



CONSULTATION PAPER

AFSA-G-CE-2021-0004

Proposed Framework on implementation of further regulatory measures on the development of AIFC Digital Assets ecosystem

Unrestricted

July 26, 2021

Introduction

1. The Astana Financial Services Authority (“AFSA”) has issued this Consultation Paper AFSA-G-CE-2021-0004 to invite public feedback and comments on the proposed Framework on implementation of further regulatory measures on the development of AIFC Digital Assets ecosystem.
2. The proposed amendments to the AIFC Acts to introduce limits on buying and trading of Digital Assets on AIFC Authorised Digital Asset Trading Facilities by Retail Clients are set out in Annexes 1-2 to this Paper.
3. This Consultation Paper may be of interest to the financial services providers providing or intending to provide services on operating a Digital Asset Trading Facility.
4. All comments to the proposed amendments to the AIFC Acts to introduce limits on buying and trading of Digital Assets on AIFC Authorised Digital Asset Trading Facilities by Retail Clients should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper No. AFSA-G-CE-2021-0004” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments.
5. 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.
6. **The deadline for providing comments on the proposals is August 26, 2021.** Once we receive your comments, we shall consider if any refinements are required to the proposed amendments to the AIFC Acts due to introduction of limits on buying and trading of Digital Assets on AIFC Authorised Digital Asset Trading Facilities by Retail Clients.
7. **Comments to be addressed to:**
Consultation Paper No. AFSA-G-CE-2021-0004
FinTech Division
Astana Financial Services Authority (AFSA)
55/17, Mangilik El avenue, block C-3.2, Astana, Kazakhstan
or emailed to: m.abdinaminov@afsa.kz

I. Purpose

1. The proposal aims to ensure a greater client protection level of buyers of Digital Assets and to facilitate the provision of access for Authorised Digital Asset Trading Facilities (cryptoexchanges) to the local banking services, licenced and regulated by the Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market (Agency) and the National Bank of Kazakhstan (NBK).
2. Analogously to the existing regulatory limits to invest in crowdfunding and private placement regimes, including initial coin offering (ICO), the proposal envisages the introduction of similar limits on buying Digital Assets on AIFC Authorised Digital Asset Trading Facilities.

II. Background

3. To keep up with the fast-growing cryptocurrencies industry, in July 2018, the AFSA adopted the AIFC framework on the regulation of cryptocurrencies and extended private placement regimes for securities, including tokenized securities.
4. To further support the new cryptocurrencies regime, since 2019, AFSA developed and proposed amendments on digital assets to the national Bill “On digital technologies” (enacted on 7 July 2020), which:
 - a) allows having two separate regulations on digital assets (including different definitions and types, such as cryptocurrencies) in Kazakhstan: one – under AIFC acts, and another – under the national law of Kazakhstan on Informatization,
 - b) harmonise the titles used for the cryptocurrencies regulated in the AIFC and the above-mentioned Bill (replacement of the term “Private E-currency” with the term “Digital Assets” throughout the text in AIFC Acts).
5. Following this, the AFSA jointly with the AIFC Authority introduced amendments to the Joint Order of Ministry of Finance (MF), Ministry of National Economy (MNE) and AIFC to exempt financial services relative to cryptocurrencies, including activities of Providing Custody and Operating a Digital Asset Trading Facility, from corporate income and value-added taxes.
6. However, by the Resolution of the Board of the National Bank of Kazakhstan (hereinafter – NBK) dated 12 November 2019 No. 188 “On approval of the Rules for the formation of a risk management and internal control system for second-tier banks” any operations with cryptocurrencies are declared as high-risk for local banks. As a result, local banks do not carry out both their own and client's transactions and operations expressed in cryptocurrencies.
7. Thus, AIFC firms with license operating Digital Asset Business, including cryptoexchanges, and their clients are not able to open bank accounts, including current accounts, at the local banks. As a result, such AIFC firms cannot carry out their activities, which hinders the development of innovations and FinTech within the AIFC.
8. The issue has been escalated by the Government. As the response the Government established the Working Group chaired by the First Deputy Prime Minister of Kazakhstan, Smailov A.A, with representatives from AIFC, NBK, Agency of financial development and regulations, Ministry of Innovation, Ministry of Justice, Ministry of Finance, Ministry of Economy, Ministry of Industry and Infrastructure Development, Ministry of Energy and Blockchain Technologies Association of Kazakhstan. As part of the Working Group discussions, the Roadmap on matters related to opening bank accounts for cryptoexchanges at local banks has been developed.
9. Investments in Digital Assets expose retail investors to significant risks, including but not limited to high price volatility, cyber-attack, market manipulations.
10. AFSA already implemented specific consumer protection measures and now following rules have been introduced to protect clients of Authorised Digital Asset Trading Facilities:

- a. According to 6.3.1 of AIFC Authorised Market Institution Rules, an Authorised Digital Asset Trading Facility must make clear and transparent rules concerning the admission of Digital Assets to trading on its facilities.
 - b. According to 6.3.2 (3) of AIFC Authorised Market Institution Rules, an Authorised Digital Asset Trading Facility must obtain approval of the AFSA in respect of such Digital Asset before admitting any Digital Asset to trading.
 - c. According to 6.6 of AIFC Authorised Market Institution Rules, an Authorised Digital Asset Trading Facility must comply with additional requirements on technology resources, including cyber-security policy, technology governance, trading controls and settlement and clearing facilitation services.
 - d. According to 1.1 (h) of AIFC Fintech Rules, if the participant, operating with the FinTech Lab licence, is providing Digital Asset transactions - the participant must have arrangements in place to ensure storage of Client funds on a Hot Digital wallet at most equivalent to 10 Bitcoin (further BTC) or 10% of all Client funds or assets, whichever is greater.
11. With the view to protect citizens of Kazakhstan and by the request of the Agency and NBK, it was agreed to introduce limits on buying and trading of Digital Assets on AIFC Authorised Digital Asset Trading Facilities by retail clients – residents of Kazakhstan. Given that AIFC is international financial centre, clients cannot be discriminated, so proposal is to introduce limits for both residents and non-residents of Kazakhstan.
 12. Given that the existing AIFC acts envisage investment limits for ICO and crowdfunding, it is proposed to extend similar limits on investments in Digital Assets through the AIFC Authorised Digital Asset Trading Facilities.
 13. Benchmark analysis of regulatory frameworks showed that regulators in the United Kingdom (FCA), Singapore (MAS), France (AMF), Malta (MFSA), UAE (ADGM) and the United States of America did not exercise regulatory measure of imposing limits on investments in Digital Assets. Nevertheless, it is proposed to introduce limits on buying and trading of Digital Assets for retail clients due to significant risks and with the aim to protect citizens of Kazakhstan.
 14. The proposal is that an Authorised Digital Asset Trading Facility must maintain effective systems and controls to ensure that a Retail Client using its service does not invest, in respect of Digital Assets in aggregate calculated over a period of one month, an amount which exceeds the greater of:
 - a) USD 1,000; or
 - b) the lesser of (i) 10 percent of the annual income; or (ii) 5 percent of the net worth of such Retail Client (excluding the value of the primary residence), up to a maximum aggregate amount of USD100,000.
 15. The Retail Client can invest up to USD 1,000 without proof of income or net worth. If the Retail Client intends to invest more than USD 1,000, the Retail Client must provide proof documents and invest up to 10 percent of the annual income or 5 percent of the net worth (but not more than USD 100,000), whichever is less.
 16. The proposal does not envisage limits for Professional Clients and Market Counterparties.
 17. An Authorised Digital Asset Trading Facility will be responsible for compliance of Retail Clients with proposed limits.
 18. The proposed limits have been discussed with Agency of financial development and regulations. Given that limits for investments on crowdfunding platforms by Retail Clients is limited by RUB 600,000 per year in Russian Federation, the Agency suggested to decrease limit for investments in Digital Assets by Retail Clients without proof of income or net worth from USD 2,000 (our initial proposed limit) to USD 1,000.

19. The NBK stated that National risk assessment of money laundering and terrorist financing for the period 2017-2021 should be first reviewed to comment on proposed limits.

National risk assessment of money laundering and terrorist financing is conducted according to article 11-1 of the AML/CFT Law of the Republic of Kazakhstan and the first FATF recommendation, which requires that states identify, assess and understand the money laundering and terrorist financing risks to which they are exposed.

National risk assessment is a process of identifying, assessing, and understanding ML/TF risks as part of the implementation and development of a national anti-money laundering / countering the financing of terrorism (AML/CFT) regime, which includes laws, regulations, enforcement, and other measures to mitigate ML/TF risks.

The Agency for Financial Monitoring of the Republic of Kazakhstan is responsible to conduct National risk assessment in Kazakhstan, which consists of sectoral risk assessment of each supervisory authority, including assessment of money laundering and terrorist financing risks in AIFC.

The National risk assessment for the period 2017-2021 in the framework of preparation to the EAG Mutual Evaluation of Kazakhstan in 2022 is currently in the final stages of development.

20. Currently, Authorised Digital Asset Trading Facilities are authorised only in the AFSA FinTech Lab, where there are additional limits. The maximum size of funds per Client up to which the Client Money Accounts are permitted to be deposited is 0.5 (point five) BTC or equivalent amount in another Digital Asset for Retail Clients (natural persons) and 5 (five) BTC or equivalent amount in another Digital Asset for Retail Clients (Body Corporates). The maximum size of aggregated funds of Clients that a FinTech Lab Participant is permitted to hold without ensuring compensation arrangement (which can be, for instance, in the form of performance assurance or guarantee) at any given instance is 50 (fifty) BTC or equivalent Digital Asset for Retail Clients and 1,250 BTC or equivalent Digital Asset Professional Clients.

III. Legislation

21. The implementation of the proposed framework requires introduction of amendments to AIFC Authorised Market Institutions Rules and AIFC Conduct of Business Rules.

IV. Questions in this Consultation Paper

22. Do you agree that proposed limits are necessary to protect Retail Clients? If not, please explain why.
23. Is our proposed limit set at the right level and, if not, what limit would you propose and what evidence can you provide to support this?
24. Are there other significant consumer protection measures that we haven't considered?

Annex 1



**AMENDMENTS No ** TO AIFC
AUTHORISED MARKET INSTITUTIONS
RULES**

Approval Date: 2021

Commencement Date: 2021



AIFC AUTHORISED MARKET INSTITUTIONS RULES (AMI)

In this Appendix, a blue font and underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

6. RULES APPLICABLE TO AN AUTHORISED DIGITAL ASSETS TRADING FACILITY

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6.7. Clients of an Authorised Digital Asset Trading Facility and Investment limits

- (1) Members of an Authorised Digital Asset Trading Facility and their clients will be Clients of an Authorised Digital Asset Trading Facility.
- (2) An Authorised Digital Asset Trading Facility must maintain effective systems and controls to ensure that a Retail Client using its service does not invest, in respect of all Digital Assets in aggregate calculated over a period of one month, an amount which exceeds the greater of:
 - a) USD 1,000; or
 - b) the lesser of (i) 10 percent of the annual income; or (ii) 5 percent of the net worth of such Retail Client (excluding the value of the primary residence), up to a maximum aggregate amount of USD100,000.

Annex 2



**AMENDMENTS No ** TO AIFC
CONDUCT OF BUSINESS RULES**

Approval Date: 2021

Commencement Date: 2021

AIFC CONDUCT OF BUSINESS RULES (COB)

In this Appendix, a blue font and underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

1. APPLICATION

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1.2.2. Exclusions in relation to certain categories of Centre Participant

For the avoidance of doubt, the requirements in COB do not apply to:

- (a) a Representative Office;
- (b) an Authorised Market Institution (other than an Authorised Crowdfunding Platform and an Authorised Digital Asset Trading Facility), except for COB 3 (Communications with Clients and Financial Promotions); ~~or~~
- (c) an Authorised Crowdfunding Platform, except for COB 3 (Communications with Clients and Financial Promotions), COB 4 (Key Information and Client Agreement), COB 7 (Conflicts of Interest), COB 8 (Client Assets) and COB Schedule 2 (Key Information and Content of Client Agreement); or
- (d) an Authorised Digital Asset Trading Facility, except for COB 2 (Client Classification) and COB 3 (Communications with Clients and Financial Promotions).

For the purposes of 1.2.2(c), references in COB 3, COB 4, COB 7, COB 8 and COB Schedule 2 to:

- (a) "Authorised Firms" shall be read as if it were a reference to "an Authorised Crowdfunding Platforms";
- (b) "Regulated Activities" shall be read as if it were a reference to "Market Activities";
- (c) references to "Professional Client" or a "Market Counterparty" shall be read as if they were a reference to "Accredited Lender or Accredited Investor"; and
- (d) references to "Retail Client" shall be read as if they were a reference to "Retail Lender or Retail Investor".

For the purposes of 1.2.2(d), references in COB 2 and COB 3 to:

- (a) "Authorised Firms" shall be read as if it were a reference to "an Authorised Digital Asset Trading Facility"; and
- (b) "Regulated Activities" shall be read as if it were a reference to "Market Activities".

Guidance: Other applicable requirements

Although the Centre Participants listed in COB 1.2.2 are not generally subject to the requirements in COB, they will be subject to requirements in other Rules, which may include but are not limited to requirements in REP, AMI and GEN as applicable.