



# **Regulatory Propriety**   **Guidance**   **On**   **Fitness**   **and**

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**Nur-Sultan, Kazakhstan**

## **1. Introduction**

- 1.1. This document establishes the Astana Financial Services Authority's (the AFSA) Regulatory Guidance on Fitness and Propriety (the Guidance).
- 1.2. This Guidance should be read in conjunction with the following:
  - a) Financial Services Framework Regulations (FSFR);
  - b) AIFC General Rules (AIFC GEN); and
  - c) AIFC Authorised Market Institution Rules (AIFC AMI).
- 1.3. The fit and proper assessment involves assessing natural persons and where relevant, legal persons. Where the Authorised Person, Ancillary Service Provider (ASP) or an applicant is a legal person, the fit and proper assessment will be conducted on the legal person, natural persons who are the beneficial owners, controllers and persons in Controlled Functions.
- 1.4. The primary objective of assessing the fitness and propriety of persons in Controlled Functions is to protect depositors, investors, policyholders, creditors, or the public against future harmful conduct by those persons.

## **2. Statement of Objectives**

- 2.1. To set out and describe the criteria the AFSA will use to determine whether persons are fit and proper.
- 2.2. It is a requirement under the AIFC Rules and Regulations that persons carrying out or proposing to carry out certain functions in an Authorised Person or ASP be fit and proper.

## **3. Scope of Application**

- 3.1. The Guidance applies to the Authorised Persons (including applicants and FinTech Lab Participants), ASPs, where applicable in accordance with the AIFC Rules and Regulations, Approved Individuals and Controllers and is used to assess their fitness and propriety.

## **4. Assessment of the fitness and propriety of Authorised Persons**

### ***Introduction***

- 4.1. The AFSA may have regard to all relevant matters, whether arising in the AIFC or elsewhere. The AFSA may determine the materiality of any information for the purposes of considering whether an Authorised Person has demonstrated, or continues to demonstrate, that it is fit and proper.
- 4.2. The AFSA may request or require any information which it considers relevant to its consideration of an application by an Authorised Person.

### ***Background and history***

- 4.3. In respect of the background and history of an Authorised Person, the AFSA may have regard to any matters including, but not limited to, the following:
- a) any matter affecting the propriety of the Authorised Person's conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
  - b) whether an Authorised Person has ever been the subject of disciplinary procedures by a government body or agency or any self-regulatory organisation or other professional body;
  - c) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self-regulatory organisation, Financial Services Regulator or regulated exchange or clearing house;
  - d) whether an Authorised Person has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
  - e) an adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction;
  - f) whether an Authorised Person has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other Financial Services Regulator; and
  - g) whether an Authorised Person has been open and truthful in all its dealings with the AFSA.

### ***Ownership and Group***

- 4.4. In respect of the ownership and Group structure of an Authorised Person, the AFSA may have regard to:
- a) the Authorised Person's position within its Group, including any other relationships that may exist between the Authorised Person's affiliates, Controllers, Associates or other Persons;
  - b) the financial strength of the Group and its implications for the Authorised Person;
  - c) whether the Group has a structure which makes it possible to:
    - i exercise effective supervision;
    - ii exchange information among regulators who supervise Group members; and
    - iii determine the allocation of responsibility among the relevant regulators;
  - d) any information provided by other regulators or third parties in relation to the Authorised Person or any entity within its Group; and
  - e) whether the Authorised Person or its Group is subject to any adverse effect or considerations arising from a country or countries of incorporation, establishment and operations of any member of its Group. In considering such matters, the AFSA may also have regard to the type and level of regulatory oversight in the relevant country or countries of the Group members, the regulatory infrastructure and adherence to

internationally held conventions and standards that the AFSA may have adopted in its Rules.

### **Controllers**

- 4.5. In respect of the Controllers of an Authorised Person, the AFSA may, considering the nature, scale and complexity of the firm's business and organisation, have regard to:
- a) the background, history and principal activities of the Authorised Person's Controllers, including that of the Controller's Directors, Partners or other officers associated with the Authorised Person, and the degree of influence that they are, or may be, able to exert over the Authorised Person and/or its activities;
  - b) where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller;
  - c) the financial strength of a Controller and its implications for the Authorised Person's ability to ensure the sound and prudent management of its affairs, where such a Controller agrees to contribute any funds or other financial support such as a guarantee or a debt subordination agreement in favour of the Authorised Person; and
  - d) whether the Authorised Person is subject to any adverse effect or considerations arising from the country or countries of incorporation, establishment or operations of a Controller. In considering such matters, the AFSA may have regard to, among other things, the type and level of regulatory oversight which the Controller is subject to in the relevant country or countries and the regulatory infrastructure and adherence to internationally held conventions and standards that the AFSA may have adopted in its Rules.
- 4.6. Where the AFSA has any concerns relating to the fitness and propriety of an applicant, for a licence stemming from a Controller of such a person, the AFSA may consider imposing licence conditions designed to address such concerns. For example, the AFSA may impose, in the case of a start-up, a licence condition that there should be shareholder agreement to resort to an effective shareholder dispute resolution mechanism.

### **Resources, Systems and Controls**

- 4.7. The AFSA may have regard to whether the Authorised Person has sufficient resources, including the appropriate systems and controls (including those set out in chapter 5 of the GEN module or, if applicable, chapter 2 of the AMI module), such as:
- a) the Authorised Person's financial resources and whether it complies, or will comply, with any applicable financial Rules, and whether the Authorised Person appears in a position to be able to continue to comply with such Rules;
  - b) the extent to which the Authorised Person is or may be able to secure additional capital in a form acceptable to the AFSA where this appears likely to be necessary at any stage in the future;
  - c) the availability of sufficient competent human resources to conduct and manage the Authorised Person's affairs, in addition to the availability of sufficient Approved

Individuals as applicable, to conduct and manage the Authorised Person's Regulated Activities;

d) whether the Authorised Person has sufficient and appropriate systems and procedures in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;

e) whether the Authorised Person has appropriate anti money laundering procedures and systems designed to ensure full compliance with AIFC and Kazakhstan AML/CTF laws and regulations and other applicable money laundering and counter terrorism legislation, and relevant UN Security Council sanctions and resolutions, including arrangements to ensure that all relevant staff are aware of their obligations;

f) the impact of other members of the Authorised Person's Group on the adequacy of the Authorised Person's resources and in particular, though not exclusively, the extent to which the Authorised Person is or may be subject to consolidated prudential supervision by the AFSA or another Financial Services Regulator;

g) whether the Authorised Person can provide sufficient evidence about the source of wealth and source of funds available to it, to the satisfaction of the AFSA. This is particularly relevant in the case of a start-up entity; and

h) the matters specified in paragraph 4.5(c).

### ***Authorised Persons - Collective suitability of individuals or other persons connected to the Authorised Person***

4.8. Notwithstanding that, individuals performing Controlled Functions are required to be Approved Individuals and that an Authorised Person is required to appoint certain Approved Individuals to certain functions, as stated in chapter 2 of the GEN module, the AFSA will also consider:

a) the collective suitability of all of the Authorised Person's staff taken together, and whether there is a sufficient range of individuals with appropriate knowledge, skills and experience to understand, operate and manage the Authorised Person's affairs in a sound and prudent manner;

b) the composition of the Governing Body of the Authorised Person. The factors that would be considered by the AFSA in this context include, depending on the nature, scale and complexity of the firm's business and its organisational structure, whether:

i members of the Governing Body have relevant knowledge, skills and expertise to provide effective leadership, direction and oversight of the Authorised Person's business. For this purpose, the members of the Governing Body should be able to demonstrate that they have, and would continue to maintain, including through training, necessary skills, knowledge and understanding of the firm's business to be able to fulfil their roles;

ii the individual members of the Governing Body have the commitment necessary to fulfil their roles, demonstrated, for example, by a sufficient allocation of time to the affairs of the firm and reasonable limits on the number of memberships held by them in other Boards of Directors or similar positions. In particular, the AFSA will consider whether the membership in other Boards of Directors or similar positions held by individual members of the Governing Body has the potential to

conflict with the interests of the Authorised Person and its customers and stakeholders; and

- c) the position of the Authorised Person in any Group to which it belongs;
- d) the individual or collective suitability of any Person or Persons connected with the Authorised Person;
- e) the extent to which the Authorised Person has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities;
- f) whether the Authorised Person has appointed auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the Authorised Person's activities; and
- g) whether the remuneration structure and strategy adopted by the Authorised Person is consistent with the requirements in GEN Rule 4.2.13.

### **5. Assessment of the fitness and propriety of individuals**

#### ***General Considerations***

- 5.1. In assessing the fitness and propriety of a person, the AFSA may consider, as appropriate, the particular function that the Authorised Person is applying for the person to perform, the particular function that the person is performing, and the activities of the Authorised Person or applicant. As such, a person who is fit and proper for a particular role in an Authorised Person or in an applicant may not necessarily be considered fit and proper for any other role in the same Authorised Person or with another Authorised Person.
- 5.2. The fit and proper assessment is both an initial test undertaken during consideration of an application for authorisation or registration and a continuing test in relation to the conduct of the business and the person's relationship with the AFSA.
- 5.3. As such, where a person has previously been regarded as fit and proper, the AFSA reserves the right to reassess whether that person continues to be fit and proper to hold either current or proposed positions.
- 5.4. Part of the ongoing fit and proper assessment entails a review of any material changes affecting the probity questions in the Application for Approved Individual status. Persons are required to notify the AFSA of any material changes within a period of twenty-one (21) days.
- 5.5. When assessing the fitness and propriety of a person, each case will be considered on its own merits, and may consider all relevant matters, including, but not limited to, those set out in this Guidance.
- 5.6. When considering each application or when subsequently assessing the fitness and propriety of persons, the AFSA may have regard to current, past and prospective matters. Additionally, the AFSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the



person is not fit and proper to perform a Controlled Function. The fit and proper factors are non-exhaustive and apply to each person on a case-by-case basis.

- 5.7. When considering an application, the AFSA will review the fit and proper documentation provided in support of the application. To prevent delays in the process for consideration of a person, all information should be provided in the form requested. Where there is any doubt by the person completing the application of the relevance of information, it should be included.
- 5.8. There is a range of sanctions available to the AFSA where the AFSA is of the opinion that a person is not a fit and proper person. This Guidance provides the foundation on which the AFSA will base its decision on fitness and propriety. The list of considerations is not exhaustive, and each application is considered on a case-by-case basis.
- 5.9. When assessing the fitness and propriety of a person, the burden is on the Authorised Person, ASP or applicant sponsoring the application to satisfy the AFSA that the person is fit and proper to perform the function for which the person is proposed to be engaged.
- 5.10. Applicants and persons are expected to provide complete and truthful information.
- 5.11. Persons approved by the AFSA are expected to remain fit and proper. Where it may come to light that there is evidence of the person no longer being fit and proper, the Authorised Person, ASP should immediately inform the AFSA. The AFSA will endeavour to maintain adherence to international standards relating to fitness and propriety and will review this Guidance as needed.
- 5.12. Failure to satisfy the AFSA in relation to any of these criteria may result in the Authorised Person being unable to appoint or continue to appoint the person to perform a Controlled Function.

### ***Obligations of the Authorised Person or Applicant***

- 5.13. When an Authorised Person seeks to appoint a person to perform a Controlled Function, the burden is on the Authorised Person sponsoring the application to satisfy the AFSA that the person is fit and proper to perform the function for which the person is engaged.
- 5.14. It is expected that the assessment conducted by the Authorised Person or applicant will take place during the recruitment stage and on an ongoing basis, and that the Authorised Person make every effort to verify qualifications, experience, references and membership of professional bodies. It is also expected that the Authorised Person or applicant will conduct probity checks on criminal history, sanctions, legal proceedings, and other similar matters. The Authorised Person or applicant should be able to satisfy the AFSA that the person proposed to act in a Controlled Function possesses sufficient competence and capability for the proposed Controlled Function.
- 5.15. The AFSA expects that third parties providing the AFSA with documentation for the fit and proper assessment on behalf of a person, obtain and submit information in the form requested and ensure that only complete applications are submitted to the AFSA.

## ***Integrity***

5.16. When assessing a person's integrity, honesty and reputation, the AFSA will consider matters including, but not limited to, those items listed below, which may have arisen in the Republic of Kazakhstan or elsewhere:

- a) Whether the person has been convicted of any criminal offence. This may include, where particular, any offences of dishonesty, fraud, financial crime or other offences relating to financial services or financial institutions;
- b) Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;
- c) Whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the AFSA, by other regulatory authorities, clearing houses and exchanges, professional bodies, or government bodies or agencies;
- d) Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or any investigation, which might lead to such proceedings;
- e) Whether the person has contravened any of the AFSA's regulatory requirements or the rules, regulations, statements of principle, guidance or codes of practice of other regulatory authorities, clearing houses and exchanges, professional bodies, or government bodies or agencies;
- f) Whether the person has been the subject of any justified complaint relating to Regulated Activities in the AIFC or in another jurisdiction;
- g) Whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had such registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory body or government body;
- h) Whether, because of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority. The AFSA should be informed about all such occurrences, but will consider the circumstances only where relevant to the regulatory requirements;
- i) Whether the person has been a person in a Controlled Function, of a business that has gone onto insolvency, liquidation or administration while the person has been connected with that organisation or within one year of such a connection;
- j) Whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured, or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately. Persons subject to a lifetime censorship or suspension in any jurisdiction will not be approved by the AFSA;
- k) Whether the person has ever been disqualified from acting in a Controlled Function;
- l) Whether, in the past, the person has been candid and truthful in all his/her dealings with any regulatory body and whether the person demonstrates a readiness and



willingness to comply with the AFSA's regulatory requirements and with other legal, regulatory and professional obligations and ethical standards; and

m) Whether the person has been convicted of money laundering, fraud, theft, other financial crime or crime involving dishonesty. Such persons will not be approved if there are negative findings in this regard. Unless stated otherwise in the AIFC Rules and Regulations, the record of any other type of conviction will not automatically disqualify a person from being deemed fit and proper. The seriousness of the offence, the restitution, circumstances surrounding the offence, explanation offered by the person, passage of time, and other relevant factors will be taken into account.

### ***Competence and Capability***

5.17. The type of Regulated/Market activity conducted by the Authorised Person; the nature, complexity and volume of business; the jurisdictions in which products and services will be offered; the level of responsibility; and the collective competence and experience of those who will govern the Authorised Person or applicant will be considered when assessing whether a person is competent and capable of performing a Controlled Function:

a) Whether the person has the technical knowledge to perform the Controlled Function for which the person is employed or is proposed to be employed. Academic and professional qualifications and memberships in professional institutions will be particularly relevant;

b) Whether the person has demonstrated by experience through years of employment and positions held that the person is able, or will be able if approved, to perform the Controlled Function for which the person is employed or for which the Authorised Person or applicant intends to employ him/her; and

c) Whether the person has the appropriate training necessary to fulfil the role for which the person is employed or for which the Authorised Person or applicant intends to employ him/her.

d) Persons performing a Controlled Function should understand the regulatory and legal environment relevant to the Controlled Function and be knowledgeable about the business affairs of the Authorised Person or applicant, the industry and products associated with the Authorised Person or applicant and the duties of the Controlled Function.

### ***Financial Soundness***

5.18. The assessment of financial soundness is aimed at determining whether the person can meet his/her personal liabilities when they become due and mitigate financial risks on a constant basis. In the case of shareholders, the financial strength will be considered. In addition, the AFSA is committed to international efforts to detect and prevent financial services from being used to launder the proceeds of crime. To help with this, the AFSA may ask applicants and their shareholders, using a risk-based approach, for information on how they acquired wealth and funds or other assets that are the subject of the business relationship. In determining a person's sound management of financial affairs, the AFSA may, where relevant, consider matters including, but not limited to:

- a) Whether in the Republic of Kazakhstan, or elsewhere, the person has made any arrangements with his/her creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to personal solvency and that of any entity in which they had a controlling interest;
- b) Whether the person has been subject to any judgement of debt payment that remained outstanding for a substantial period of time or is presently outstanding;
- c) Whether the person has persistently failed to manage financial affairs in a manner that has caused detriment to others;
- d) Whether the person met capital and/or solvency requirements applicable to it;
- e) Whether the person was able to manage any previous business dealings in a sound and prudent manner; and
- f) The source of wealth and source of funds for individuals (natural persons) and corporate shareholders/ controllers.

## 6. Assessment of Persons Upon Application

### *Documentation to be collected*

#### 6.1. The AFSA requires the following:

- a) A completed current version of the application for Approved Individual status issued by the AFSA;
- b) Details in the form of documents (such as a report of final decision) should be provided to the AFSA if a person responds “Yes” to any of the probity questions in the Fit & Proper Questionnaire;
- c) Evidence acceptable to the AFSA of the person’s professional knowledge and experience for the function to be undertaken by the person. This includes copies of certificates or other records of relevant academic and professional qualifications. Where a person is required to be registered with a professional body, a certified copy of the current registration should be provided;
- d) An updated and comprehensive Curriculum Vitae (“CV”) detailing the professional background of the person to demonstrate that the person has the necessary skills, experience and qualifications to perform the Controlled Function;
- e) For persons who will be involved in the day-to-day management of an Authorised Person, a current job description detailing the duties and responsibilities attached to the position, and an organisational chart showing lines of reporting within the Authorised Person and of the position to which the person is to be appointed;
- f) A copy of photo identification such as a passport, an identity card, or any other government issued identification document. All copies must be in colour;
- g) For each individual beneficial shareholder/controller who is a natural person holding more than 10% of issued share capital or total voting rights, the AFSA requests full details of source of wealth and source of funds, with supporting documentary evidence;
- h) In the case of a corporate shareholder, the AFSA may request audited financial statements for three (3) consecutive years. The AFSA may also request additional information to complete the assessment process.

- i) All documents and certificates must be provided in English:
  - i Where the primary documents/certificates are in a foreign language, a professional notarized translation is required;
  - ii The primary documents/certificates along with the translated and notarized documents/certificates must be submitted to the AFSA.
- j) The AFSA will consider whether a breach has occurred under AIFC GEN where a person:
  - i knowingly, recklessly or wilfully supplies false or misleading information to the AFSA;
  - ii makes, orders, or allows to be made any false statement in any document to be sent to the AFSA; or
  - iii knowingly or recklessly provides any explanation or makes any statement to the authority.

### Assessment Procedures

- 6.2. Upon the receipt of documentation, the AFSA will review the application for completeness.
- 6.3. The AFSA will conduct a risk assessment based on the extent of the following factors:
  - a) Answers in the current version of the Application for Approved Individual status issued by the AFSA, and in particular (but not limited to) the probity questions of the Fit & Proper Questionnaire;
  - b) The proposed role of the person in the Controlled Function;
  - c) The type of licence held by the Authorised Person to which the person is proposed to be appointed;
  - d) Complexity of business of the proposed Authorised Person;
  - e) The experience and qualifications of the person;
  - f) Previous compliance history of the person;
  - g) Results of due diligence conducted by the AFSA;
  - h) Any information identified while performing the procedures for assessing the fitness and propriety of persons. This includes:
    - i. A search on a database that monitors existing and emerging risks of individuals and organisations around the world (“Risk Intelligence Database”);
    - ii. A search of publicly available web search engines; and
  - i) Any other factor the AFSA deems relevant in determining the fitness and propriety of a person.
- 6.4. In addition to factors identified in 6.3, if necessary, the AFSA may seek additional verification steps to be performed on a person. The additional steps include verifications of:
  - a) criminal history;
  - b) employment history;

- c) professional qualifications;
- d) civil history;
- e) education; and
- f) evidence of identity.

## **7. Ongoing Obligations of Authorised Persons**

7.1. The fit and proper assessment is both an initial and ongoing test as long as the person continues to hold a Controlled Function. As such, in certain circumstances, the AFSA will consider whether a person is or continues to be fit and proper. Such circumstances include:

- a) Where the AFSA has been notified of any material changes affecting the responses to the Application for Approved Individual status;
- b) Where the direction and management of an Authorised Person's business has not been conducted in a fit and proper manner; or
- c) Where the person has been subject to or has been involved in any other matters as listed in this Guidance.