

Astana Financial Services Authority

Consultation Paper

AFSA-P-CE-2019-0002

Proposed Amendments to AIFC Rules and Regulations on repealing Commercial Licence

Unrestricted

Introduction

- The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the AIFC Rules and Regulations with the aim at achieving clear understanding and correct use of the term "Licence" and providing more attractive environment for doing business in the AIFC.
- The proposals in this Consultation Paper will be of interest to current and potential AIIFC participants who are interested in exercising business activities in or from the AIFC.
- 3. 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 No 24" 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.
- 4. The deadline for providing comments on the proposals is **30 June 2019**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
- 5. Comments to be addressed by

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

or emailed to: consultation@afsa.kz

Tel: +8 7172 613781

- 6. The remainder of this Consultation Paper contains the following:
 - (a) Background to the proposals
 - (b) Key elements of the proposed amendments
 - (c) Annex 1: Draft of proposed amendments

Background

- The proposed amendments are related to the repeal of Commercial Licence and associated fees and issuance procedures, setting of a one-time payable fee for incorporation and recognition in the amount of 300 USD, and introduction of additional fees for re-registration procedures in the amount of 50 USD and processing inquiries in the amount of 20 USD.
- 2. The current framework of registration exists in 10 AIFC Acts such as AIFC Companies Regulations, AIFC Companies Rules, AIFC Special Purpose Company Rules, AIFC General Partnership Regulations, AIFC Limited Partnership Regulations, AIFC Limited Liability Partnership Regulations, AIFC Non-Profit Incorporated Organisations Regulations, AIFC Foundations Regulations, AIFC Fees Rules, AIFC General Rules.
- 3. The problem of current framework is that the term Commercial Licence causes misconceptions in terms of its seamless continuity and definition. Potential participants perceive the obligation to renew "Commercial Licence" annually as additional risk associated with subjecting itself to periodic administrative decisions on continuation of the business in or from AIFC. Also, the term "licence" was misperceived as it has been widely associated with authorisation to conduct certain regulated activities.

KEY ELEMENTS OF THE PROPOSED AMENDMENTS

- 4. Amendments to AIFC Rules and Regulations cancel the Commercial Licence, associated fees and issuance procedures. Instead, there is a proposal to set the one-time payable fee for incorporation and recognition at 300 USD with possibility of deferred payment of 100 USD for 12 months.
- 5. Best practices of the United Kingdom, Singapore, State of Delaware (US) and Netherlands were considered in the proposal of the open-ended certificate of incorporation and recognition. The analysis of best practices shows that, upon registration, an entity receives an open-ended registration certificate that does not require a renewal, decreasing administrative burden on businesses.
- 6. To achieve a fair treatment of AIFC participants, the companies, partnerships or NPIO incorporated or recognised after [3 July, 2018], but before [3 July, 2019] will be subject to one payment of fee of 100 USD during the next 12 months. For applicants incorporated after [July 3, 2019] a one-time registration or recognition fee is set out at 300 USD, with a possibility of paying 200 USD on the date of submission of application and deferred payment of 100 USD during the next 12 months from the date of registration or recognition.
- 7. Administrative services fees for re-registration procedures (change of Registered Details, Merger, Acquisition, Division etc.) in the amount of USD 50 and processing inquiries in the amount of USD 20 will be introduced. Thus, the loss of revenue from cancelling fees for issuing the commercial licence can be offset by the decrease of workload on the Office of the Registrar and associated costs.
- 8. The adoption of the proposed amendments to AIFC Rules and Regulations will facilitate the implementation of the best practices in AFSA by minimizing administrative burden on the businesses, reducing perceived risk by participants, decreasing the time required for incorporation or recognition which will lead to the development of doing business in AIFC.

Question:

Do you have any concerns relating to the proposed amendments to AIFC Rules and Regulations? If so, what are they, and how should they be addressed?

Proposed amendments to AIFC Rules and Regulations

In this chart table, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments.

Commercial Licence Amendment chart table:

Current Version Suggested Version AIFC Companies Regulations CHAPTER 2-COMMERCIAL LICENCES CHAPTER 2- COMMERCIAL LICENCES CERTIFICATES 7. Prohibition against conduct of business without holding Commercial Licence etc. 7. Prohibition against conduct of business (1) A Person must not conduct business in or without holding Commercial Licence a from the AIFC unless the Person holds a certificate etc. Commercial Licence and is incorporated or (1) A Person must not conduct business in or from the AIFC as an AIFC Participant unless registered as an AIFC Participant. the Person holds a Commercial Licence and is incorporated or registered as an AIFC (2) Subsection (1) does not apply to a Person if the Person: Participant. is an exempt Person under the Rules; (2) Subsection (1) does not apply to a Person (a) if the Person: or (b) is exempted from the requirement to (a) is an exempt Person under the Rules; hold a Commercial Licence by the Registrar. or Contravention of this section is (3)(b) is exempted from the requirement topunishable by a fine. hold a Commercial Licence by the Registrar. Contravention of this section is punishable by a fine. **Commercial Licences** 8. 8. **Commercial Licences** Certificates The Registrar may issue a The Registrar may issue a Commercial Licence subject to any Commercial Licence certificate subject to any conditions or restrictions. conditions or restrictions. The holder of a Commercial Licence The holder of a Commercial Licence (2)must not Contravene a condition or restriction AIFC Participant must not Contravene a condition or restriction to which the licence_ to which the licence is subject. certificate is subject. The Registrar may revoke, suspend, or vary the terms of, a Commercial Licence (3)The Registrar may revoke, suspend on the Registrar's own initiative or on the the activity of the AIFC Participant or vary the application of the licence holder. terms of the activity of the AIFC Participant, on the Registrar's own initiative or on the application of the licence holder AIFC (4) The Registrar may exercise a power under subsection (3) in relation to a Participant. Commercial Licence on the Registrar's own initiative only if the Registrar: The Registrar may exercise a power under subsection (3) in relation to an activity

complies with the Decision-making

(a)

Procedures; and

of the AIFC Participant on the Registrar's

own initiative only if the Registrar:

- (b) either:
- (i) is satisfied that the licence holder, or an officer, employee or agent of the licence holder, has Contravened, is Contravening or is likely to Contravene these Regulations; or
- (ii) considers that the exercise of the power is necessary or desirable in the interests of the AIFC.
- (5) A Commercial Licence has effect for 1 year from the date of its issue or the shorter period decided by the Registrar.
- (6) The holder of a Commercial Licence must, at least 15 days before the day the term of the licence ends, apply to the Registrar for the renewal of the licence, unless the licence holder has:
- (a) ceased to conduct business in the AIFC; and
- (b) given the Registrar the notification required by the Rules.
- (7) Contravention of subsection (2) or (6) is punishable by a fine.
- 26. Annual returns
- (1) A Company must, at the same time as it applies for renewal of its Commercial Licence (and, in any event, before the end of the term of its Commercial Licence), file with the Registrar an annual return containing:
- 146. (4) When the Registrar issues a certificate of recognition to a Recognised Company, the Registrar must issue a Commercial Licence to the company.
- 202. (3) Without limiting subsection (2), the notice must:
- (a) if the decision is to take effect on the day after the day the notice is given to the Person— state that fact; or
- (b) if the decision is to take effect at a different time—specify the time; or

- (a) complies with the Decision-making Procedures; and
- (b) either:
- (i) is satisfied that the licence holder

 AIFC Participant, or an officer, employee or
 agent of the licence holder AIFC Participant,
 has Contravened, is Contravening or is likely
 to Contravene these Regulations; or
- (ii) considers that the exercise of the power is necessary or desirable in the interests of the AIFC.
- (5) A Commercial Licence has effect for 1year from the date of its issue or the shorterperiod decided by the Registrar.
- (6) The holder of a Commercial Licencemust, at least 15 days before the day the term of the licence ends, apply to the Registrar for the renewal of the licence, unless the licence holder has:
- (a) ceased to conduct business in the AIFC; and
- (b) given the Registrar the notification required by the Rules.
- (7) Contravention of subsection (2) or (6) is punishable by a fine.
- 26. Annual returns
- (1) A Company must, at the same time as it applies for renewal of its Commercial-Licence (and, in any event, before the end of the term of its Commercial Licence) within 6 months of the end of financial year, or other date the Registrar considers appropriate, file with the Registrar an annual return containing:
- 146. (4) When the Registrar issues a certificate of recognition to a Recognised-Company, the Registrar must issue a Commercial Licence to the company.
- 202. (3) Without limiting subsection (2), the notice must:
- (a) if the decision is to take effect on the day after the day the notice is given to the Person— state that fact; or
- (b) if the decision is to take effect at a different time—specify the time; or

(c) if the decision is to grant or issue (however described) a licence, permit, registration or anything else subject to conditions, restrictions or limitations of any kind—state the conditions, restrictions or limitations; or (d) if the decision is to grant or issue (however described) a licence, permit, registration or anything else for a period—specify the period. Page 153 (Definitions) Commercial Licence means a Commercial Licence issued by the Registrar under these Regulations	(c) if the decision is to grant or issue (however described) a licence, permit, registration or anything else subject to conditions, restrictions or limitations of any kind—state the conditions, restrictions or limitations; or (d) if the decision is to grant or issue (however described) a licence, permit, registration or anything else for a period—specify the period. Commercial Licence means a Commercial Licence issued by the Registrar under these Regulations.		
ALEO O TOTAL DE LA COLLEGA			
AIFC General Partnership Regulation			
 (9) (b) holds a Commercial Licence issued by the Registrar of Companies under AIFC Companies Regulations. 9) (2) Subsection (1)(b) does not apply to a 	(9) (b)holds a Commercial Licence issued by the Registrar of Companies under AIFC Companies Regulations. 9) (2) Subsection (1)(b) does not apply to a		
general partnership if the general partnership:	general partnership if the general partnership:		
(a) is an exempt general partnership under the Rules; or	(a) is an exempt general partnership under the Rules; or		
(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.	(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.		
AIFC Limited Partnership Regulation	S		
(9)(1)(b) holds a Commercial Licence issued by the Registrar of Companies under AIFC Companies Regulations.	(9)(1)(b)holds a Commercial Licence issued by the Registrar of Companies under AIFC Companies Regulations.		
(9) (2) Subsection (1)(b) does not apply to a limited partnership if the partnership:	(9) (2) Subsection (1)(b) does not apply to a limited partnership if the partnership:		
(a) is an exempt limited partnership under the Rules; or	(a) is an exempt limited partnership under the Rules; or		
(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.	(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.		
(12) (8) (d) issue a Commercial Licence to the partnership under the AIFC Companies Regulations; and	(12) (8) (d)issue a Commercial Licence to the partnership under the AIFC Companies Regulations; and		
(51)(1) (g) issue a Commercial Licence to the partnership under the AIFC Companies Regulations; and	(51)(1) (g)issue a Commercial Licence to the partnership under the AIFC Companies Regulations; and		

AIFC Limited Liability Partnership Re	gulations	
(9) (1) (b) holds a Commercial Licence issued by the Registrar of Companies under	(9) (1) (b)holds a Commercial Licence issued by the Registrar of Companies under AIFC	
AIFC Companies Regulations.	Companies Regulations.	
(9) (2) Subsection (1)(b) does not apply to a limited liability partnership if the partnership:	(9) (2) Subsection (1)(b) does not apply to a limited liability partnership if the partnership:	
(a) is an exempt limited liability partnership under the Rules; or	(a) is an exempt limited liabilit partnership under the Rules; or	
(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.	(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.	
(12)(1)(d) issue a Commercial Licence to the partnership under the AIFC Companies Regulations.	(12)(1)(d)issue a Commercial Licence to the partnership under the AIFC Companies Regulations.	
AIFC Non-Profit Incorporated Organi	sations Regulations	
(8) (1) A Person must not conduct activities as an Incorporated Organisation in or from the AIFC unless the Person is incorporated as an Incorporated Organisation and holds a Commercial Licence issued under the AIFC Companies Regulations.	(8) (1) A Person must not conduct activities as an Incorporated Organisation in or from the AIFC unless the Person is incorporated as an Incorporated Organisation and holds a Commercial Licence issued under the AIFC Companies Regulations.	
(8) (2) Subsection (1) does not apply to a	(8) (2) Subsection (1) does not apply to a	
Person if the Person:	Person if the Person:	
(a) is an exempt Person under the Rules; or	(a) is an exempt Person under the Rules; or	
(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.	(b) is exempted from the requirement to hold a Commercial Licence by the Registrar of Companies.	
(15) (d) issue a Commercial Licence to the Incorporated Organisation under the AIFC Companies Regulations.	(15) (d)issue a Commercial Licence to the Incorporated Organisation under the AIFC Companies Regulations.	
AIFC Foundation Regulations		
(14) (5) (c) issue a Commercial Licence in its favour.	(14) (5) (c)issue a Commercial Licence in its favour.	
(6) The provisions of section 8 (Commercial Licences) of the AIFC Companies Regulations apply to a Commercial Licence issued to a Foundation. A Foundation which fails to maintain a valid Commercial Licence is liable to a fine, as set out in Schedule 3 (Fines and Fees). (14)(7) This section is a new provision	(6) The provisions of section 8 (Commercial Licences Certificates) of the AIFC Companies Regulations apply to a Commercial Licence certificate issued to a Foundation. A Foundation which fails tomaintain a valid Commercial Licence is liable to a fine, as set out in Schedule 3 (Fines and Fees).	

	14 (7) A Person must not conduct business in or from the AIFC as a Foundation unless the Person is incorporated or registered under these Regulations as a Foundation.	
(14)(8) This section is a new provision	14 (8) Contravention of this section is punishable by a fine.	
(36) (3) The annual return must be made up to the Foundation's return date, which shall be each anniversary of the date it received its Commercial Licence, or such other date the Registrar considers appropriate, and must be submitted to the Registrar together with the renewal of its Commercial Licence but in any event not later than thirty (30) days after the return date.	(36) (3)The annual return must be made up to the Foundation's return date, which shall be each anniversary of the date it received its Commercial Licence, or such other date the Registrar considers appropriate, and must be submitted to the Registrar together with the renewal of its Commercial Licence but in any event not later than thirty (30) days after the return date. within 6 months of the end of financial year, or other date the Registrar considers appropriate.	
(36) (5) A Foundation must pay the prescribed Commercial Licence fees to the Registrar as prescribed in Regulations.	36 (5) A Foundation must pay the prescribed Commercial Licence application for registration fees to the Registrar as prescribed in Regulations.	
Page 39, Interpretations		
Commercial Licence means a Commercial Licence issued by the Registrar under these Regulations.	Commercial Licence means a Commercial Licence issued by the Registrar under these Regulations.	
Page 45, line 2 of the table Fines		
Foundation failing to maintain a Licence	Foundation failing to maintain a Licence Prohibition against conduct of business without holding a certficate etc	
Page 46, line 1 of the table Fees		
Application for registration of a Foundation 200 US\$	Application for registration of a Foundation 200 US\$ 400 US\$	
Page 46, line 2 of the table Fees		
Application for renewal of a Foundation (Annual Fee)	Application for renewal of a Foundation (Annual Fee)	
11500		
AIFC Companies Rules 1.5. Definitions etc.		
Commercial Licence	•Commercial Licence	
(Schedule 3: Fine limits, 3.1. Table of fine limits) Prohibition against conduct of business without holding Commercial Licence etc.	(Schedule 3: Fine limits, 3.1. Table of fine limits) Prohibition against conduct of business without holding Commercial Licence etc. a certificate	

Line 1 of the	Line 1 of the	
AIFC Companies Rules- Schedule 3: Fine	AIFC Companies Rules- Schedule 3: Fine	
Limits	Limits	
3.1. Table of fine limits	3.1. Table of fine limits	
Prohibition against conduct of business	Prohibition against conduct of business	
without holding Commercial Licence etc	without holding Commercial Licence a	
ŭ	certificate etc	
Line 2 of the	Line 2 of the	
AIFC Companies Rules- Schedule 3: Fine	AIFC Companies Rules- Schedule 3: Fine	
Limits	Limits	
3.1. Table of fine limits	3.1. Table of fine limits	
8(2) or (6) Commercial Licences	8(2) or (6) Commercial Licences Certificates	
AIFC General Rules		
1.3.6. Withdrawal of an Ancillary Service	1.3.6. Withdrawal of an Ancillary Service	
Provider's Licence by the AFSA	Provider's Licence by the AFSA	
The AFSA may withdraw the Licence of an	The AFSA may withdraw the Licence of an	
Ancillary Service Provider:	Ancillary Service Provider:	
(a) on the application of the Ancillary Service	(a) on the application of the Ancillary Service	
Provider; or	Provider; or	
(b) if the Ancillary Service Provider's	(b) if the Ancillary Service Provider's	
commercial registration is cancelled or	commercial registration is cancelled or	
expires and a reasonable time has passed	expires and a reasonable time has passed	
without such registration being renewed; or	without such registration being renewed; or	
(c) following a request by the Registrar of	(c) following a request by the Registrar of	
Companies; or	Companies; or	
(d) in the event of the insolvency or the	(d) in the event of the insolvency or the	
entering into administration of the Ancillary	entering into administration of the Ancillary	
Service Provider; or	Service Provider; or	
(e) if the AFSA considers it necessary or	(e) if the AFSA considers it necessary or	
desirable in the interests of the AIFC.	desirable in the interests of the AIFC.	
AIFC Special Purpose Company Rul	es	
1.6. Commercial Licence	1.6. Commercial Licence	
3.4.2 For the purposes of section 7	3.4.2For the purposes of section 7	
(Prohibition against conduct of business	(Prohibition against conduct of business	
without holding Commercial Licence etc.) of	without holding Commercial Licence etc.) of	
the AIFC Companies Regulations, a Special	the AIFC Companies Regulations, a Special	
Purpose Company is exempted from the	Purpose Company is exempted from the	
requirement to hold a Commercial Licence.	requirement to hold a Commercial Licence.	
ALEO E D		
AIFC Fees Rules	2.1.1 Application for a mariable to the	
2.1.1. Application fees payable to the	2.1.1. Application fees payable to the	
Registrar of Companies in respect of a	Registrar of Companies in respect of a	
Company or Partnership	Company or Partnership	
An applicant seeking to register or have	An applicant seeking to register or have	
recognised a legal entity and/or receive a	recognised a legal entity and/or receive a	
Commercial Licence or renew a Commercial	Commercial Licence or renew a Commercial	
Licence must pay to the Registrar of	Licence must pay to the Registrar of	
	I Liberioe IIIusi pay io ine Nedistrat Or	
Companies the application fees specified in	Companies the application fees specified in	

The fee specified in relation to each matter	The fee specified in relation to each matter
above is payable to the Registrar of	above is payable to the Registrar of
Companies on the registration of the	Companies on the registration of the
documents so delivered.	documents so delivered.
The fee for the Commercial Licence will be	The fee for the Commercial Licence will be
paid to the Registrar of Companies in the	paid to the Registrar of Companies in the
same manner and at the same time that the	same manner and at the same time that the
application fee for incorporate is paid.	application fee for incorporate is paid.
2.1.2. An applicant on babalf of a Farcian	2.1.2. An applicant on habalf of a Faraign
2.1.2. An applicant on behalf of a Foreign Company seeking recognition as a	2.1.2. An applicant on behalf of a Foreign Company seeking recognition as a
Recognised Company in order to carry on	Company seeking recognition as a Recognised Company in order to carry on
business in the AIFC and applying for a	business in the AIFC and applying for a
Certificate of Recognition and a Commercial	Certificate of Recognition and a Commercial
Licence or a renewal of a Commercial	Licence or a renewal of a Commercial
Licence, must pay to the Registrar of	Licence, must pay to the Registrar of
Companies the application fees specified in	Companies the application fees specified in
Schedule 5.	Schedule 5.
Schedule 5: FEES PAYABLE TO THE	Schedule 5: FEES PAYABLE TO THE
REGISTRAR OF COMPANIES	REGISTRAR OF COMPANIES
	Shall be amended as per Annex 1
New Schedule	Schedule 5-1: ADMINISTRATIVE
	SERVICES FEES PAYABLE TO THE
	REGISTRAR OF COMPANIES
	Shall be added as per Annex 2

Schedule 5: FEES PAYABLE TO THE REGISTRAR OF COMPANIES

An applicant seeking registration or recognition or a Commercial Licence must pay the following fees to the Registrar of Companies:

rees to the registral of companies.	1	I	
	Effecting the	Issuing a	Renewing a
	registration or	Commercial -	Commercial -
	recognition	Licence	Licence
Company Limited by Shares	100 <u>300*</u>	100	100
Recognised Company	100 <u>300*</u>	100	100
Partnerships	100 <u>300*</u>	100	100
Recognised Partnership	100 <u>300*</u>	100	100
Non-Profit Incorporated	100 <u>300*</u>	100	100
Organisations			
Special Purpose Companies	100 <u>300*</u>	100	100
Restricted Scope	100 <u>300*</u>	100	100
Companies			
Protected Cell	100 <u>300*</u>	100	100
Companies			
Representative offices	100 <u>300*</u>	100	100

NOTE:

Applicants registered or recognised after [July 3, 2018], but before [July 3, 2019] are subject to one single payment of 100 USD within the 12 months period from the date of registration or recognition

^{*} For applicants incorporated after [July 3, 2019], but before [July 3, 2020] a one-time registration or recognition fee is set out at 300 USD, with a possibility of paying 200 USD on the date of submission of application and deferred payment of 100 USD during the next 12 months from the date of registration or recognition.

Annex B

Schedule 5-1: ADMINISTRATIVE SERVICES FEES PAYABLE TO THE REGISTRAR OF COMPANIES

An AIFC Participant must pay the following administrative services fees to the Registrar of Companies:

Administrative Services	Fee (USD)
Processing inquiries	<u>20</u>
Post-registration procedures	<u>50</u>