



AFSA

Astana
Financial
Services
Authority

Consultation Paper

AFSA-L-CE-2023-0003

**Proposed Amendments to the
Astana International Financial Centre
Financial Services Framework Regulations**

Unrestricted

2 June 2023

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 amendments to the AIFC Financial Services Framework Regulations.

Who should read this CP?

2. The proposals in this paper will be of interest to current and potential AIFC Participants dealing with digital assets as well as the market and other stakeholders.

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 amendments. All comments should be in writing and sent to the email specified below. If sending your comments by email, please use “Consultation Paper AFSA-L-CE-2023-0003” 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 **2 July 2023**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
6. AFSA prefers to receive comments by email at consultation@afsa.kz or posted to:
Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik El, building C3.2, Astana, Kazakhstan

Structure of this CP

- Part I – Background;
 - Part II – Issues;
 - Part III – Best Practice;
 - Part IV – Proposals;
 - Part V – Public Consultation Questions;
 - Part VI – Outcomes.
- Annex 1 - Draft amendments to the AIFC Financial Services Framework Regulations;
Annex 2 – Consequential amendments to AIFC rules.

In accordance with the Constitutional Statute of the Republic of Kazakhstan “On the Astana International Financial Centre” (the “Constitutional Statute”), the Astana Financial Services Authority (the “AFSA”) is a legal entity responsible for the regulation of financial services and related activities in the Astana International Financial Centre (the “AIFC”). Pursuant to sub-paragraph 5) of paragraph 3 of Article 12 of the Constitutional Statute, the AFSA also conducts consumer protection, exercises control and supervision over the activities of AIFC Participants and takes appropriate measures in relation to them.

The AIFC Financial Services Framework Regulations provide that in performing its functions and exercising its powers, the AFSA may pursue the following objective: 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.

ASP regime

The AFSA, as a supervisory authority, is responsible for the regulation of Financial Services and Ancillary Services in the AIFC.

Ancillary Services in the AIFC include providing:

1. Legal Services;
2. Audit Services;
3. Accountancy Services;
4. Consulting Services;
5. Credit Rating Services.

A law firm, accounting firm, audit firm, insolvency firm, and company service provider are also considered as Designated Non-Financial Business and Profession (“DNFBP”) in the AIFC.

The AFSA may only grant a Licence permitting a Centre Participant to carry on one or more Ancillary Services if it is satisfied that the Centre Participant is fit and proper. AFSA prescribed by Rules the requirements for the grant of such Licence and the circumstances in which the AFSA may withdraw such a Licence.

In relation to Legal Services Providers, AIFC Legal Services Regulations were adopted in 2022, which provided a statutory ground to establish the **AIFC Legal Services Board** (“LSB”) as a designated body within the AIFC for registration and regulation of legal advisers. The LSB determines standards of legal services, qualification requirements, code of ethics and some other measures to foster the development of the AIFC legal services market. Amendments were introduced to the AIFC General Rules, AIFC Conduct of Business Rules and the AIFC Glossary on a statutory requirement for registration of at least 1 legal adviser for Legal Services Providers to be eligible to receive and maintain a Licence from the AFSA to Providing Legal Services in the AIFC.

As to the Audit Services providers, AFSA adopted AIFC Auditor Rules with purpose to provide a single reference point for all persons who are permitted by the AFSA and the Registrar of Companies to carry out audit services in the AIFC and to ensure that auditors, and audit services undertaken in the AIFC comply with international best practice in the field of regulation of audit and the provision of audit services.

However, the AIFC legal system does not contain any special provisions for supervisory powers of the AFSA in relation to Ancillary Service Providers (“ASP”). The existing powers of the AFSA do not fully comply with effective Regulator principles due to the current absence of the regulatory framework for the supervision of ASPs. The lack of the regulator’s supervisory powers creates risks and may have a negative impact on the customers.

As of 18 May 2023, 120 ASPs have been licensed to provide legal, consulting, accountancy, audit activities, credit rating services; none of these are deemed to be of systemic importance.

Issues

The FSFR have been drafted based on various sources including similar framework legislation in the United Kingdom, Dubai International Financial Centre (the “DIFC”), Abu Dhabi Global Market, Qatar Financial Centre (the “QFC”), Guernsey, and Australia. The DIFC Regulatory Law was served as the primary legislative model for decision-making procedures. However, the DIFC has the Regulatory Policy and Process Sourcebook (the “RPP”) which specifies that decisions made by the DFSA fall into three categories:

(a) decisions which are subject to the procedures in Schedule 3 of the Regulatory Law (“Schedule 3 Decisions” is similar to Schedule 1 of the FSFR), e.g., a decision to withdraw the Licence of an Authorised Person;

(b) decisions which are subject to a bespoke process instead of the procedures in Schedule 3, e.g., the rejection of a new Controller of an Authorised Firm; and

(c) routine operational decisions, e.g., a DFSA decision to start an investigation against a Person. These decisions are not subject to the procedures in Schedule 3 and are not referable to the Financial Markets Tribunal but may be reviewed by way of judicial review in the DIFC Court.

Section 10 (1) of the FSFR provides that ‘[w]here a provision in these Regulations or Rules made thereunder requires the AFSA to make a decision, the AFSA will follow the decision making procedures set out in Schedule 1’. Since there is no document in the AIFC similar to the DIFC Regulatory Policy and Process Sourcebook, there are some uncertainties in which cases the AFSA should follow procedures specified in Schedule 1.

ASP regime

The absence of the supervisory powers of the AFSA in relation to ASPs has been highlighted in recent assessments conducted of the AIFC jurisdiction.

During the self-assessment against the International Organization of Securities Commissions (“IOSCO”) principles for August 2020 – March 2021, it was identified that out of 37 principles, ASP is covered in five principles from 19 to 23. AFSA is fully compliant with principles 19, 20, 21 and 23.

Principle 22 was marked as not compliant with following deficiencies and proposed solutions. It was noted that AIFC legal framework does not contain provisions that allow AFSA to an adequate level of oversight (ongoing supervision, inspections, enforcement) in relation to ASPs.

The leading financial centres in the Asian region (e.g., Dubai International Financial Centre (“DIFC”), Abu-Dhabi Global Market (“ADGM”), Qatar Financial Centre (“QFC”). Hong-Kong) have implemented supervisory framework for ASPs or DNFBPs.

The AIFC in its further development stage needs to have a supervisory framework to maintain the competitive advantages that its regulatory system offers to investors in or from the region.

Best Practice

The AFSA reviewed financial services frameworks of peer jurisdictions (e.g., the DIFC Regulatory Law and QFC Financial Services Regulations) and made a comparison of their regimes with the one in the AIFC.

In relation to the decision-making procedures, there were several options which we considered:

1) to explicitly specify in Section 10 of the FSFR decisions which should not be subject to Schedule 1 (e.g., the AFSA’s decision to exercise the power to require the production of a report); or

2) to categorise all decisions that the AFSA may make and specify which of them are subject to Schedule 1; or

3) to insert additional subsections to certain sections of the FSFR that will clarify that these sections are subject to Schedule 1.

Having considered all three options, we concluded that options 1 and 2 have some flaws. For example, there is a risk that we may not capture all existing decisions. In addition, since the AFSA has been constantly working on the development and enhancement of the AIFC's legal and regulatory framework, some new provisions may be developed which will give the AFSA power to make decisions in new cases. This approach may require the AFSA to constantly amend and update Section 10 of the FSFR.

Therefore, the drafters suggest following Option 3 and inserting new subsections that would explicitly state that the AFSA should follow Schedule 1 when makes decisions under these sections (e.g., suspending a Licence of an Authorised Person). In this regard, the drafters made a table of cases (sections) where the AFSA may exercise its powers and indicated sections where the AFSA's decisions should be subject to Schedule 1. Such approach seems to give more comfort both to the regulator and regulated entities.

ASP regime

The AFSA conducted a thorough analysis of the ASP frameworks of peer jurisdictions (DIFC, ADGM, QFC and Hong-Kong), and used as best example jurisdictions to identify the requisites for the ASP framework. The analysis is briefly summarised below.

DIFC

The legislative framework in the DIFC is based on Law No 5 of 2021 Concerning the DIFC and DIFC Regulatory Law 2004.

Since 2006, the DFSA supervision of an ASP had been primarily focused on its compliance with AML rules. This supervisory approach was reflected in the contents of the ASP Module, the bulk of which was made up of AML rules which largely duplicated those in the AML module.

ASP regime was reviewed in 2012, and relevant amendments to the DIFC Regulatory Law 2004 followed. ASPs were brought into the DNFBP regime and consequently the ASP regime was repealed, with existing ASPs being re-classified as DNFBPs. The purpose was to avoid having a twin track regime depending on whether a person provides services to an Authorised Person.

At that time, DNFBP definition included law firms, notary firms, or other independent legal businesses; accounting, audit or insolvency firms; company service providers among others.

In 2013, following a strategic review by the DIFC Authority (DIFCA), the responsibility for AML/CTF supervision of DNFBPs was transferred to the DFSA by DIFCA. This was on the basis that the DFSA was to be the **single authority** responsible for AML/CTF supervision in the DIFC for Financial Institutions and DNFBPs. As the single authority responsible for AML/CTF supervision of these entities, the DFSA consolidated its AML rules into one module.

In 2018, DFSA introduced changes to the DNFBP regime so that DNFBPs ceased to be able to conduct any activities in or from the DIFC unless they were registered by the DFSA as a DNFBP.

Currently, DNFBP means:

(1) The following class of Persons whose business or profession is carried on in or from the DIFC:

- (a) a real estate developer or agency which carries out transactions with a customer involving the buying or selling of real property;
- (b) a dealer in precious metals or precious stones;
- (c) a dealer in any saleable item of a price equal to or greater than \$15,000;
- (d) a law firm, notary firm, or other independent legal business;
- (e) an accounting firm, audit firm or insolvency firm;

(f) a company service provider; or

(g) a Single Family Office.

(2) A Person who is an Authorised Person or an Auditor is not a DNFBP.

The Regulatory Law gives the DFSA a power to supervise DNFBPs' *compliance with relevant AML laws* in the State. The Regulatory Law requires a DNFBP to be registered by the DFSA to conduct its activities in the DIFC. The Regulatory Law also gives the DFSA several other important powers in relation to DNFBPs, including powers of *enforcement*. This includes a power to obtain information and to conduct investigations into possible breaches of the Regulatory Law. The DFSA may impose fines for breaches of the Regulatory Law or the Rules. It may also suspend or withdraw the registration of a DNFBP in various circumstances.

To *register as a DNFBP*, an applicant needs to satisfy the DFSA that:

(a) it is *fit and proper* to perform AML functions;

(b) it has adequate resources and systems and controls, including policies and procedures, to comply with the applicable AML requirements under the Federal AML Legislation, the Regulatory Law and the AML Module; and

(c) it satisfies any other requirements prescribed by the DFSA.

The DFSA emphasises that the registration process for DNFBPs would be different to that for Authorised Firms and focus on the issue of the integrity and suitability of the applicant to control a DNFBP, rather than on qualifications and experience. The registration process must include, reviewing the fitness and propriety of relevant persons, and ascertaining the identity of the ultimate beneficial owners.

From the supervision standpoint, DNFBPs are obliged to notify the DFSA promptly of any change in name, legal status, address, MLRO, or beneficial owners; and submit an Annual Information Return.

ADGM

The Registration Authority ("RA") is responsible for the regulation of all ADGM licensed persons (Controlled Activities) as well as Registered Auditors, Registered Audit Principals and insolvency practitioners in accordance with ADGM's **commercial legislation**.

In the ADGM ASPs are regulated by the Commercial Licensing Regulations 2022, Commercial Licensing Regulations (Controlled Activities) Rules 2022, Financial Services and Markets Regulations 2015 and Anti-Money Laundering and Sanctions Rules and Guidance (AML).

Controlled activities include [Commercial Licensing Regulations (Controlled Activities) Rules 2022]:

1. financial services;
2. legal services;
3. accountancy services;
4. audit services;
5. insolvency practitioner services;
6. company services;
7. other economic activities.

For legal services, accountancy services, insolvency practitioners services, healthcare, providing company services it is mandatory to be licensed or authorised by an approved legal regulatory body to carry on activities of the kind which the applicant intends to carry on in the ADGM. DNFBP [Anti-Money Laundering and Sanctions Rules and Guidance (AML)]:

(a) a real estate agency, which carries out transactions with other persons that involve the acquiring or disposing of Real Property;

(b) a dealer in precious metals or precious stones;

(c) a dealer in any saleable item of a price equal to or greater than USD15,000;

(d) an accounting firm, audit firm, insolvency firm or taxation consulting firm;

(e) a law firm, notary firm or other independent legal business; or

- (f) a company service provider that carries out any of the following services to a customer:
- (i) acting as a formation agent of a Legal Person;
 - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to other Legal Persons or any other legal arrangement;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a Legal Person or any other legal arrangement;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; or
 - (v) acting as (or arranging for another Person to act as) a nominee shareholder for another person.

For legal services, accountancy services, insolvency practitioners' services, healthcare, providing company services **it is mandatory** to be licensed or authorised by an approved legal regulatory body to carry on activities of the kind which the applicant intends to carry on in the ADGM.

Pursuant to Article 11(6) of Abu Dhabi Law No. 4 of 2013, the RA, in addition to registering and licensing legal entities, is **the commercial regulator of the ADGM, responsible for monitoring and, where necessary, enforcing compliance with ADGM's commercial legislation.**

The scope of the RA's monitoring and enforcement function is broad as the RA is responsible for **monitoring** all ADGM licensed persons (financial, non-financial and retail businesses), auditors and insolvency practitioners, concerning a range of different commercial regulatory regimes, as applicable. The RA is also responsible for **administering and monitoring** the UAE's economic substance requirements in respect of ADGM licensed persons.

In turn, the Financial Services and Markets Regulations ("FSMR") establish the legislative and regulatory framework for financial services in ADGM. FSMR gives the Regulator a power to supervise DNFBPs' compliance with relevant Anti-Money Laundering laws in the State. FSMR also gives the Regulator a number of other powers in relation to DNFBPs, including powers of enforcement. This includes a power to obtain information and to conduct investigations into possible breaches of the FSMR. The Regulator may also impose fines for breaches of FSMR or the Rules. It may also suspend or withdraw the registration of a DNFBP in various circumstances.

Under an agreement with the FSRA, **the RA is also responsible for monitoring compliance with anti-money laundering requirements by ADGM licensed DNFBPs.**

For note:

An accounting firm, audit firm, insolvency firm or taxation consulting firm; a law firm, notary firm or other independent legal business; and a company service provider are among others treated as NFDBPs.

QFC

The QFC Law provides that no activities may be conducted in or from the QFC unless they fall within the general categories of Permitted Activities.

The Permitted Activities are divided in two types: Regulated Activities and non-Regulated Activities, as determined by QFC Law No. 7 of Year 2005. Not Regulated Activities include, among others, the business of providing professional services including audit, accounting, tax, consulting and legal services and the business of provision, formation, operation and administration of companies.

The QFC Authority Rules among other things deal with the licensing of firms to conduct non-Regulated activities and contain rules relating to the conduct of business, licensed firm assets and

compliance and enforcement. The QFC Authority currently licenses firms to provide non-Regulated services in or from the QFC.

When licensing applicants for non-Regulated Activities, a list of the professional bodies to which the Applicant is associated and/or regulated by is considered. Conduct of Business, Compliance and Enforcement procedures are determined by QFC Authority Rules and administered by the **QFC Authority**.

It is worth to mention, that in 2017 Legal Services Code, applied to all Legal Services Firms and all QFC Lawyers, and QFC Professional Accountants' Code, applied to all Accountancy Firms and QFC Accountants, were adopted by the QFC Authority as parts of the QFC Authority Rules.

Hong Kong

Legal Services

The legal profession in Hong Kong is self-regulated by the Bar Association and the Law Society. The Bar Association is a professional organisation of barristers in Hong Kong. It is governed by an executive committee known as the Bar Council. The Law Society is a professional association for solicitors (including trainee solicitors and foreign lawyers). **It is mandatory for barristers and solicitors to be members of the Bar Association and Law Society respectively.**

The Barristers Disciplinary Tribunal is an independent body, and it deals with cases referred by the Bar Council where a barrister acts in breach of the Bar Code. The Solicitors Disciplinary Tribunal is an independent body, and it deals with disciplinary cases brought by the Law Society against solicitors, registered foreign lawyers, trainee solicitors or an employee of a solicitor or a registered foreign lawyer in Hong Kong for alleged professional misconduct.

The provisions under the Drug Trafficking (Recovery of Proceeds) Ordinance/Organised and Serious Crimes Ordinance/ United Nations (Anti-Terrorism Measures) Ordinance in respect of, among other things, dealing with criminal proceeds, funding terrorist activities and suspicious transaction reporting, apply to every person in Hong Kong including the legal profession.

In addition, the Law Society has issued Practice Direction P "Guidelines on Anti-Money Laundering and Terrorist Financing". Any law firm or solicitor who fails to follow the mandatory elements of Practice Direction P can be subject to disciplinary proceedings. The mandatory requirements include rules on client identification and verification, client due diligence, record keeping and staff training. Since 1 March 2018, the customer due diligence and record-keeping requirements of the AMLO apply to legal professionals. The AMLO enables the Law Society, as the sole authority for enforcing AMLO requirements for legal professionals, to have the discretion to promulgate guidelines and determine the content of Practice Direction P. Practice Direction P has been revised with effect from 1 September 2018 in light of the amendments to the AMLO.

Audit services

The Hong Kong Institute of Certified Public Accountants ("HKICPA") as the professional body for certified public accountants in Hong Kong sets the standards for auditing and assurance and regulates the profession. HKICPA develops and issues Hong Kong Standards on Auditing ("HKSA"), which are converged with the Clarified International Standards on Auditing that are to be applied in audits of financial statements. All companies registered in Hong Kong are required to have their financial statements audited, and audits of financial statements have to be carried out in accordance with HKSA.

To be eligible to conduct an audit in Hong Kong, the auditor must be:

1. A member of the HKICPA;
2. Registered with the HKICPA;
3. Authorized by the HKICPA to conduct the evaluation process.

The roles and responsibilities of auditors vary depending on the type of audit being conducted. However, all auditors must:

1. Conduct the process following HKICPA standards;
2. Cooperate with the company during the audit process;
3. Report any irregularities or non-compliance to the HKICPA.

Accountancy services

The accountancy profession in Hong Kong is self-regulated under the Professional Accountants Ordinance (“PA Ordinance”) by the Hong Kong Institute of Certified Public Accountants (HKICPA).

Under the PA Ordinance, professional accountants in Hong Kong are designated as Certified Public Accountants (“CPA”) and Certified Public Accountants Practicing (CPA (Practicing)) for auditors. These designations are conferred by HKICPA. Membership and a practicing certificate issued by HKICPA is mandatory for auditors. The PA Ordinance also establishes the functions of the HKICPA, including maintaining a registry of all professional accountants and firms, regulating the practice of accountancy professionals by establishing quality assurance reviews and an investigation and discipline systems for members and member firms, setting ethical requirements for members, setting auditing and accounting standards to be applied in Hong Kong, and setting initial professional development and continuing professional development (“CPD”) requirements.

To qualify to become a professional accountant with the HKICPA, individuals have to complete the Qualification Program (“QP”) offered by HKICPA, which is made up of four technical modules that include technical workshops, a final examination of professional competence, and completing supervised practical experience. To qualify for the QP, a Bachelor’s degree in accounting from any Hong Kong tertiary institution, or an overseas degree, or other academic qualification accepted by HKICPA is required. Individuals who wish to practice as auditors are required to satisfy up to four-years of full-time approved work experience, pass relevant Practicing Certificate examinations in auditing, local law and taxation (if not qualified through the QP), and complete relevant CPD. Annual CPD is mandatory for all CPA’s.

Under the Professional Accountants Ordinance, the HKICPA is responsible for setting ethical requirements for professional accountants in Hong Kong.

Credit Rating services

The Securities and Futures Commission (“SFC”) is an independent statutory body which licences Type 10 regulated activity – providing credit rating services. The SFC will be guided by the Code of Conduct for Persons Providing Credit Rating Services (“CRA Code”) in considering whether a licensed or registered person satisfies the requirement that it/he is fit and proper to be or to remain licensed or registered. The CRA Code is based on the revised Code of Conduct Fundamentals for Credit Rating Agencies issued by the International Organization of Securities Commissions in May 2008 (“IOSCO Code”).

Only a staff member, who prepares credit ratings for a Credit Rating Agency (“CRA”), is required to be licensed. Marketing or business development activities are unlikely to be regarded as “providing credit rating services”.

In general, a CRA should not carry on any business which can reasonably be considered to have the potential to give rise to any conflict of interest in relation to its business of providing credit rating services. If the CRA intends to provide Ancillary Services, it should ensure its compliance with paragraph 30 of the CRA Code. In any event, a CRA is not allowed to provide the consultancy or advisory services to a rated entity, or its related party, regarding the corporate or legal structure, assets, liabilities or activities of that rated entity or related party.

Apart from being an analyst involved in the rating process of a CRA, experience acquired by an individual in relation to credit risk management of financial institutions, financial analysis, credit

analysis or bank's internal counterparty risk assessment would also be considered as relevant to "providing credit rating services".

Proposals

The analysis suggests that the AIFC may enhance its framework by:

- 1) Clarifying in which cases Schedule 1 (Decision-making procedures) of the FSFR apply;
- 2) Adding new provisions that will fill some current gaps;
- 3) Extending the AFSA's powers in certain aspects; and
- 4) Making the relevant editorial changes.

It is expected that the clarification of whether Schedule 1 of the FSFR applies will provide greater certainty to the users of the FSFR. As noted above, in comparison with the DIFC, there is currently no analogue of the RPP in the AIFC. The RPP aims to provide an understanding of how the DFSA functions and operates and what is expected from the regulated community.

Another benefit of specifying cases in which Schedule 1 to the FSFR applies is related to the development of the new legal frameworks. This implies that there could be more instances where the AFSA would need to make a decision. As not all of these decisions should be subject to the decision-making procedures, new subsections that indicate the application of Schedule 1 would provide a better understanding to the readers.

In addition, it is suggested to extend the AFSA's powers in relation to:

- making an order, issuing a direction or prohibition, or imposing a requirement in relation to any Person (not only in relation to Authorised Persons);
- the appointment or removal of an Auditor in relation to an Authorised Person;
- Ancillary Service Providers (from the supervisory powers' perspective since they are also licensed and should be supervised appropriately).

Other proposed amendments relate to making a Money Laundering Reporting Officer an Approved Individual (it is currently a Designated Individual) and some other editorial changes for consistency throughout the Act.

Besides, for the sake of consistency with other AIFC acts (e.g., Section 5(2) of the AIFC Companies Regulations) and making it clearer to a reader section 6 of the FSFR was amended to clarify that the expression "in the AIFC" should be read as if it includes the expression "from the AIFC". A such, any reference in the FSFR or any other rules under the AIFC financial services legal framework now should be read as "in or from the AIFC". This addition brings more clarity since the AIFC legal framework does allow the AIFC Participants to, for example, market or provide financial services to their clients and users who are based outside the territory of the AIFC.

ASP regime

As the analysis showed, in the jurisdictions where a financial regulator regulates ASPs, the financial regulatory law's scope covers ASPs. In those jurisdictions, where authorities other than a financial regulator do regulate ASPs/DNFBPs, separate ASP framework is adopted.

Since the AFSA is a single regulator for Financial Services and Ancillary Services in the AIFC, it is proposed to expand the FSFR.

To enhance the AIFC ASP framework in accordance with the recommendations in the self-assessment against IOSCO principles, the AFSA proposes to adopt a number of amendments, mainly to the AIFC Financial Services Framework Regulations ("FSFR") and, additionally, to the

AIFC General Rules and AIFC Conduct of Business Rules to extend supervisory powers of AFSA to ASPs.

The draft rules and amendments to the FSFR are similar to the DIFC legal framework for ASP regulation, namely some provisions of the DIFC Regulatory Law 2004 related to the DNFBPs. From the analysis of the provisions existing in the DIFC it is concluded that they correspond to the requirements of the recommendations in the IOSCO self-assessment report. The DIFC legal framework has also been chosen due to the similarity of their legal framework with existing legal framework in the AIFC.

(1) AIFC FSFR

The suggested amendments include specification of the AFSAs' supervisory powers to act as a supervisory authority and apply supervisory powers and tools over ASPs:

- (a) clarification on withdrawal of ASP Licence application by an applicant;
- (b) clarification on the AFSA powers to grant or reject ASP Licence application;
- (c) extension of the AFSA supervisory powers (Part 8: Supervision) in relation to ASPs:
 - power to gather information;
 - power to require a production of report;
 - power to restrict, withdraw or suspend a Licence;
 - power to impose a prohibition and requirement;
 - power to obtain information and documents for investigation;
- (d) clarifications on obligations of ASPs:
 - obligation of disclosure to AFSA;
 - obligation to comply with an order or requirement of the AFSA;
 - obligation of an ASP to provide an annual activity report;
 - obligation not to engage in conduct that is intended to obstruct the AFSA;
- (e) clarification on no liability for provision of information or documents to the AFSA;
- (f) editorial amendments.

(2) Amendments to the AIFC Rules

In addition, certain amendments are proposed to the AIFC General Rules and AIFC Conduct of Business Rules related to the licensing of Legal Services Providers.

AIFC General Rules

It is proposed to add new subrule "Effective supervision" in relation to the ASPs. 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 the nature, including the complexity, of the Ancillary Services that the applicant will carry on; and the way in which the applicant's business is organised; and (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 whether the applicant is subject to consolidated supervision.

It is suggested to extend conflict of interest and record keeping obligation to the ASPs. It is also proposed to extend "Guidance: Exercise of supervisory powers by the AFSA", "core information", "regulatory impact", "fraud and errors", "winding up, bankruptcy and insolvency", "accuracy of information", "correction of inaccurate information" subrules to the ASPs

It is suggested to make amendments to AIFC General Rules on replacing a statutory requirement in registration of at least 1 legal adviser for Legal Services Providers to be eligible to receive and maintain a Licence from the AFSA to Provide Legal Services in the AIFC with all legal advisers employed by Legal Services Providers starting from 1 January 2024.

This proposal is based on practices of regulation of legal profession in common law countries, including Hong Kong. It aims to further enhance standards of ethics and conduct on ASPs providing Legal Services in the AIFC. Legal Consultants employed by ASPs in the AIFC will continue to be regulated by the AIFC Legal Services Board.

Other Ancillary Services were considered whether any special rules are needed to be adopted. Considering practice of the DIFC, ADGM, and the QFC, any special rules related to Accountancy, Consulting, and Credit Rating Services are not proposed at this stage of the AIFC development.

AIFC Conduct of Business Rules

It is proposed to supplement Part 13 “Ancillary Service Providers” with 2 more principles of conduct for ASPs:

1. “Conflicts of Interest” to ensure that conflicts of interest between itself and its Clients, between its Employees and Clients and between one Client and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a Client are not adversely affected; and
2. “Complaints” to ensure that Complaints made against it by Clients are handled fairly, consistently and promptly.

AFSA Glossary

Editorial amendments – replacing “Constitutional Law” term with “Constitutional Statute” term and replacing the word 'shall' with the word 'must'.

AIFC Fees Rules

Editorial amendments – dealing with typo, replacing words “modify”, “modification” with words “vary”, “variation”.

For the sake of consistency, it is also proposed that to use the same drafting style when some expressions are used. For example, the AFSA “makes a decision”, “issues, varies or withdraws a Licence”, “withdraws an Approved Individual status”, “gives a direction”, “revokes a direction”, “withdraws a condition or restriction”, etc. In this regard, it is suggested to replace the word used in the expression “revoke a Licence” (used only once in section 41 of the FSFR) with the word “withdraw”.

Such approach is consistent with the drafting styles used in peer jurisdictions. For example, there are 4 instances in the DIFC Regulatory Law where the word “revoke” was used (in relation to a direction, requirement and recognition). There are only 1 instance in the QFC’s Financial Services Regulations where the word “revoke” was used (in relation to a written notice).

The word “withdrawal” is used (both in case of the applicant and regulator) in the QFC and DIFC in the context of the Licence (Authorisation).

The approach used in the Financial Services and Markets Act 2000 follows the same approach as the word “revoke/revocation” is used in relation to requirements, recognition, directions, authorisation orders” but not in relation to licences/authorisations. The word “withdrawal” is used in section 33 in terms of the authorisation (licence).

Public consultation questions

In the course of public consultation, existing and potential market participants will be invited to comment on the following questions:

1. Do you agree with our proposal to clearly state where Schedule 1 of the FSFR applies? If not, why not?
2. Do you agree with the introduction of new sections?

3. Do you agree with our proposals in relation to Ancillary Service Providers? If not, why, and what alternative(s) would you suggest?
4. Do you consider that the FSFR should include provisions providing for passporting of licensees from other jurisdictions or whether such matters should be dealt with by way of class orders/waivers and operational arrangements of the AFSA?

Outcomes

As a result of the proposed amendments, the AFSA will fill certain gaps and clarify powers to give certainty to AIFC Participants. Additionally, the proposed amendments will bring in line the FSFR with its counterparts in other peer jurisdictions.

ASP regime

From the ASP regime's perspective, the AFSA will address the shortcomings identified in the preliminary review of its legal regime and as noted in recent assessment exercises. It is expected that the ASPs regulatory framework clarifications will make the AIFC jurisdiction more aligned with the applicable international standards of, in the first instance, Ancillary Services, including DNFBPs.

Enhancement of the ASPs regulatory framework will also help the AIFC to continue positioning itself as a financial centre compliant with the highest international standards, bringing more economic activity to the centre and reaffirming its existing commitments to those international standards.

PROPOSED AMENDMENTS TO THE AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS

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

CONTENTS

40. Application for a License to carry on Ancillary Services

(...)

~~PART 8: SUPERVISION OF AUTHORISED PERSONS~~

(...)

CHAPTER 2 – Obligations of Authorised Persons and Ancillary Service Providers

(...)

3. Application

(1) These Regulations apply in the AIFC.

(2) Where the AFSA makes an order, issues a direction or prohibition, or imposes any requirement in relation to a Person pursuant to a provision of these Regulations or Rules or legislation administered by the AFSA, such Person must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

6. Meaning of “in the AIFC”

(1) A Person will be deemed to be carrying on activities in the AIFC for the purposes of these Regulations if:

(a) that Person is a Centre Participant and the day-to-day management of those activities (even if those activities are undertaken in whole or in part from outside the AIFC) is the responsibility of the Centre Participant in its capacity as such; or

(b) that Person’s head office is outside the AIFC but the activity is carried on from a branch maintained by it in the AIFC; or

(c) the activities are conducted in circumstances that are deemed to amount to activities carried on in the AIFC under Rules made by the AFSA.

(2) The AFSA may issue Rules and guidance as to the circumstances in which activities capable of having an effect in the AIFC are or are not to be regarded as conducted in the AIFC.

(3) The expression “in the AIFC” means “in or from the AIFC”. Any reference to the expression “in the AIFC” in these Regulations and rules made thereunder means the expression “in or from the AIFC”.

7. Main functions, powers and objectives of the AFSA

(...)

(3) In performing its functions and exercising its powers, the AFSA will pursue the following objectives (“the Regulatory Objectives”):

(a) the regulation, control and supervision of financial activities in the AIFC by Centre Participants with a view to the maintenance of the safety and soundness of the financial system within the AIFC;

(b) ensuring that financial markets in the AIFC are fair, efficient, transparent and orderly;

(c) creating fair, transparent and non-discriminatory conditions for Centre Participants;

(d) fostering and maintaining confidence in the AIFC’s financial system and regulatory regime;

(e) fostering and maintaining the financial stability of the AIFC’s financial services industry and capital markets, including the reduction of systemic risks;

(f) preventing, detecting and restraining actions, including the Financial Crime, 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;

(g) protecting interests of investors and users of financial services;

(h) implementing in the AIFC a regulatory regime that complies with international standards in the sphere of regulation of financial services;

(i) fostering the development of financial technologies in the AIFC; and

- (j) pursuing such other objectives as may be specified by AIFC's Regulations from time to time.
- (4) The AFSA may prepare and make available forms for any purpose under these Regulations or Rules made hereunder and may give instructions for their completion.

7A. Principles of good regulation

In performing its functions and exercising its powers under the Acting Law of the AIFC and these Regulations, the AFSA must have regard to:

- (a) the need to use its resources in the most economic and efficient way;
(b) the desirability of facilitating innovation and fostering the international competitiveness of the AIFC;
(c) the desirability of fostering competition between those who are subject to regulation by the AFSA;
(d) the principle that the AFSA should exercise its powers and functions in a fair and transparent manner;
(e) the need to comply with such generally accepted principles of good governance as it is reasonable to regard as applicable to it;
(f) the need to balance the burdens and restrictions on firms with the benefit of regulation; and
(g) the need to act in accordance with all laws and Regulations to which it is subject.

(...)

8A. Power of the AFSA to give Guidance

(1) The AFSA may, on the application of Person(s) or on its own initiative, give Guidance consisting of such information and advice as it considers appropriate:

- (a) with respect to the operation of specified parts of these Regulations, any Regulations and any Rules which the AFSA administers;
(b) with respect to any matter relating to functions of the AFSA;
(c) for the purpose of meeting the Regulatory Objectives; and
(d) with respect to any matters about which it appears to the AFSA to be desirable to give the relevant information or advice.

(2) Guidance issued by the AFSA may be given to Persons generally, to a class of Authorised Persons or Ancillary Service Providers, or to any Authorised Person or Ancillary Service Provider or other Person individually.

(3) Unless otherwise indicated by the AFSA, Guidance issued by the AFSA is indicative of the view of the AFSA at the time and in the circumstances in which it was given and is non-binding.

(4) Unless the AFSA is satisfied that it is inappropriate or unnecessary to do so, it must publish Guidance in a way the AFSA considers appropriate for bringing Guidance to the attention of:

- (a) Persons(s) likely to be affected by it; and
(b) others who may be likely to become subject to similar guidance.

9. AFSA power to modify, waive or grant relief

(...)

(2) The AFSA must not ~~give~~make a direction under (1)(a) unless it is satisfied that:

(...)

(2-1) The AFSA ~~must~~shall make public by way of guidance the criteria applicable to ~~the making of giving~~ directions under (1)(b) after the date of publication of the guidance.

(...)

11. Appeals against decisions of the AFSA, and the AFSA's statutory immunity

(...)

(4) Neither the AFSA nor any Person who is, or is acting as, a director, officer or member of staff of the AFSA ~~must~~shall be held liable for anything done or omitted to be done in the performance or purported performance of its functions, or in the exercise or purported exercise of its powers, under these Regulations or any other AIFC Regulations or Rules, unless the act or omission is shown to have been done in bad faith.

20. Definition of Controlled Function

(...)

(2) Controlled Functions prescribed under section 20(1) may include the functions of senior officers or ~~E~~employees with material responsibility for both or either:

(...)

35. Grant or rejection of application

(...)

(3) Where the AFSA rejects an application for ~~A~~authorisation or variation or withdrawal of an ~~A~~authorisation, the AFSA will inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal, and of the applicant's right to appeal that decision to the AIFC Court.

(4) If the applicant requests the AFSA to provide the reasons for refusal, the time for instituting an appeal stops and resumes after the AFSA provides the reasons for refusal.

38. Grant or rejection of application

(...)

(3) Where the AFSA rejects an application under section 36, the AFSA will inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal, and of the applicant's right to appeal that decision to the AIFC Court.

(3A) If the applicant requests the AFSA to provide the reasons for refusal, the time for instituting an appeal stops and resumes after the AFSA provides the reasons for refusal.

39. Exemption for Authorised Market Institutions

(...)

~~(3) An Authorised Digital Asset Trading Facility is exempt from the General Prohibition in respect of any Regulated Activity: ***[intentionally omitted]***~~

~~(a) which is carried on as a part of the Authorised Digital Asset Trading Facility's business as a Digital Asset trading facility; or ***[intentionally omitted]***~~

~~(b) which is carried on for the purposes of, or in connection with, the provision by the Authorised Digital Asset Trading Facility of services designed to facilitate the provision of clearing services by another Person. ***[intentionally omitted]***~~

CHAPTER 3 – Licensing of Ancillary Service Providers

40. Application for a Licence to carry on Ancillary Services

(1) A Person may apply to the AFSA for a Licence permitting a Centre Participant to carry on one or more Ancillary Services.

(2) An Ancillary Service Provider may apply to the AFSA to extend, vary, or withdraw its Licence to carry on Ancillary Services. The applicant for a Licence or its variation or withdrawal may withdraw its application by giving the AFSA notice at any time before the AFSA issues, varies or withdraws the Licence or rejects the application.

(...)

40A. Grant or rejection of application

(1) The AFSA may:

(a) grant an application under section 40, either without conditions, restrictions or requirements or with such conditions, restrictions or requirements as it considers appropriate; or

(b) reject the application.

(2) Where the AFSA grants an application under section 40, the AFSA will notify the applicant of:

(a) such decision;

(b) the date on which the Licence will be deemed to take effect;

(c) the Ancillary Service or Ancillary Services that the applicant is authorised to carry on; and

(d) any conditions and restrictions applicable to the Licence.

(3) Where the AFSA rejects an application under section 36, the AFSA will inform the applicant in writing of such refusal and, where requested by the applicant, the reasons for such refusal, and of the applicant's right to appeal that decision to the AIFC Court.

(4) If the applicant requests the AFSA to provide the reasons for refusal, the time for instituting an appeal stops and resumes after the AFSA provides the reasons for refusal.

(5) The AFSA may vary the terms of a Licence granted by it under this section, either on the application of the Ancillary Service Provider or upon its own initiative.

41. Criteria for the grant of a Licence to carry on Ancillary Services

(1) The AFSA may only grant a Licence permitting a Centre Participant to carry on one or more Ancillary Services if it is satisfied that the Centre Participant is fit and proper.

(2) The AFSA may prescribe by Rules:

(a) the Centre Participants or class of Centre Participants who may be permitted to carry on Ancillary Services;

(b) the requirements for the grant of such a Licence; and

(c) the circumstances in which the AFSA may ~~withdraw~~~~revoke~~ such a Licence.

44. Grant or rejection of application

(...)

(3) Where the AFSA rejects an application for approval or variation of an approval under section 42, the AFSA will inform the Authorised Person in writing of such refusal and, where requested by the Authorised Person, the reasons for such refusal, and of the Authorised Person's right to appeal that decision to the AIFC Court.

(4) If the Authorised Person requests the AFSA to provide the reasons for refusal, the time for instituting an appeal stops and resumes after the AFSA provides the reasons for refusal.

45. Residency requirement for ~~Authorised~~Approved Individual

The AFSA may require where it considers appropriate in particular circumstances an Authorised Person to ensure that a particular Controlled Function is carried on by an ~~Authorised~~ Approved Individual who is resident in the Republic of Kazakhstan.

45A. Suspending or withdrawing Approved Individual status

(1) If the AFSA reasonably concludes that:

(a) an Approved Individual is in breach of, or has been in breach of, an obligation that applies as a result of such individual's Approved Individual status; or

(b) an individual is no longer fit and proper to perform a role in respect of which he is an Approved Individual;

it may either restrict the individual from carrying on a Controlled Function or suspend or withdraw the Approved Individual status from such individual.

(2) The AFSA may withdraw the Approved Individual status of an individual if:

(a) the individual becomes bankrupt;

(b) the individual is convicted of a serious criminal offence;

(c) the individual becomes incapable (through mental or physical incapacity) of managing his affairs;

(d) the individual or the relevant Authorised Person requests the AFSA to withdraw the relevant status;

or

(e) the Licence of the relevant Authorised Person is withdrawn.

(3) Where the AFSA:

(a) is conducting an investigation under section 114; and

(b) in the course of such investigation believes on reasonable grounds that an individual has engaged in serious misconduct that may form grounds for the withdrawal of the individual's Approved Individual status;

it may suspend the Approved Individual status of such individual for the duration of the investigation or related proceedings insofar as such investigation or proceedings relate to the individual.

(4) An individual commits a contravention if the individual carries on a Controlled Function:

(a) in breach of a provision in these Regulations or any Rules or legislation administered by the AFSA that applies to that individual;

(b) contrary to a restriction imposed under subsection (1); or

(c) where his Approved Individual status has been suspended or withdrawn under subsections (1), (2) or (3).

(5) The AFSA may vary or withdraw a restriction or suspension imposed under this section where it is reasonable to do so.

(6) the AFSA may act under subsection (5) on its own initiative or at the request of the relevant individual or Authorised Person.

(7) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

49. Rules governing eControllers

The AFSA may make Rules in connection with the change of control of Authorised Persons incorporated in the AIFC, including Rules as to:

- (a) when a Person becomes or ceases to be a Controller of an Authorised Person;
- (b) when the acquisition or increase in the level of control of an Authorised Person requires either the prior approval of, or notification to, the AFSA;
- (c) when the AFSA is likely object to an existing Controller;
- (d) the procedures relating to the approval, notification and objections referred to in section 49(b) and 49(c); and
- (e) any other matter necessary or incidental to give effect to the provisions governing eControllers.

50. Powers of the AFSA in respect of Controllers

(1) Without limiting the generality of the AFSA powers, the AFSA may:

- (a) approve or object to a Person becoming a Controller of an Authorised Person incorporated in the AIFC;
 - (b) approve or object to an increase in the level of control of an existing eController of an Authorised Person incorporated in the AIFC;
 - (c) object to an existing eController of an Authorised Person incorporated in the AIFC where it has reasonable grounds to believe that such a Person is no longer an acceptable eController; and
 - (d) approve a Person as a Controller or approve an increase of control by an existing Controller subject to such conditions as it considers appropriate.
- (...)

57. AFSA power to impose requirements on an Authorised Market Institution

Without limiting the powers available to the AFSA under Part 8 (~~Supervision of Authorised Persons~~), the AFSA may direct an Authorised Market Institution to do or not do specified things that the AFSA considers are necessary or desirable or to ensure the integrity of the AIFC financial markets, including but not limited to directions:

- (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution; or
- (b) requiring an Authorised Market Institution to act in a specified manner in relation to a transaction conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or
- (c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made; ~~or~~
- (d) ~~excluding the application of any requirements for engaging in the activity of Operating a Digital Asset Business imposed by the Rules; or~~ ***[intentionally omitted]***
- (e) ~~imposing on an Authorised Person engaged in the activity of Operating a Digital Asset Business any additional requirements that the AFSA considers appropriate.~~ ***[intentionally omitted]***

68. Suspending and delisting Securities or Units in a Listed Fund from an Official List

(...)

(3) The AFSA may ~~revoke~~~~withdraw~~ a direction ~~given~~~~made~~ under section 68(2) at any time.

(...)

71. AFSA power to authorise omission of information

The AFSA may authorise the omission from the Prospectus, or constituent parts thereof, of certain information to be included therein, where it considers that any of the following conditions is met:

- (a) disclosure of such information would be contrary to the public interest;
- (b) disclosure of such information would be seriously detrimental to the Issuer or to the guarantor, if any, provided that the omission of such information would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the Issuer or guarantor, if any, and of the rights attached to the Ssecurities to which the prospectus relates;
- (c) such information is of minor importance in relation to admission to trading on an Authorised Investment Exchange and would not influence the assessment of the financial position and prospects of the Issuer or guarantor, if any.

77. Defence of reasonable reliance on information given by another Person

(1) A Person does not commit a contravention of section 75(1) if the Person proves that he placed reasonable reliance on information given to him by:

- (a) if the Person is not a natural person, someone other than a member of the Governing Body, or Employee or agentrepresentative of the Person; or
- (b) if the Person is a natural person, someone other than an Employee or agentrepresentative of the natural person.

(2) For the purposes of this Part, a Person is not the agentrepresentative of a Person merely because he performs a particular professional or advisory function for the Person.

78. Statements about future matters

(1) A Person is taken to make a misleading or deceptive statement about a future matter ~~whether by himself or through his agent,~~ if he, at the time of making the statement or causing the statement to be made, did not have reasonable grounds for making the statement or causing the statement to be made.

(...)

84. Financial reports

The AFSA may prescribe by Rules:

- (a) financial reports to be filed by a Reporting Entity; and
- (b) audit requirements to be observed by a Reporting Entity.

CHAPTER 8 – Prevention of Market Abuse

86. Market Abuse

A Person must not:

(...)

(d) effect, or participate in effecting, transactions or orders to trade (otherwise than for legitimate reasons in conformity with accepted market practice on the relevant market) which:

- (i) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price or value of, one or more Investments; or
- (ii) secure the price of one or more Investments at an abnormal or artificial level; or

(...)

CHAPTER 10 – Recognition

89. Recognition of Non-AIFC Market Institutions

(...)

(3) The AFSA may make an order referred to in subsection (1) if, having regard to the law and practice of the country or territory in which the applicant's head office is situated and to the rules and practice of the applicant, it appears to the AFSA that the following requirements are met:

(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with the relevant requirements for the licensing of an Authorised Market Institution in ~~Chapter 2~~ of Part 3;

(...)

91. Recognised Non-AIFC Member

(...)

(3) The AFSA may make an order referred to in subsection (1) if, the applicant satisfies the AFSA that the following requirements are met:

(a) the applicant is licensed or otherwise authorised to trade on or use the facilities of an exchange or clearing house in a jurisdiction acceptable to the AFSA;

(b) the applicant is regulated in respect of trading in such jurisdiction by a regulator to a standard satisfactory to the AFSA;

(c) the law and practice under which the applicant is licensed or otherwise authorised is broadly equivalent to the AFSA's regulatory regime as it applies to a Member;

(d) when using the facilities of an Authorised Investment Exchange, ~~or~~ Authorised Clearing House, MTF Operator, OTF Operator, or Digital Asset Trading Facility Operator the applicant does not exceed the scope of the activities it is authorised to carry on by those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated;

(e) the applicant has agreed to cooperate with the AFSA and subject itself to such parts of the legal and regulatory framework administered by the AFSA as the AFSA may require.

(...)

94. Power to givemake directions in respect of Collective Investment Schemes

(...)

PART 8: SUPERVISION OF ~~AUTHORISED PERSONS~~

CHAPTER 1 – Supervisory powers of the AFSA

95. Exercise of supervisory powers by the AFSA

(...)

(3) Where the AIFC has exercised one or more of the powers set out in this Chapter it may, where it considers it necessary or desirable to do so in accordance with its Regulatory Objectives:

(a) withdraw a prohibition, restriction, ~~or~~ requirement, or decision to exercise any of its supervisory powers; or

(b) substitute or vary an existing prohibition, restriction, ~~or~~ requirement, or decision to exercise any of its supervisory powers.

(...)

96. Power to gather information

(1) The AFSA may, by notice in writing, require an Authorised Person, Ancillary Service Provider, Approved Individual, Designated Individual or any other Director, Employee or representative agent of an Authorised Person or Ancillary Service Provider to:

(...)

(2) The AFSA may require an Authorised Person or Ancillary Service Provider to allow the AFSA to enter its premises during normal business hours or at any other time as may be agreed for the purpose of inspecting and copying information or documents stored in any form on such premises, as it considers necessary or desirable to meet the Regulatory Objectives of the AFSA.

97. Power to require a production of a report

(1) The AFSA may, by notice in writing, require an Authorised Person; or Ancillary Service Provider to provide the AFSA with a report on any matter as the AFSA considers necessary or desirable to meet the objectives of the AFSA.

(2) The Person appointed to make a report required by section 97(1) must be a Person nominated or approved by the AFSA.

(3) Where a requirement has been made of an Authorised Person or Ancillary Service Provider under this section, the Authorised Person or Ancillary Service Provider must take all reasonable steps to ensure that:

(a) any Person who is providing or has provided services to the Authorised Person or Ancillary Service Provider must provide all such assistance as the appointed Person may reasonably require; and
(b) the appointed Person co-operates with the AFSA.

(4) The obligation in section 97(1) is enforceable on application by the AFSA to the AIFC Court.

(5) The costs of providing a report under section 97(1) will be borne by the Authorised Person, or Ancillary Service Provider to whom a notice has been given under section 97(1).

(...)

98. Power to restrict, withdraw or suspend a Licence

(1) The AFSA may:

(a) impose or vary such conditions, restrictions and requirements on a Licence as the AFSA considers appropriate; or

(b) withdraw an Authorised Person's Licence or vary its Licence to remove one or more Regulated Activities or Market Activities; or

(ba) withdraw an Ancillary Service Provider's Licence or vary its Licence to remove one or more Ancillary Services; or

(c) suspend an Authorised Person's Licence in relation to one or more Regulated Activities or Market Activities; or

(ca) suspend an Ancillary Service Provider's Licence in relation to one or more Ancillary Services.

(2) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

99. Power to impose a prohibition

(1) The AFSA may prohibit an Authorised Person or Ancillary Service Provider from:

(a) entering into certain specified transactions or types of transactions; or

(b) soliciting business from certain specified Persons or types of Persons; or

(c) carrying on business in a specified manner or other than in a specified manner; or

(d) using a particular name or description in respect of the Authorised Person or Ancillary Service Provider; or

(e) dealing with any relevant property in a specified manner or other than in a specified manner; or

(f) assisting, counselling or procuring another Person to deal with any relevant property in a specified manner or other than in a specified manner.

(2) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

99A. Power to issue directions for prudential purposes and capital requirements

(1) For prudential purposes and capital requirements, the AFSA may direct that an Authorised Person or Authorised Persons within a specified class (including but not limited to):

(a) comply with any specified additional capital or liquidity requirements;

(b) apply a specific provisioning policy or treatment of specified assets;

(c) comply with specified limits on material risk exposures;

(d) comply with specified limits on exposures to related parties;

(e) meet additional or more frequent reporting requirements; or

(f) take such other action as is specified in the direction.

(2) The AFSA may direct an Affiliate of an Authorised Person to take specified steps or not to carry out specified activities if the AFSA:

(a) is the consolidated supervisor of the Group to which the Authorised Person belongs; and

(b) is satisfied that the direction is necessary or desirable for the purposes of the effective prudential supervision of the Group on a consolidated basis.

(3) A direction to an Affiliate under subsection (2) may include a requirement that the Affiliate:

(a) limit any activities it undertakes or may undertake (including closing any office which is outside the jurisdiction in which it has its principal place of business and head office) if the activities are reasonably likely to expose the Authorised Person or its Group to excessive risks or risks that are not properly managed; or

(b) take such other measures as are necessary to remove any impediments to effective supervision of the Group on a consolidated basis, including a direction to take steps to restructure the Group.

- (4) Nothing in this section limits the scope or application of any other power that the AFSA may have in these Regulations, any Rules or Regulations or legislation administered by it.
- (5) A direction issued under this section comes into force on the date specified in it and remains in force, subject to subsection (7), until it is revoked or varied in writing by the AFSA pursuant to subsection (6).
- (6) The AFSA may withdraw or vary any direction given pursuant to this section.
- (7) A direction issued to Authorised Persons within a specified class under subsection (1), including any variation made to such a direction according to subsection (6), may not remain in force for a period longer than 12 months from the date specified in the initial direction issued according to subsection (1).
- (8) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this decision.

100. Power to impose a requirement

- (1) The AFSA may require an Authorised Person or Ancillary Service Provider to:
- take or refrain from taking such action as the AFSA considers appropriate;
 - carry on business in, and only in, a specified manner;
 - deal with any relevant property in a specified manner;
 - deal with any relevant property such that:
 - the property remains of a value and in a condition that appears to the AFSA to be desirable with a view to ensuring that the Person will be able to meet its liabilities in relation to the business which constitutes a Regulated Activity for which it holds a Licence or Ancillary Service; and
 - the Person is able at any time to transfer or dispose or otherwise deal with the property when instructed to do so by the AFSA.
- (...)
- (3) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

CHAPTER 2 – Obligations of Authorised Persons and Ancillary Service Providers

102. Obligation of disclosure to the AFSA

- (1) Subject to (2), an Authorised Person or Ancillary Service Provider must disclose to the AFSA anything which reasonably tends to show:
- a breach, or likely breach of a provision of legislation administered by the AFSA; or
 - a failure, or likely failure, to comply with any obligation to which a Person is subject under such legislation; or
 - any other matter as the AFSA may prescribe in Rules;
- which may be attributable to the conduct of the Authorised Person or Ancillary Service Provider or their Directors, officers, Employees or representatives ~~agents~~.
- (...)
- (3) An Authorised Person or an Ancillary Services Provider must establish and implement appropriate systems and internal procedures to enable its compliance with section 102(1).
- (4) Any provision in an agreement between an Authorised Person, Ancillary Service Provider and a ~~Director, officer, eEmployee, representative agent~~ or auditor thereof is void in so far as it purports to hinder compliance with an obligation under section 102(1).
- (5) No Person may be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an Authorised Person or Ancillary Service Provider to comply with an obligation under section 102(1).
- (...)

103. Obligation to comply with an order or requirement of the AFSA

Where the AFSA makes an order, issues a direction or prohibition, or makes any requirement in relation to an Authorised Person or Ancillary Service Provider pursuant to a provision of ~~this Law~~ these Regulations or Rules or legislation administered by the AFSA, such Authorised Person or Ancillary Service Provider must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

104. Provision of information to the AFSA

- (1) An Authorised Person and Ancillary Service Provider must not:
- (...)

(2) An Ancillary Service Provider must provide to the AFSA an activity report using the appropriate form specified by the AFSA on an annual basis.

105. Obstruction of the AFSA

An Authorised Person or Ancillary Service Provider must not engage in conduct that is intended to obstruct the AFSA in the exercise of any powers under this Part or Part 9 (Enforcement), including without limitation the:

(...)

106. No liability for provision of information or documents to the AFSA

An Authorised Person, an Ancillary Service Provider, an Approved Individual, a Designated Individual or any other Employee or Director of an Authorised Person or an Ancillary Service Provider is neither liable to a proceeding, nor subject to a liability, nor in breach of any duty, merely by reason of:

(...)

107. Self-incrimination

(...)

pursuant to any requirement under either this Part 8 (Supervision of ~~Authorised Persons~~) or 9 (Enforcement) on the grounds that any such information or document or answer, as the case may be:

(...)

109. Requirement to appoint an Auditor

(1) An Authorised Person must appoint an Auditor.

(2) The AFSA may direct, or the AIFC Court on an application made by the AFSA may order, an Authorised Person to:

(a) appoint an Auditor, where an Auditor has not been appointed by the Authorised Person; or

(b) remove an Auditor and appoint a new Auditor, where in the opinion of the AFSA or the AIFC Court (as the case may be) the Auditor appointed by the Authorised Person is not suitable to provide Audit Services to the Authorised Person.

(3) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

111. Relevant Transfer

The AFSA may provide by Rules that the transfer of the business of carrying on specified Regulated Activities by an Authorised Firm (a "Relevant Transfer") either:

(a) may only be made by an order of the AIFC Court under section 1130; or

(b) may be made by such an order if the transferor elects.

113. Powers of the Court in relation to a transfer scheme

(1) The AIFC Court may make an order under this section sanctioning a Relevant Transfer if:

(a) any directions ~~made~~given by the ASFA pursuant to section 112(2) have been complied with;

(...)

116. Powers to Obtain Information and Documents for Investigation

(1) Where the AFSA considers that a Person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:

(a) enter the business premises of such Person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;

(b) require such Person, by written notice, to

(i) give, or procure the giving of, specified information in such form as it may reasonably require; or

(ii) produce, or procure the production of, specified documents; or

(iii) to attend before an officer, or Employee or agent of the AFSA at a specified time and place to answer questions in private (compulsory interview); or

(iv) give it any assistance in relation to the investigation which the Person is able to give.

(...)

(5) The AFSA may exercise its powers under section 116(1) in respect of any Person within, or outside of, the AIFC provided that, if the Person is outside the AIFC and is not an Authorised Person, Ancillary Service Provider or Approved Individual, the AFSA will either:

(...)

118. Sanctions for contraventions

- (1) If the AFSA considers that a Person has committed a Contravention, it may:
- (a) fine the Person such amount as it considers appropriate in respect of the contravention; and/or
 - (b) censure the Person in respect of the contravention; and/or
 - (c) ~~make give~~ a direction requiring the Person to effect restitution or compensate any other Person in respect of the contravention within such period and on such terms as the AFSA may direct; and/or
 - (d) ~~make give~~ a direction requiring the Person to account for, in such form and on such terms as the AFSA may direct, such amounts as the AFSA determines to be profits or unjust enrichment arising from the contravention; and/or
 - (e) ~~make give~~ a direction requiring the Person to cease and desist from such activity constituting or connected to the contravention as the AFSA may stipulate; and/or
 - (f) ~~make give~~ a direction requiring the Person to do an act or thing to remedy the contravention or matters arising from the contravention; and/or
 - (g) ~~make give~~ a direction restricting or prohibiting the Person from holding office in or being an Director or Employee of any Authorised Person or Ancillary Service Provider.
- (2) Nothing in this section prevents the AFSA from exercising any other power that it may exercise under any legislation administered by it.
- (3) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

123. Compulsory Winding up

- (1) The AFSA may present a petition to the AIFC Court for the winding up of an Authorised Person or Ancillary Service Provider.
- (2) On such a petition, the AIFC Court may wind up the Authorised Person or Ancillary Service Provider if it is of the opinion that it is just and equitable that it should be wound up.

125. Injunction – investigations and proceedings

- (...)
- (g) in the event that the relevant Person is a natural pPerson
- (...)

130A. Procedural irregularities

- (1) A procedure under these Regulations or any other Rules or Regulations is not invalidated because of any procedural irregularity unless the AIFC Court declares the procedure to be invalid.
- (2) For the purposes of this Section:
- (a) procedure includes the making of a decision, the conduct of a hearing, the giving of the relevant notice, and any proceedings (legal or otherwise); and
 - (b) procedural irregularity includes a reference to a defect, irregularity or deficiency of notice or time.

PART 10: CONFIDENTIALITY

131. Confidential information

- (1) For the purposes of these Regulations, information is confidential if it is received by the AFSA or an officer, ~~Eemployee,~~ or delegate or agent of the AFSA in the exercise of a function under these Regulations or any other AIFC Regulations or Rules.
- (...)

132. General prohibition on disclosure

- (1) Subject to subsection (2), confidential information must not be disclosed to a third party by the AFSA or by an officer, ~~Eemployee,~~ or delegate or agent of the AFSA, or by any Person coming into possession of the information, without the consent of the Person to whom the duty of confidentiality is owed.
- (2) The AFSA may disclose confidential information where such disclosure:
- (a) is permitted or required under these Regulations or under any other AIFC Regulations or Rules;
 - (b) is made to any of the authorities listed in CO-OP for the purpose of assisting the exercise by any such authority of its regulatory functions; or
 - (c) is made in good faith for the purposes of the exercise of the functions and powers of the AFSA.
- (3) A Contravention in bad faith of subsection (1) by an officer, ~~Eemployee,~~ delegate or agent of the AFSA, or by any other Person coming into possession of the information shall be punishable by a fine

of such amount as it considers appropriate in respect of the Contravention up to a maximum fine of \$10,000 and/or disciplinary proceedings. The AFSA may seek injunctive relief where appropriate.

(4) The AFSA may make Rules for the purpose of ensuring the confidentiality of information received in the exercise of a regulatory function.

132A. Prohibition on disclosure for Person

A Person who received from the AFSA any notice, decision, direction, order, request or warning, which is marked as confidential, must not disclose the existence and content of such notice, decision, direction, order, request or warning to any third party except for obtaining any necessary professional advice in relation to his rights and obligations.

PART 11: CO-OPERATION AND EXCHANGE OF INFORMATION

133. Regulatory co-operation

(...)

(2) The AFSA ~~must~~shall implement policies and procedures to ensure that it:

(...)

PART 12: Miscellaneous

134. Public Registers

(1) The AFSA must publish and maintain a register of current and past grants, withdrawals and suspensions of Licences of all Authorised Persons and Ancillary Service Providers, statuses of Recognised Non-AIFC Market Institutions, Recognised Non-AIFC Members, Foreign Fund Managers, Approved Individuals, and Principal Representatives in such manner as it believes appropriate.

(2) The AFSA may publish and maintain registers of:

(a) all Persons in relation to whom action has been taken under section 45A(1); and

(b) all Persons who have been prohibited under section 118(1)(g) from holding office or being a Director or Employee of any Authorised Person or Ancillary Service Provider,

indicating whether any such action is of past effect or current, in such manner as the AFSA believes appropriate.

(3) The AFSA may decide not to publish information about a suspension imposed under section 45A(3).

(4) The AFSA must make a reasonably current version of each register kept under subsections (1) to

(3) freely available for viewing by the public during the normal business hours of the AFSA.

135. Extended jurisdiction

(1) Any power which the AFSA may exercise in relation to an Authorised Person, Ancillary Service Provider, Approved Individual, Designated Individual or any Director, officer, Employee or representative of an Authorised Person, Ancillary Service Provider, Registered Auditor under these Regulations or any other Rules or other legislation administered by the AFSA may, subject to subsections (2) and (3), continue to be exercised after the date on which:

(a) the Licence of such Authorised Person or Ancillary Service Provider; or

(b) the Approved Individual or Designated Individual status of such individual;

is withdrawn by the AFSA under these Regulations or any other Rules or other legislation administered by the AFSA.

(2) Except as provided in subsection (3), the AFSA may only exercise a power under subsection (1) in relation to a Person within three years after the day on which the AFSA became aware of the act or omission that gave rise to the right to exercise the power in respect of that Person.

(3) If proceedings with respect to the act or omission are commenced by the AFSA within the period referred to in subsection (2), then the provisions of subsection (1) must remain in force until such time as the proceedings and any review or appeal relating to the proceedings are completed.

(4) For the purposes of this section, the AFSA is aware of an act or omission if it has information from which the act or omission can reasonably be inferred.

(5) The decision-making procedures in Schedule 1 apply to a decision made by the AFSA under this section.

136. Publication by the AFSA

The AFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the AFSA and the AIFC Court, sanctions, and any other matters which the AFSA considers relevant to the conduct of affairs in the AIFC.

SCHEDULE 1: Decision-making procedures of the AFSA

(...)

2. Application of Schedule

This Schedule applies to the AFSA where a provision in these Regulations or Rules made

3. Decisions to which procedures do not apply

(1) The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the AFSA:

- (a) to ~~revoke~~withdraw a direction; or withdraw a requirement, restriction or prohibition; or
- (b) to withdraw a condition or restriction imposed in relation to a Licence, registration, authorisation or approval; or
- (c) in relation to a Person, if the Person has requested, or consented in writing to, the making of the decision; or
- (d) to give~~make~~, revoke and/or vary a direction under section section 9.

4. Opportunity to make representations before a decision

(1) If the AFSA proposes to make a decision to which this Schedule applies, it must first give the ~~R~~relevant Person:

- (a) a written notice (a "Preliminary Notice") containing the information in sub-paragraph (2); and
- (b) an opportunity to make representations to the AFSA in ~~P~~erson orand in writing concerning the decision the AFSA proposes to take.

(...)

6. Opportunity to make representations after a decision

(1) If this paragraph applies under paragraph 4(7), the AFSA must:

- (a) provide the Relevant Person with an opportunity to make representations to the AFSA in ~~P~~erson orand in writing within a period of 14 days, or such further period as may be agreed, from the date on which the Decision Notice is given to the Person under paragraph 5; and

(...)

7. Third party rights

(1) If any of the reasons contained in a Decision Notice relate to a matter which:

- (a) identifies a Person (a "Third Party") other than the Person to whom the Decision Notice is given; and
- (b) in the opinion of the AFSA, is prejudicial to the Third Party.

The AFSA must give a notice or a copy of the Decision Notice, or extracts of its relevant parts, to the Third Party.

(2) The notice copied to the Third Party must specify a reasonable period within which he may make representations to the AFSA.

(3) A copy of the notice is not required to be given to a Third Party if the AFSA considers it impractical to do so.

(4) The Third Party may refer to the AIFC Court:

- (a) the decision in question or any aspect of the decision, so far as it related to him; or
- (b) any opinion expressed by the AFSA in relation to him.

(5) The copy of the Decision Notice must advise the Third Party's right to make a reference to the AIFC Court.

(6) If the Third Party does refer the matter to the AIFC Court, the Third Party may apply to the AIFC Court to stay the action specified in the Decision Notice.

(7) The Third Party must be given a copy of any discontinuance applicable to the proceedings to which the Decision Notice related.

SCHEDULE 2: Appeal to the AIFC Court

1. Time frame for instituting an appeal

(1) An appeal under section 11 may be instituted:

(a) within a period of 28 days immediately following the date of the decision, including the Decision Notice, given to the Person~~issued~~ by the AFSA, and

(b) by serving a Claim Form on the AFSA, in accordance with the service provisions of the AIFC Court Rules, stating the grounds and material facts on which the appellant relies.

(2) An appeal does not operate as a stay of the decision being appealed.

(...)

PROPOSED AMENDMENTS TO THE AIFC GENERAL RULES

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

Guidance: Purpose of this rulebook

...

- 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.

...

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.

2.2.5-1. 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.

2.3.4. 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.

...

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

...

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.

...

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.

...

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.

...

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.

...

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.

PROPOSED AMENDMENTS TO THE AIFC CONDUCT OF BUSINESS RULES 2017

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

Guidance: Purpose of this rulebook

The purpose of this rulebook, “COB”, is to ensure that financial services firms operating in the AIFC meet the standards of conduct expected of such firms, particularly with regard to the treatment of their clients, but also in their dealings with counterparties and other market participants. COB also includes rules to ensure that the behaviour of firms operating in the AIFC contributes to fostering and maintaining the integrity of financial markets in the AIFC. COB also includes certain requirements applicable to Ancillary Services Providers.

(...)

13. ANCILLARY SERVICE PROVIDERS

(...)

13.2. Principles for Ancillary Service Providers

(...)

13.2.9. Principle 9 - Conflicts of interest

An Ancillary Service Provider must take all reasonable steps to ensure that conflicts of interest between itself and its Clients, between its Employees and Clients and between one Client and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a Client are not adversely affected.

13.2.10. Principle 10 – Complaints

An Ancillary Service Provider must take all reasonable steps to ensure that Complaints made against it by Clients are handled fairly, consistently and promptly.

PROPOSED AMENDMENTS TO THE AFSA GLOSSARY

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

AIFC Court	The court specified under Article 13 of the Constitutional Law Statute .
Centre Bodies	The bodies identified in Article 9 of the Constitutional Law Statute .
Centre Participant	As defined in Article 1(5) of the Constitutional Law Statute : “legal entities incorporated pursuant to the acting law of the Centre, and other legal entities accredited by the Centre”
<u>Client Assets</u>	<u>Client Money and Client Investment</u>
Financial Crime	Any kind of conduct relating to money or to financial services or markets that would amount to criminal conduct under Kazakh law (whether or not such conduct takes place in the Republic of Kazakhstan), including any offence involving: (a) fraud or dishonesty; or (b) misconduct in, or misuse of information relating to, a financial market; or (c) handling the proceeds of crime; or (d) the financing of terrorism; or (e) <u>money laundering</u> .
<u>Guidance</u>	<u>(a) guidance adopted under, or contained in, any AIFC Act; or (b) a code of practice, standard, policy statement or anything else adopted as guidance under any AIFC Act.</u>
Offer	(1) In relation to Securities, an Offer of Securities. (2) In relation to Units, an Offer of Units (and “Offered” and “Offering” and similar terms have corresponding meanings shall be construed accordingly).
Regulation	A regulation enacted under Article 4(3) of the Constitutional Law Statute .
Rule	A rule made by the AFSA under Article 4(3) of the Constitutional Law Statute .
Security	1. A Security is: (a) a Share; (b) a Debenture; (c) a Warrant; (d) a Certificate; or (e) a Structured Product. 2. For the purposes of article 6 of the Constitutional Law Statute , a Security shall be treated as if it includes a Unit .

PROPOSED AMENDMENTS TO THE AIFC FEES RULES

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

1.2.3. Application fees payable to the AFSA in respect of Ancillary Services

An applicant seeking to carry on one or more Ancillary Services or an ~~Authorised Firm~~ Ancillary Service Provider applying to ~~modify~~ vary or withdraw a Licence to carry on Ancillary Services, must pay to the AFSA:

- (a) the application fees specified in Schedule 3; and
- (b) any supplementary fee required by the AFSA in accordance with FEES 6.

SCHEDULE 3: APPLICATION FEES PAYABLE TO THE AFSA FOR ANCILLARY SERVICES

...

1.2 Fees for variation~~modification~~ or withdrawal of a Licence

Application to <u>vary</u>modify or withdraw a Licence	<u>Fee (USD)*</u>
<u>Variation</u> Modification of an Ancillary Service Provider's Licence	The application fee under table 1.1 of Schedule 3 of FEES for an additional type of Ancillary Service currently being sought. This applies only to a <u>variation</u> modification (change) of the scope of Licence where new Ancillary Services sought to be included.
Withdrawal of an Ancillary Service Provider's Licence	At present, the AFSA does not intend to charge an application fee for these activities . Any such application fee shall be determined by the AFSA at a later date.

* Application fee for variation~~modification~~ of a Licence prescribed herein is applied from 1 May 2022. Before 1 May 2022, this fee is not applied.

Applications to vary~~modify~~ or withdraw

An Ancillary Service Provider applying to the AFSA to change the scope of its Licence, to have a condition or restriction varied or withdrawn, or to have its Licence withdrawn must pay the prescribed fee set out in the table at 1.2 above