



AFSA

Astana
Financial
Services
Authority

Consultation Paper

AFSA-P-CE-2022-0003

Enhancing AIFC Market and Recognition Frameworks in the AIFC

May 11, 2022

Introduction

Why are we issuing this Consultation Paper (CP)?

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to seek suggestions from the market on the proposed enhancements to market and recognition frameworks in the AIFC.

Who should read this CP?

2. The proposals in this paper will be of interest to current and potential issuers on AIFC Authorised Investment Exchange, Recognised Non-AIFC Members (RNAMs), Exempt Offerors and AIFC participants who are interested in exercising business activities in or from the AIFC, as well as other interested parties.

Terminology

3. Defined terms have the initial letter of the word capitalised, or of each word in a phrase. Definitions are set out in the Glossary Rules ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

4. We invite comments from interested stakeholders on the proposed enhancements. 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-2022-0003” 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.
5. The deadline for providing comments on the proposed framework is **11 June 2022**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
6. Comments to be addressed by post:
Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik EI, building C3.2, Kazakhstan

or emailed to: consultation@afsa.kz

Structure of this CP

- Part I – Background;
- Part II – Key proposals;

- Part III – Questions in this consultation paper;
- Annex 1 – Draft Amendments to AIFC Market Rules (MAR);
- Annex 2 – Draft Amendments to AIFC Glossary (GLO);
- Annex 3 – Draft Amendments to AIFC Recognition Rules (REC).

Part I - Background

1. Further development of the AIFC requires the enhancement of regulatory framework for market participants and institutions to best meet the market needs.
2. Enhancing AIFC Market Framework envisages the following:
 - clarifications on the definition of an Expert and his duties;
 - circumstances in which a Person will not be liable for a Prospectus; and
 - clarifications in relation to Exempt Offerors' duties.
3. Also, the clarification was needed for interpretation of the term "Securities" under article 6 of the Constitutional Law. AIFC Financial Services Framework Regulations (FSFR) and GLO use Unit as a standalone type of Investment (not consolidated into the general definition of "Securities") due to differences in regulatory framework/ requirements for offering and listing of Units vis-à-vis other Securities.
4. The enhancements to Recognition Framework for RNAMs are based on AFSA Modification Notice that remains effective until 2 July 2022.
5. Considering the suggestions from the Astana International Exchange Ltd (AIX), it is proposed to introduce amendments to the following AIFC Rules:
 - AIFC Market Rules (MAR);
 - AIFC Glossary (GLO); and
 - AIFC Recognition Rules (REC).

Part II - Key proposals

I. Enhancing market framework in the AIFC

Amendments to MAR

Provisions in relation to an Expert

6. Definition of an "Expert" is proposed to be a Person accepting responsibility under section 79(1) of the FSFR for any statement or report included in whole or in part in a Prospectus if he has given written consent to such inclusion. A Person responsible for making a Prospectus Offer must keep a record of any consent received from the Expert and include a statement in the Prospectus that the Expert has consented to the inclusion of his statement or report. Also, it is proposed to clarify circumstances in which a Person will not be liable for a Prospectus as per MAR rule 1.9.4. The proposed provisions are in line with the practice at other financial centres such as ADGM and DIFC.

Provisions in relation to an Exempt Offeror

7. Pursuant to MAR 1.2.1, the AFSA published an [AFSA Notice](#) identifying the bodies which are Exempt Offerors. However, MAR only provides for exclusions in respect of the appointment of Sponsors in relation to Exempt Offerors. To clarify the requirements for Exempt Offerors, it is proposed to provide exemptions in section 2 Governance of Reporting Entities and section 3 Financial Reports of MAR.
8. By way of comparison to other financial centres, in particular the ADGM and DIFC regimes do not treat Exempt Offerors as Reporting Entities and prospectus requirements do not apply. Therefore, they are automatically exempt from corporate governance, market disclosure, financial reports and appointment of sponsors obligations.

Amendments to GLO

9. Amendments to GLO include a reference to the definition of an Expert and inclusion of a Unit into the definition of a Security for the purposes of article 6 of the Constitutional Law. Article 6 of the Constitutional Law defines tax regime in the territory of the AIFC. The Tax Code of the Republic of Kazakhstan applies in the AIFC, except for exemptions provided in that article. The proposed amendment is aimed at inclusion of Listed Funds into the definition of Securities only for tax exemption purposes under article 6 of the Constitutional Law.

II. Enhancing recognition framework in the AIFC

Amendments to REC

10. The proposed amendments to REC are based on [AFSA Modification Notice](#) that remains effective until 2 July 2022. Since the granted modifications have been effectively functioning to discharge supervisory function of the AFSA in relation to RNAMs it is proposed to reflect the modifications in REC.
11. The proposed amendments include:
 - Provision of reports and notifications by RNAMs, which are members of the Authorised Market Institution, to Authorised Market Institution rather than to the AFSA; and
 - Possibility to revoke the RNAM status by the AFSA on the application of the RNAM.

Part III - Questions in this consultation paper

1. Do you have any concerns related to the proposed provisions in relation to an Expert? If so, what are they, and how should they be addressed?
2. Do you have any concerns related to the proposed provisions in relation to an Exempt Offeror? If so, what are they, and how should they be addressed?

- 3. Do you have any concerns related to the proposed provisions in relation to an inclusion of a Unit into the definition of a Security in GLO? If so, what are they, and how should they be addressed? Do you see an unintended consequence of these changes?**
- 4. Do you have any concerns related to the proposed provisions in relation to RNAMs? If so, what are they, and how should they be addressed?**
- 5. Do you agree with the proposed amendments to MAR as set out in Annex 1? If not, what are your concerns, and how should they be addressed?**
- 6. Do you agree with the proposed amendments to GLO as set out in Annex 2? If not, what are your concerns, and how should they be addressed?**
- 7. Do you agree with the proposed amendments to REC as set out in Annex 3? If not, what are your concerns, and how should they be addressed?**

PROPOSED AMENDMENTS TO THE AIFC MARKET RULES

In these Rules, underlining indicates a new text and strikethrough indicates a removed text

Guidance: Purpose and application of MAR

(...)

- MAR 2 (Governance of Reporting Entities) applies to Reporting Entities other than a Reporting Entity that is a Listed Fund or a Fund Manager of a Listed Fund (in its capacity as such) and an Exempt Offeror.
- MAR 3 (Financial Reports) applies to Reporting Entities other than a Reporting Entity that is a Listed Fund or a Fund Manager of a Listed Fund (in its capacity as such) and an Exempt Offeror.

(...)

1.9 Prospectus Liability

(...)

1.9.3 Expert's responsibility

- (1) For the purposes of liability under section 79(1) of the Framework Regulations, an Expert is a Person accepting responsibility for any statement or report included in whole or in part in a Prospectus if he has given written consent to such inclusion.
- (2) An Expert in (1) is a Person, in relation to a matter, whose profession or reputation gives authority to a statement or report made by him in relation to that matter.
- (3) A Person responsible for making a Prospectus Offer must:

- (a) keep a record of any consent received under Rule 1.9.3(1); and
- (b) include a statement in the Prospectus that the Expert has consented to the inclusion of his statement or report.

1.9.4 Exceptions from liability

- (1) Pursuant to section 79(2) of the Framework Regulations, a Person is hereby prescribed as not incurring civil liability for any loss arising from any false, misleading, or deceptive statement or omission in a Prospectus if any of the circumstances specified in (2) to (6) apply.
- (2) A Person does not incur civil liability under section 79(1) of the Framework Regulations if that Person can demonstrate that:
 - (a) the statement was true and not false, misleading, or deceptive or that the matter the omission of which caused the loss was properly omitted; or
 - (b) he made all enquiries that were reasonable in the circumstances and believed that there was no false, misleading, or deceptive statement or omission in the Prospectus; or
 - (c) before the Securities were acquired by any Person in reliance on the Prospectus, he had taken all reasonable steps to secure that a correction was promptly made and brought to the attention of the Persons likely to acquire the Securities in question.
- (3) A Person does not incur any liability under section 79(1) of the Framework Regulations for any loss in respect of Securities caused by any false, misleading, or deceptive statement or omission purporting to be made by or on the authority of an Expert and included in the Prospectus with the Expert's consent at the time when the Prospectus was approved by the Authorised Investment Exchange and published if:
 - (a) he believed on reasonable grounds that the Person was an Expert and had consented to the inclusion in the Prospectus of a statement or report made by that Expert in the form and context in which such a statement or report was included in the Prospectus; or
 - (b) he believed on reasonable grounds that the statement or report was true and not false, misleading, or deceptive or that the matter, the omission of which caused the loss, was properly omitted; or

- (c) he made all enquiries that were reasonable in the circumstances and believed that there was no false, misleading, or deceptive statement or omission in the Expert's statement included in the Prospectus; or
 - (d) before the Securities were acquired by any Person in reliance on the Prospectus, he had taken all reasonable steps to have taken to secure that a correction was promptly made and brought to the attention of Persons likely to acquire the Securities in question.
- (4) Without prejudice to (2) and (3), a Person does not incur any liability under section 79(1) of the Framework Regulations for any loss in respect of any Securities caused by any statement or omission as is mentioned in that section if:
- (a) before the Securities were acquired by any Person, a correction or, where the statement was such as is mentioned in (2)(c), the fact that the Expert was not competent or had not consented to the inclusion of the statement attributed to that Expert in the Prospectus had been published in a manner designed to bring to the attention of Persons likely to acquire the Securities in question; or
 - (b) he took all such steps as were reasonable for him to take to secure such publication and believed on reasonable grounds that such a publication had taken place before the Securities were acquired.
- (5) A Person does not incur any liability under section 79(1) of the Framework Regulations for any loss resulting from a statement made by a public official or contained in an official public document which is included in the Prospectus if the statement is accurately and fairly reproduced.
- (6) A Person does not incur any liability under section 79(1) of the Framework Regulations if the Person incurring the loss acquired the Securities in question with knowledge:
- (a) that the statement was false, misleading, or deceptive; or
 - (b) of the omitted matter or of the change; or
 - (c) of the new matter or inaccuracy.

(...)

2 GOVERNANCE OF REPORTING ENTITIES

(...)

2.1 Application

(...)

(2) This section 2 of the MAR will not apply to:

(1) a Reporting Entity that is a Listed Fund or the Fund Manager of Listed Fund (in its capacity as such), and the CIS and the Business Rules prescribe the governance requirements for Listed Funds, and

(2) an Exempt Offeror.

(...)

3 FINANCIAL REPORTS

3.1-1 Application

(1) This section 3 of the MAR will not apply to:

(a) a Reporting Entity that is a Listed Fund or the Fund Manager of Listed Fund (in its capacity as such), and the CIS and the Business Rules prescribe the governance requirements for Listed Funds, and

(b) an Exempt Offeror.

(...)

PROPOSED AMENDMENTS TO THE AIFC GLOSSARY

In these Rules, underlining indicates a new text and strikethrough indicates a removed text

<u>Expert</u>	<u>Has the meaning given in MAR 1.9.3.</u>
Security	<p>1. <u>A Security is:</u> (a) a Share; (b) a Debenture; (c) a Warrant; (d) a Certificate; or (e) a Structured Product.</p> <p>2. <u>For the purposes of article 6 of the Constitutional Law, a Security shall be treated as if it includes a Unit.</u></p>

PROPOSED AMENDMENTS TO THE AIFC RECOGNITION RULES

In these Rules, underlining indicates a new text and strikethrough indicates a removed text

(...)

2.2. Supervision

2.2.1. Annual reports

- (a) A Recognised Non-AIFC Member shall provide the AFSA or the Authorised Market Institution, as applicable, with an annual report which must include:
- (i) a copy of its audited annual report and accounts, including any consolidated annual report and accounts of any Group of which the Recognised Non-AIFC Member is a member;

(...)

- (d) Copies of the report should be sent to the AFSA or the Authorised Market Institution, as applicable, within ~~two~~five months after the end of the period to which it relates.

Guidance

A Recognised Non-AIFC Member, which is not a member of the Authorised Market Institution, shall provide the AFSA with an annual report.

A Recognised Non-AIFC Member, which is a member of the Authorised Market Institution, shall provide the Authorised Market Institution with an annual report.

2.2.2. Notifications ~~to be made to the AFSA~~

A Recognised Non-AIFC Member must notify the AFSA or, in case such a Recognised Non-AIFC Member is an effective member of the Authorised Market Institution, the Authorised Market Institution, of the events identified in the first column of the table in Schedule 3 within the period and in the manner specified in the second and third columns of that table.

(...)

2.2.5. Supervisory powers of the AFSA

The AFSA may:

- (a) give directions to a Recognised Non-AIFC Member if it has failed, or is likely to fail, to satisfy the Non-AIFC Member Recognition Requirements or if it has failed to comply with any other obligation imposed by the AFSA; or
- (b) revoke a recognition order if:
 - (i) a Recognised Non-AIFC Member is failing, or has failed, to comply with the Non-AIFC Member Recognition Requirements or any other obligation; or
 - (ii) a Recognised Non-AIFC Member has applied for revocation of its status by completing the form prescribed in Schedule 1 and filing the form with the AFSA accompanied by such documents as are specified in the form; or
- (c) require a Recognised Non-AIFC Member or a Person connected with the Recognised Non-AIFC Member, to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require; ~~or~~

(...)

SCHEDULE 1: Forms

For the purpose of the Framework Regulations and the REC Rules the prescribed Forms are listed in the following table.

Purpose	Relevant section or Rule	Form
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Application for an order declaring a Person to be a Recognised Non-AIFC Member	REC 2.1_1	
<u>Application to revoke a Recognised Non-AIFC Member status</u>	<u>REC 2.2.5</u>	

(...)

SCHEDULE 3: Notifications required of a Recognised Non-AIFC Member

	Event	Timing	Information requirement
	(...)		
6	Anything which causes or may cause the Recognised Non-AIFC Member to fail to satisfy <u>the Non-AIFC Member Recognition Requirements</u> .	As soon as possible.	Particulars of the event.
	(...)		