



AFSA

Astana
Financial
Services
Authority

Consultation Paper

AFSA-L-CE-2022-0002

AIFC AML/CFT Framework: Consequential amendments to the Beneficial owner definition

Unrestricted

August 19, 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 definition of Beneficial owner in the AIFC Glossary.

This CP is issued in continuation of the Consultation Paper AFSA-L-CE-2022-0001 posted on 14 June 2022.

Who should read this CP?

2. The proposals in this paper will be of interest to current and potential AIFC participants.

What are the next steps?

3. We invite comments from the interested stakeholders on the proposed amendments. 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-2022-0002” 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 amendments is **September 20, 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 EI, building C3.2, Kazakhstan
or emailed to: consultation@afsa.kz

Tel: +8 7172 613741

Structure of this CP

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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.
4. Continuing our work on enhancement of the AIFC AML/CFT Framework we are proposing further consequential amendments to the definition of Beneficial owner in the AIFC Glossary Act.

Proposed amendments

5. AIFC Act: 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 to achieve alignment with the Kazakhstani AML Law. Hence any risk of a criticism in mutual assessment of different approaches being followed in Kazakhstan is avoided.

Below please see the table where the underlining indicates a new text and the striking through indicates a deleted text.

AIFC Glossary	
Current version	Proposed version
<p>The beneficial owner, in relation to a customer, is a natural person:</p> <p>(a) who ultimately controls, directly or indirectly, a customer;</p> <p>(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 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>(1) The beneficial owner, in relation to a customer, is a natural person:</p> <p>(1) <u>Beneficial owner, in relation to a customer, is a natural person:</u></p> <p>(a) <u>for an account – a natural person who ultimately owns, or exercises effective controls over the account, directly or indirectly, a customer;</u></p> <p>(b) <u>for a transaction – a natural person on whose behalf or for whose benefit the transaction is being conducted;</u></p> <p>(c) who, in relation to a customer which is for a legal person or arrangement – a natural person who, ultimately owns or exercises (whether directly or indirectly) ultimate effective control over the legal person or arrangement, or the management of such person or arrangement;</p> <p>(e) 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><u>(2) Without limiting subrule (1) (a), a beneficial owner for an account includes any natural person on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are acting (either temporarily or permanently).</u></p> <p><u>(3) Without limiting (1) (c), the beneficial owner for:</u></p>

(a) a legal person includes:

(i) a natural person who, directly or indirectly, owns or controls at least 25% of the shares, participation interest or voting rights of the legal person; or

(ii) a natural person who, directly or indirectly, otherwise exercises control over the legal person's management;

(b) a legal arrangement that administers and distributes funds (such as a trust) includes:

(i) where the beneficiaries and their distributions have already been determined - a natural person who is to receive at least 25% of the funds of the arrangement;

(ii) where the beneficiaries or their distributions have not already been determined – a natural person who is part of the class of natural persons for whose benefit the arrangement is established or operated and who could receive at least 25% of the funds of the arrangement; or

(iii) where a natural person, directly or indirectly, exercises control over at least 25% (by value) of the property of the arrangement.

Questions

6. Here are some questions for your consideration:

Question 1. Do you think that the 25% threshold will give greater clarity to potential users of the proposed amendments, particularly those in Kazakhstan?

Question 2. Is anything not clear in the amended definition? What is it and what is your interpretation of it? How would you recommend addressing the lack of clarity (if any)?

Question 3. How long will your business need to make itself compliant with the proposed amendments?

Question 4. Do you think your existing compliance and technical resources are sufficient to comply with the proposed requirements? If not, would the insufficiency be caused by lack of resources or their qualifications/experience?