



Consultation Paper

AFSA-P-CE-2020-0008

Proposed Enhancement of AIFC Market Institutions Framework

Unrestricted

November 19, 2020

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to seek suggestions from the market on ways to enhance AIFC Market Institutions framework.
2. The proposals in this Consultation Paper will be of interest to current and potential issuers on AIFC Authorised Investment Exchange, AIFC participants who are interested in exercising business activities in or from the AIFC, Recognised Non-AIFC Members as well as investors and other interested parties.
3. We invite comments from interested stakeholders on the following proposed amendments to the AIFC Authorised Market Institutions Rules (AMI):
 - (a) clarification on securities settlement finality provisions;
 - (b) alignment of the outsourcing requirement in AMI with the requirement in AIFC General Rules;
 - (c) clarification on the requirement for Direct Electronic Access Rules;
 - (d) guidance on the definition of service of process and the role of an agent for service of process;
 - (e) alignment of the notification requirement to admit Securities or Units to the Official List with the existing AFSA Waiver and Modification Notice and alignment of submitting audit financial reports requirement in AMI with the requirement in AIFC General Rules.
4. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper AFSA-PC-2020-0008” 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 proposals is **19 December 2020**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
6. Comments to be addressed by
post: Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik EI, building C3.2, Kazakhstan

or emailed to: consultation@afsa.kz

Tel: +8 7172 613741

7. The remainder of this Consultation Paper contains the following:
 - (a) Background to the proposal;
 - (b) Annex 1: Proposed Amendments to the AIFC Authorised Market Institutions Rules.

Background

1. According to Article 2 of the Constitutional Statute of the Republic of Kazakhstan On the Astana International Financial Centre (the “Constitutional Statute”), the purpose of the AIFC is to establish a leading international centre for financial services. The objectives of the AIFC are as follows:
 - (1) attracting investment into the economy of the Republic of Kazakhstan by creating an attractive environment for investment in the financial services sphere;
 - (2) developing a securities market in the Republic of Kazakhstan and integrating it with international capital markets;
 - (3) developing insurance markets, banking services, and Islamic financing, in the Republic of Kazakhstan;
 - (4) developing financial and professional services based on international best practice;
 - (5) achieving international recognition as a financial centre.
2. Further development of the AIFC requires the enhancement of regulatory framework for market institutions to best meet the region specificities and the market needs.
3. Enhancing AIFC Market Institutions Framework envisages the following:
 - 1) Enhancing the securities settlement finality framework in the AIFC;
 - 2) Introducing miscellaneous enhancements in AMI with regards to:
 - Outsourcing arrangement;
 - Direct Electronic Access Rules;
 - Agent for service of process;
 - Reporting and notification requirements.
4. On settlement finality framework in the AIFC, the amendments are needed for establishing international interoperable links and attracting foreign investment by the Authorised Investment Exchange in the AIFC. The amendments on securities settlement finality provisions have been developed based on the best practices deployed in the European Union, United Kingdom, Australia, New Zealand and Dubai International Financial Centre.
5. Other miscellaneous amendments are aimed at alignment of requirements and providing additional clarification and guidance. Thus, the amendments will reflect practical experience of the Authorised Investment Exchange in the AIFC in implementing AMI and the evolving external environment (e.g., unavailability of Direct Electronic Access; period for notification of AFSA in respect of Public Listings and Exempt Offer Listings), clarify certain requirements (e.g., process agent appointment and submission of annual financials by AMI to AFSA). The

introduction of changes to AMI will result in clearer and more explicit statement of rules that are already in effect.

6. Annex 1 includes the proposed amendments to the AIFC Authorised Market Institutions Rules.

Proposed amendments to the AIFC Authorised Market Institutions Rules

In these Rules the underlying indicates a new text and the strikethrough indicates a removed text

1. INTRODUCTION

(...)

1.1.2. Outsourcing

An Authorised Market Institution may satisfy the requirements applying to it under these Rules by making arrangements for functions to be performed on its behalf by any other Person. In such circumstances:

(a) An Authorised Market Institution must, before entering into any material outsourcing arrangements with a service provider, ~~obtain the AFSA's prior approval to do so~~ notify AFSA of such an arrangement.

(b) For the avoidance of doubt, the requirement in sub-paragraph (a) applies to any outsourcing arrangements which were not in existence at the time the Authorised Market Institution was granted a Licence.

(c) Outsourcing arrangements made by an Authorised Market Institution do not affect the responsibility of the Authorised Market Institution to satisfy the requirements applying to it, but there is in addition a requirement applying to the Authorised Market Institution that the Person who performs (or is to perform) the functions is a fit and proper Person who is able to perform them.

(d) An Authorised Market Institution that outsources any functions must comply with the outsourcing requirements in GEN.

2. RULES APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

(...)

2.5. Business Rules

2.5.1. Requirement to prepare Business Rules

Save where the AFSA otherwise directs, an Authorised Market Institution must establish and maintain Business Rules governing relations between itself and the participants in the market, including but not limited to:

(a) Membership Rules, prepared in accordance with AMI 2.6, governing the admission of Members and any other Persons to whom access to its facilities is provided;

(b) Direct Electronic Access Rules, prepared in accordance with AMI 2.7, in case a Direct Electronic Access is available at the Authorised Market Institution, setting out the rules and conditions pursuant to which its Members may provide their clients with Direct Electronic Access to the Authorised Market Institution's trading systems;

(...)

2.6.4. Undertaking to comply with AFSA rules

An Authorised Market Institution may not admit a Recognised Non-AIFC Member as a Member unless it:

(...)

(d) where the Recognised Non-AIFC Member is incorporated outside the Republic of Kazakhstan, appoints and maintains at all times, an agent for service of process in the Republic of Kazakhstan-AIFC.

Guidance

- (1) Service of process is the procedure by which a party to a lawsuit (Claimant) gives an appropriate notice of initial legal action (Claim Form) to another party (Defendant), in an effort to exercise jurisdiction over that Person so as to enable that Person to respond to the proceeding before the court. Notice is furnished by delivering a set of court documents (called "process") to the Person to be served. Service of a Claim Form is defined in clause 4.9 of the AIFC Court Rules. Acknowledgement of process and consequences of not filing an acknowledgment of service are defined in clause 7.4 of the AIFC Court Rules. Methods of service are defined in Part 5 of the AIFC Court Rules.
- (2) An agent for service of process is a service provider having legal and real presence in the AIFC.
- (3) The main role of agent for service of process is to receive service of process in the AIFC on behalf of a Person, acknowledge the service of process, and forward the process to such Person once it is received.

3. RULES APPLICABLE TO AUTHORISED INVESTMENT EXCHANGES

3.2.3. Undertaking to comply with AFSA rules

An Authorised Investment Exchange may not admit Securities or Units in a Listed Fund to trading unless the Person who seeks to have such Investments admitted to trading:

(...)

(d) appoints and maintains at all times, an agent for service of process in the AIFC and requires such agent to accept its appointment for service of process.

Guidance

See Guidance to AMI 2.6.4

(...)

3.6.5. Application for admission of Securities or Units in a Listed Fund to an Official List

(...)

(4) Subject to (5), at least 5 business days prior to an admission of Securities (other than (i) Exempt Securities or (ii) Equity Securities in connection with Pre-IPO Listings) or Units

in a Listed Fund to its Official List, an Authorised Investment Exchange must provide the AFSA with notice of the decision and include the following information in the notification:

- (a) a copy of the listing application;
- (b) a copy of the assessment of the listing application carried out by the Exchange; and
- (c) any information requested by the AFSA.

(4-1) Subject to (5), at least 2 business days prior to an admission of Exempt Securities to its Official List or Equity Securities to its Official List under the sub-heading "Pre-IPO Listings", an Authorised Investment Exchange must provide the AFSA with notice of the decision and include the information specified in (4) above.

(5) An Authorised Investment Exchange must immediately notify the AFSA of any decision to suspend, restore from suspension or de-list any Securities or Units in a Listed Fund from its Official List and the reasons for the decision.

3.6.6. Undertaking to comply with AFSA rules

An Authorised Investment Exchange may not admit Securities or Units in a Listed Fund to an Official List unless the issuer of such Investments:

(...)

(d) appoints and maintains at all times, an agent for service of process in the AIFC and requires such agent to accept its appointment for service of process.

Guidance

See Guidance to AMI 2.6.4

4. RULES APPLICABLE TO AUTHORISED CLEARING HOUSES

(...)

4.4. Settlement

4.4.1. Settlement finality

(1) An Authorised Clearing House must have rules and procedures which clearly define:

- (a) the point at which settlement is final according to the relevant governing law; and
- (b) the point after which unsettled payments, transfer instructions, or other obligations may not be cancelled by a participant.

(2) An Authorised Clearing House must complete final settlement no later than the end of the value date.

(3) Notwithstanding (1) above, a settlement by an Authorised Clearing House is final,

irrevocable and binding and may not under any circumstances be reversed or avoided after:

(a) an amount of money is credited to or debited from a depository account; or

(b) an Investment approved for admission to the depository is credited to or debited from a depository account.

(4) Notwithstanding (1) above, transfer instructions and settlement are legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfer instructions were entered into a system before the moment of opening of such insolvency proceedings. Where, exceptionally, transfer instructions are entered into a system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the Authorised Clearing House can prove that it was not aware, nor should have been aware, of the opening of such proceedings.

(5) For the purpose of (4), the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision.

5. SUPERVISION

(...)

5.3. Financial and other information

5.3.1. ~~Annual reports and accounts~~ financial statements

Authorised Market Institution must give the AFSA:

(a) a copy of its audited ~~annual report and accounts~~ financial statements; and

(b) a copy of any audited ~~consolidated annual report and accounts~~ financial statements of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

(c) ~~three~~ four months after the end of the financial year to which the document relates;

(d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or

(e) the time when the document is sent to a holding company of the Authorised Market Institution.

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