e) it suspects that one of its Employees who is connected with the Authorised Person's Regulated Activities or Market Activities or Ancillary Service Provider's Ancillary Services may be guilty of serious misconduct.

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6.2.9. Winding up, bankruptcy and insolvency

An Authorised Person or Ancillary Service Provider must notify the AFSA immediately on:

- (a) the calling of a meeting to consider a resolution for winding up the Authorised Person or Ancillary Service Provider; or

- (b) an application to dissolve the Authorised Person or Ancillary Service Provider or to strike it from the register maintained by the AIFC Registrar of Companies, or a comparable register in another jurisdiction; or
- (c) the presentation of a petition for the winding up of the Authorised Person or Ancillary Service Provider; or
- (d) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Authorised Person or Ancillary Service Provider; or
- (e) the application of any Person against the Authorised Person or Ancillary Service Provider for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country.

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6.2.11. Accuracy of information

An Authorised Person or Ancillary Service Provider must take reasonable steps to ensure that all information that it provides to the AFSA in accordance with any applicable legislation is:

- (a) factually accurate or, in the case of estimates and judgements, fairly and properly based; and
- (b) complete, in that it should include anything of which the AFSA would reasonably expect to be notified.

6.2.12. Correction of inaccurate information

An Authorised Person or Ancillary Service Provider must notify the AFSA immediately if it becomes aware, or has information that reasonably suggests, that it:

- (a) the Authorised Person or Ancillary Service Provider has or may have provided the AFSA with information which was or may have been false, misleading, incomplete or inaccurate; or
- (b) the information provided by the Authorised Person or Ancillary Service Provider has or may have changed in a material particular.