



**AFSA**

Astana  
Financial  
Services  
Authority

# Consultation Paper

AFSA-L-CE-2022-0001

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## **AIFC AML/CFT Framework: Consequential amendments to the AIFC Acts**

**Unrestricted**

**June 14, 2022**

## Introduction

### Why are we issuing this Consultation Paper (CP)?

1. The Astana Financial Services Authority (the “AFSA”) has issued this CP to seek suggestions from the market on the proposed amendments to the following AIFC Acts:
  - i. AIFC Financial Services Framework Regulations;
  - ii. AIFC Companies Regulations;
  - iii. AIFC Foundations Regulations;
  - iv. AIFC Limited Partnership Regulations;
  - v. AIFC General Partnership Rules;
  - vi. AIFC Limited Liability Partnership Rules; and
  - vii. AIFC Glossary.

This consultation has been approved by the Legislative Committee of the AFSA Board of Directors.

### Who should read this CP?

2. The proposals in this paper will be of interest to current and potential AIFC participants, in particular, Companies, Recognised Partnerships, Foundations, and others.

### What are the next steps?

3. We invite comments from interested stakeholders on the proposed amendments to the AIFC Acts. Comments should be provided in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper AFSA-L-CE-2022-0001” in the subject line. You may, if relevant, identify the organization 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 proposed framework is **July 14, 2022**. 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 (Attention: M Ishaq Burney, MD and CLO)  
Astana Financial Services Authority (AFSA)  
55/17 Mangilik El, building C3.2, Kazakhstan  
or emailed to: [consultation@afsa.kz](mailto:consultation@afsa.kz)

Tel: +8 7172 613741

### Structure of this CP

Introduction

Background

Key Element of the Proposed Amendments

Questions

Annex 1 – Proposed amendments to the AIFC Acts

## Background

1. The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. It sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation (AML/CFT), and other related threats to the integrity of the international financial system.
2. The FATF Recommendations are revised periodically, most recently in March 2022, to ensure that countries respond to current money laundering and terrorist financing threats, as well as other threats to the financial system through measures adapted to their particular circumstances. The FATF monitors the progress of its members in implementing these Recommendations through a mutual evaluation on how effective their AML measures are.
3. To achieve greater adherence to the FATF Recommendations, in December 2021 the AIFC Anti-Money Laundering, Counter – Terrorist Financing and Sanctions Rules (AIFC AML Rules) were enhanced. Continuing our work on enhancement of the AIFC AML/CFT Framework we are proposing further consequential amendments to the AIFC Acts, as was also highlighted earlier in the Consultation Paper AFSA-L-CE-2021-0002.
4. These consequential amendments will align the AIFC AML/CFT Framework with the FATF Recommendations and protect the AIFC financial system from money laundering and terrorist financing abuse. These amendments will also assist in demonstrating the high adherence of the FATF Recommendations at the AIFC in the upcoming mutual evaluation of the Republic of Kazakhstan by the Eurasian group on combatting money laundering and terrorist financing (EAG) 2022-2023.

## Key Elements of the proposed amendments

### 5. AIFC Financial Services Framework Regulations

#### Regulatory and supervision powers

The AFSA's powers are more clearly defined in terms of regulatory powers in the AML/CFT field. The AFSA exercises control and supervision over the compliance of AIFC Participants with the AIFC AML Rules by conducting inspections, taking appropriate enforcement actions and imposing sanctions.

### 6. AIFC Acts administered by the Registrar of Companies

The following AIFC Acts administered by the Registrar of Companies have been amended to bring the AIFC Legal Framework in compliance with FATF Recommendation 24 Transparency and beneficial ownership of legal persons:

- i. AIFC Companies Regulations;
- ii. AIFC Foundations Regulations;
- iii. AIFC Limited Partnership Regulations;
- iv. AIFC General Partnership Rules; and
- v. AIFC Limited Liability Partnership Rules.

A requirement for Recognised Partnerships and Foundations to maintain a register of partners and founders accordingly in the AIFC has been introduced.

Few requirements relating to Beneficial Ownership Register have been changed. For example, the timeframe for making change to keep the information in the Beneficial Ownership Register updated was lowered from 30 to 14 days. Such Register must be kept and maintained in the AIFC, whether at the address of the Relevant Person's registered office or any other address in the AIFC notified to the Registrar.

A relevant Person regulated by a Financial Services Regulator in a Relevant Jurisdiction is excluded from the list of exempted entities enjoying some benefits in respect of application of the whole Part 14 of the AIFC Companies Regulations.

### 7. AIFC Glossary

While the AFSA's required approach to determination of beneficial owners still remains risk based, the FATF recommended threshold of 25% is also adopted. By introducing this threshold AIFC approach is in line with the Kazakhstani AML Law; hence any risk of a criticism in mutual assessment of different approaches being followed in Kazakhstan is avoided.

## Questions

8. Here are some questions for your consideration:

**Question 1.** Are there any new provisions or amendments that are not clear? What are they and what is your interpretation of them? How would you recommend addressing the lack of clarity?

**Question 2.** How long will your business need to make itself compliant with the proposed amendments?

**Question 3.** Do you think your existing resources are sufficient to comply with the proposed requirements? If not, would the insufficiency be caused by lack of resources or their qualifications/experience?

Annex 1 to the Consultation Paper  
 No. AFSA-L-CE-2022-0001 dated 14 June 2022  
 On AML/CFT Framework:  
 Consequential amendments to the AIFC Acts

In these table the underlining indicates a new text and the striking through indicates a deleted text.

| No   | Part/Chapter/<br>Section No.                                  | Current version   | Proposed version  |
|--|---|---|---|
| 1  | 2   | 3   | 4   |
| <b>AIFC Financial Services Framework Regulations</b> |   |   |   |
| 1.   | PART 2: THE FRAMEWORK OF REGULATION<br><br>CHAPTER 1–The AFSA | <b>7. Main functions, powers and objectives of the AFSA</b><br><br>(3) In performing its functions and exercising its powers, the AFSA will pursue the following objectives (“the Regulatory Objectives”):<br>.....<br><br>(f) preventing, detecting and restraining actions that may cause damage to the reputation of the AIFC or to the financial activities carried out in the AIFC by taking appropriate measures, including by imposing sanctions;<br><br>..... | <b>7. Main functions, powers and objectives of the AFSA</b><br><br>(3) In performing its functions and exercising its powers, the AFSA will pursue the following objectives (“the Regulatory Objectives”):<br>.....<br><br>(f) preventing, detecting and restraining actions that may cause damage to the reputation of the AIFC or to the financial activities carried out in the AIFC by taking appropriate measures, including by imposing sanctions <u>(in the context of anti-money laundering, combating the financing of terrorism and proliferation of weapons of mass destruction appropriate measures include conducting inspections, impose appropriate enforcement and sanctions)</u> ;<br><br>.....<br><br><b>Or</b> |

|                                   |   |   |   |
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|                                   |   |   | To add Section 7 (3-1)<br><br><u>In pursuing the objective referred to in (3)(f) in the context of anti-money laundering, combating the financing of terrorism and proliferation of weapons of mass destruction the AFSA exercises control and supervision over the compliance of Centre Participants with the relevant AIFC Acts by conducting inspections, taking appropriate enforcement actions and imposing sanctions.</u>   |
| <b>AIFC Companies Regulations</b> |   |   |   |
| 2.                                | PART 14-1: ULTIMATE BENEFICIAL OWNERS<br><br>CHAPTER 2: BENEFICIAL OWNERSHIP REGISTER | <b>179-4 Requirements relating to Beneficial Ownership Register</b><br><br>(1) A Relevant Person shall keep and maintain a Beneficial Ownership Register within the time specified in subsections (3) and (4), in which the UBO Details in respect of each of its Ultimate Beneficial Owners and (if applicable) the information required under section 179-9 (Ownership through the Exempt entity), shall be recorded. The Relevant Person shall record any changes to this information in the Beneficial Ownership Register within thirty (30) days of becoming aware of such change. | <b>179-4 Requirements relating to Beneficial Ownership Register</b><br><br>(1) A Relevant Person shall keep and maintain a Beneficial Ownership Register within the time specified in subsections (3) and (4), in which the UBO Details in respect of each of its Ultimate Beneficial Owners and (if applicable) the information required under section 179-9 (Ownership through the Exempt entity), shall be recorded. The Relevant Person shall record any changes to this information in the Beneficial Ownership Register within <del>thirty (30)</del> <u>fourteen (14)</u> days of becoming aware of such change. |
| 3.                                | PART 14-1: ULTIMATE BENEFICIAL OWNERS<br><br>CHAPTER 2: BENEFICIAL OWNERSHIP REGISTER | <b>179-4 Requirements relating to Beneficial Ownership Register</b><br><br>(2) The Beneficial Ownership Register shall be kept and maintained at the address of the Relevant Person's registered office or any other address notified in Writing by the Relevant Person to the Registrar.   | <b>179-4 Requirements relating to Beneficial Ownership Register</b><br><br>(2) The Beneficial Ownership Register shall be kept and maintained at the address of the Relevant Person's registered office or any other address <u>in the AIFC</u> notified in Writing by the Relevant Person to the Registrar.  |
| 4.                                | PART 14-1: ULTIMATE BENEFICIAL OWNERS   | <b>179-8 Exemptions</b>   | <b>179-8 Exemptions</b>   |

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|  | <p>CHAPTER EXEMPTIONS</p> | <p>4: The requirements in this Part do not apply to a Relevant Person which:</p> <ul style="list-style-type: none"> <li>(1) has its Securities listed or traded on a Recognised Exchange;</li> <li>(2) is regulated by a Financial Services Regulator in a Relevant Jurisdiction;</li> <li>(3) is a Recognised Company, Recognised General Partnership, Recognised Limited Partnership or Recognised Limited Liability Partnership, which satisfies the Registrar that it is subject to equivalent international standards, which ensure adequate transparency of ownership information in its home jurisdiction;</li> <li>(4) is a Non-Profit Incorporated Organisation which does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes;</li> <li>(5) is wholly owned by a government or government agency of a Relevant Jurisdiction; or</li> <li>(6) is established under a law of Kazakhstan to perform governmental functions.</li> </ul> | <p>The requirements in this Part do not apply to a Relevant Person which:</p> <ul style="list-style-type: none"> <li>(1) has its Securities listed or traded on a Recognised Exchange;</li> <li>(2) <del>is regulated by a Financial Services Regulator in a Relevant Jurisdiction</del> [Intentionally omitted];</li> <li>(3) is a Recognised Company, Recognised General Partnership, Recognised Limited Partnership or Recognised Limited Liability Partnership, which satisfies the Registrar that it is subject to equivalent international standards, which ensure adequate transparency of ownership information in its home jurisdiction;</li> <li>(4) is a Non-Profit Incorporated Organisation which does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes;</li> <li>(5) is wholly owned by a government or government agency of a Relevant Jurisdiction; or</li> <li>(6) is established under a law of Kazakhstan to perform governmental functions.</li> </ul> |
|  |                           | <p><b>179-9 Ownership through an exempt entity</b></p> <p>Notwithstanding Chapters 1 to 3 and Chapter 5, where a Person referred to in section 179-8(1) to (6) (Exemptions) beneficially owns or controls (directly or indirectly) at least 25% of a Relevant Person, the Relevant Person shall:</p> <p>...</p> <p>(2) record the following information in respect of each such entity on its Beneficial Ownership Register:</p> <ul style="list-style-type: none"> <li>(a) full legal name;</li> <li>(b) registered address;</li> <li>(c) the category under section 179-8 that applies to the entity; and</li> <li>(d) if the entity:</li> </ul>  | <p><b>179-9 Ownership through an exempt entity</b></p> <p>Notwithstanding Chapters 1 to 3 and Chapter 5, where a Person referred to in section 179-8(1) to (6) (Exemptions) beneficially owns or controls (directly or indirectly) at least 25% of a Relevant Person, the Relevant Person shall:</p> <p>...</p> <p>(2) record the following information in respect of each such entity on its Beneficial Ownership Register:</p> <ul style="list-style-type: none"> <li>(a) full legal name;</li> <li>(b) registered address;</li> <li>(c) the category under section 179-8 that applies to the entity; and</li> <li>(d) if the entity: <ul style="list-style-type: none"> <li>(i) has its securities listed or traded on a Recognised Exchange, the name of the Recognised Exchange;</li> </ul> </li> </ul>  |



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|   |  | <ul style="list-style-type: none"> <li>(i) has its securities listed or traded on a Recognised Exchange, the name of the Recognised Exchange;</li> <li>(ii) is regulated by a Financial Services Regulator in a Relevant Jurisdiction, the name of such regulator;</li> <li>(iii) is wholly owned by a government or government agency, its name and the Relevant Jurisdiction; or</li> <li>(iv) is established under a law of Kazakhstan to perform governmental functions, the name of such law.</li> </ul>  | <ul style="list-style-type: none"> <li>(ii) <del>is regulated by a Financial Services Regulator in a Relevant Jurisdiction, the name of such regulator</del> <u>Intentionally omitted</u>;</li> <li>(iii) is wholly owned by a government or government agency, its name and the Relevant Jurisdiction; or</li> <li>(iv) is established under a law of Kazakhstan to perform governmental functions, the name of such law.</li> </ul>  |
| <b>AIFC Foundations Regulations</b>         |  |  |  |
| 5.  | PART 5:<br>ADMINISTRATION OF<br>AIFC FOUNDATIONS | None   | <p><b><u>28-1. Register of Founders</u></b></p> <p><u>A Foundation must establish and maintain a Register of Founders.</u></p>   |
| <b>AIFC Limited Partnership Regulations</b> |  |  |  |
| 6.  |  | <p><b>46. Recognised Limited Partnerships: requirements</b></p> <p>A Recognised Limited Partnership must:</p> <ul style="list-style-type: none"> <li>(a) appoint and retain at all times at least 1 Person who is authorised to accept service of any notice or other Document on behalf of the Recognised Limited Partnership and to Exercise any other Function prescribed by the Rules; and</li> <li>(b) have a principal place of business in the AIFC to which all communications and notices may be addressed; and</li> <li>(c) file with the Registrar of Companies, in accordance with the Rules, notice of the following: <ul style="list-style-type: none"> <li>(i) the appointment of Persons authorised to accept service on behalf of the partnership;</li> </ul> </li> </ul> | <p><b>46. Recognised Limited Partnerships: requirements</b></p> <p>A Recognised Limited Partnership must:</p> <ul style="list-style-type: none"> <li>(a) appoint and retain at all times at least 1 Person who is authorised to accept service of any notice or other Document on behalf of the Recognised Limited Partnership and to Exercise any other Function prescribed by the Rules; and</li> <li>(b) have a principal place of business in the AIFC to which all communications and notices may be addressed; and</li> <li>(c) file with the Registrar of Companies, in accordance with the Rules, notice of the following: <ul style="list-style-type: none"> <li>(i) the appointment of Persons authorised to accept service on behalf of the partnership;</li> <li>(ii) the address of the partnership's principal place of business in the AIFC;</li> </ul> </li> </ul> |

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|   |   | <ul style="list-style-type: none"> <li>(ii) the address of the partnership's principal place of business in the AIFC;</li> <li>(iii) any change in the name of the partnership or details of Persons authorised to accept service on behalf of the partnership or the address of its principal place of business in the AIFC;</li> <li>(iv) any change in the constitution of the partnership, by the incoming or outgoing of any General Partner.</li> </ul> | <ul style="list-style-type: none"> <li>(iii) any change in the name of the partnership or details of Persons authorised to accept service on behalf of the partnership or the address of its principal place of business in the AIFC;</li> <li>(iv) any change in the constitution of the partnership, by the incoming or outgoing of any General Partner.</li> </ul> <p><u>(d) A Recognised Limited Partnership must establish and maintain a Register of Partners.</u></p> |
| <b>AIFC General Partnership Rules</b>           |   |   |  |
| 7.  | PART 3:<br>RECOGNISED<br>PARTNERSHIPS   | None  | <u><b>3.5. Register of partners of Recognised Partnership</b></u><br><u>The partners of a Recognised Partnership must keep, at its place of business in the AIFC, a register showing the particulars mentioned in subrule 2.4.1 for each Person who is or has been a partner.</u>  |
| <b>AIFC Limited Liability Partnership Rules</b> |   |   |  |
| 8.  | PART 3:<br>RECOGNISED LIMITED<br>LIABILITY<br>PARTNERSHIPS<br><br>Section 3.1<br>Application for registration<br>as Recognised Limited<br>Liability Partnership | None  | <u><b>3.5 Register of members of Recognised Limited Liability Partnership</b></u><br><u>A Recognised Limited Liability Partnership must keep, at its principal place of business in the AIFC, a register showing the particulars mentioned in subrule 2.6.1 for each Person who is or has been a member (including a Designated Member) of the partnership (the member).</u>   |
| <b>AIFC Glossary</b>                            |   |   |  |
| 9.  | <b>Beneficial owner</b>   | The beneficial owner, in relation to a customer, is a natural person:<br>(a) who ultimately controls, directly or indirectly, a customer;<br>(b) who, in relation to a customer which is a legal person or arrangement, exercises (whether directly or indirectly) ultimate effective control over the  | <u><b>(1) The bBeneficial owner</b></u> , in relation to a customer, is a natural person:<br>(a) who ultimately controls, directly or indirectly, a customer;<br>(b) who, in relation to a customer which is a legal person or arrangement, exercises (whether directly or indirectly) ultimate effective control over the person or   |

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|  |  | <p>person or arrangement, or the management of such person or arrangement;</p> <p>(c) who ultimately owns or has an ownership interest in the customer, whether legally or beneficially, directly or indirectly;</p> <p>(d) on whose behalf or for whose benefit a transaction is being conducted; or</p> <p>(e) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.</p> <p>A person not falling into (a) or (b) is not a beneficial owner by reason of (c) or (d) if, having regard to a risk-based assessment of the customer, the ownership interest is small and in the circumstances poses an insignificant (or no) risk of money laundering.</p> <p>In (a) to (e), a reference to a "customer" includes a customer account, customer assets, and the underlying legal person or arrangements which constitute or make up the customer, customer account, or customer assets.</p> | <p>arrangement, or the management of such person or arrangement;</p> <p>(c) who ultimately owns or has an ownership interest in the customer, whether legally or beneficially, directly or indirectly;</p> <p>(d) on whose behalf or for whose benefit a transaction is being conducted; or</p> <p>(e) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.</p> <p><del>A person not falling into (a) or (b) is not a beneficial owner by reason of (c) or (d) if, having regard to a risk-based assessment of the customer, the ownership interest is small and in the circumstances poses an insignificant (or no) risk of money laundering.</del></p> <p><u>(2) In (1) (a) to (e), a reference to a "customer" includes a customer account, customer assets, and the underlying legal person or arrangements which constitute or make up the customer, customer account, or customer assets.</u></p> <p><u>(3) Without limiting (1) (a), (b) and (c), the beneficial owner for</u></p> <p><u>(a) a body corporate includes:</u></p> <p><u>(i) an individual who, directly or indirectly, owns or controls at least 25% of the shares, participation interest or voting rights of the body corporate; and</u></p> <p><u>(ii) an individual who, directly or indirectly, otherwise exercises control over the body corporate's management;</u></p> <p><u>(b) a legal arrangement includes:</u></p> <p><u>(i) an individual who, directly or indirectly, owns or controls at least 25% of the voting rights of the legal arrangement; and</u></p> <p><u>(ii) an individual who, directly or indirectly, otherwise exercises control over the legal arrangement's management.</u></p> |
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| 10. | FIU                       | None   | <u>The Financial Intelligence Unit of the Republic of Kazakhstan is the state authority, or any other such state authority, responsible for financial monitoring and other measures to combat money laundering in accordance with the AML Law.</u> |
| 11. | <del>SAR</del> <u>STR</u> | Suspicious Activity Report. A report in a prescribed format regarding suspicious activity or suspicious transactions made to the AFSA. | Suspicious <del>Activity</del> <u>Transaction</u> Report. A report in a prescribed format regarding suspicious activity or suspicious transactions made to the <del>AFSA</del> <u>FIU</u> .  |