



Consultation Paper

AFSA-L-CE-2022-0004

Proposed AIFC Recovery and Resolution Framework

Unrestricted

9 December 2022

Introduction

Why are we issuing this Consultation Paper (CP)?

The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to seek suggestions from the market on the proposed AIFC Recovery and Resolution Framework.

Who should read this CP?

The proposals in this paper will be of interest to current and potential AIFC participants, including:

- Banks, including Islamic Banks;
- Investment Firms;
- Market Institution Operating a Clearing House; and
- Insurers.

Terminology

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?

We invite comments from interested stakeholders on the proposed framework. 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-2022-0004” 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.

The deadline for providing comments on the proposed framework is 10 January 2023. Once we receive your comments, we shall consider if any refinements are required to this proposal.

AFSA prefers to receive comments by email at consultation@afsa.kz

Comments may also be posted to:

Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik EI, building C3.2, Kazakhstan

Structure of this CP

Part I – Background;
Part II – Key proposals;
Part III – Questions in this consultation paper;
Annex 1 – Proposed AIFC Recovery and Resolution Rules;
Annex 2 – Proposed amendments to other AIFC legal acts

Part I - Background

The AFSA is proposing to introduce AIFC Recovery and Resolution framework by adopting AIFC Recovery and Resolution Rules ("Rules") and a number of amendments, mainly to the AIFC Financial Services Framework Regulations ("FSFR") and, additionally, to the AIFC Netting Regulations, AIFC General Rules and the AIFC Glossary.

Currently, the AIFC legal framework does not envisage the recovery and resolution of financial institutions.

The Financial Stability Board ("FSB") adopted the "Key Attributes of Effective Resolution Regimes for Financial Institutions" ("Key Attributes Document") in 2011, revised in 2014. It is considered an international standard for resolution regimes and has been used as one of reference documents while drafting the AIFC Recovery and Resolution framework.

The Key Attributes Document set out twelve essential features that should be part of the resolution regimes of all jurisdictions. When the FSB adopted the Key Attributes Document in 2011, it was agreed to develop further guidance on its implementation, taking into account the need for implementation to accommodate different national legal systems and market environments and sector-specific considerations (e.g., insurance, financial market infrastructures) to promote effective and consistent implementation across jurisdictions. On 15 October 2014, the FSB adopted additional guidance that elaborates on specific key attributes relating to information sharing for resolution purposes and sector-specific guidance that sets out the application of the Key Attributes Document for insurers, financial market infrastructures (FMIs), and the protection of client assets in resolution.

Part II - Key proposals

A. DRAFT AIFC RECOVERY AND RESOLUTION RULES

Introduction and Application

These sections briefly describe the Rules and the scope of entities to which the recovery and resolution regime will apply.

AIFC scope (proposed)
<p>(1) Part 9A of the Financial Services Framework Regulations (FSFR) and these Rules apply to an Authorised Person that is authorised under its Licence to carry on any one or more of the following Financial Services:</p> <ul style="list-style-type: none"> (a) Accepting Deposits; (b) Providing Credit; (c) Dealing in Investments as Principal; (d) Islamic Banking Business; (e) <i>Operating a Clearing House</i>; (f) <i>Effecting Contracts of Insurance</i>; (g) <i>Carrying on Contracts of Insurance</i>. <p>(2) If specified, these Rules also apply to a Parent or Subsidiary of the Authorised Person or to another entity in its Group.</p>

- (3) The AFSA may apply Part 9A of the FSFR and these Rules to other Investment Firms within the meaning of the AIFC Prudential Rules for Investment Firms or other Authorised Market Institutions, including their subsidiaries, parent company or branch operating in AIFC to the extent the AFSA considers such application necessary.
- (4) Authorised Person in these Rules means either Authorised Firm or Authorised Market Institution.

Due to the above, the text of the Rules and corresponding amendments to existing AIFC acts use the term “Authorised Person” to encompass Authorised Market Institutions in the AIFC. In accordance with the AIFC Glossary, “Authorised Person” means either an “Authorised Firm” or an “Authorised Market Institution”. Where applicable and needed, it is specifically indicated that some provisions are related to the Authorised Market Institutions.

Recovery and Resolution Planning

This section contains provisions related to recovery planning, classes of Authorised Persons required to prepare a recovery plan, general requirements for the scope and content of recovery plans, and the responsibility of the Authorised Person’s management. In addition, these provisions envisage criteria for a resolvability assessment, norms on resolution planning, the responsibility of Authorised Persons’ management for providing information related to resolution planning, and general provisions about loss-absorbing capacity requirements.

Resolution

This section gives detailed scope of resolution action and outlines the provisions on the valuation of firms, the appointment of an independent valuer, and conditions for provisional and definitive valuations. The section also gives a more detailed description of resolution powers reflected in the corresponding new section of the FSFR and resolution tools, such as the Sale of Business Tool and the Bail-In Tool. It also provides the conditions for appointing a temporary administrator and gives a detailed description of resolution safeguards.

Miscellaneous

This section outlines the requirements of the information systems that need to be maintained by the Authorised Persons concerned to enable access to information to the resolution authority, as needed.

B. AMENDMENTS TO AIFC FSFR

The suggested amendments include specification of the AFSAs’ powers to act as a resolution authority and apply resolution powers and tools over financial institutions upon conducting resolution assessments and evaluations of viability and systemic character of services of financial institutions, safeguards, and some general objectives for the AFSA.

C. AMENDMENTS TO OTHER AIFC ACTS

Other AIFC acts, such as the AIFC Netting Regulations and the AIFC General Rules, will also be amended to accommodate minor enhancements, with respect to the AIFC Glossary to accommodate any new definitions related to recovery and resolution.

Part III - Questions in this consultation paper

1. Are there any new provisions or amendments that are not clear? What are they and what is your interpretation of them?
2. Do you think the scope of coverage of the resolution framework should also extend to financial market infrastructures and other Authorised Firms ?
3. Do you think it is appropriate to limit the scope of entities for recovery planning as described in section 3.1.1 of the proposed Rules?
4. How long will your business need to make itself compliant with the proposed amendments?
5. The proposed amendments to the FSFR envisage that the AFSA must, when exercising a Resolution Power or applying a Resolution Tool in relation to an Authorised Person, aim to meet the following safeguards:

(a) no shareholder or creditor should be worse off under the resolution action than if the Authorised Person had been wound up under ordinary insolvency proceedings;

(b) any other Resolution Safeguards that may be prescribed in the Rules.

Do you think the ranking of claims should be included into the AIFC Recovery and Resolution Rules?

6. Do you think recovery and resolution framework should explicitly cover Digital Asset Trading Facilities?
7. Do you have any concerns related to the provisions in the proposed draft AIFC Recovery and Resolution Rules (Annex 1) and proposed amendments to the AIFC legislation (Annex 2)? If so, what are they, and how should they be addressed?