



ASTANA FINANCIAL SERVICES AUTHORITY

CONSULTATION PAPER

AFSA-P-CE-2019-0012

**Proposed extension of the list of Regulated and
Market Activities**

October 3, 2019

Introduction

1. The Astana Financial Services Authority (“AFSA”) has issued this Consultation Paper AFSA-P-CE-2019-0012 to invite public feedback and comments on the proposed extension of the list of Regulated and Market Activities within the Astana International Financial Centre (“AIFC”).
2. The proposed amendments to the AIFC Acts to extend the list Regulated and Market Activities is set out in Annexes 1-5 to this Paper.
3. This Consultation Paper may be of interest to the financial services providers offering financial services which may be different from currently regulated in the AIFC.
4. All comments to the proposed amendments to the AIFC Acts to extend the list of Regulated and Market Activities 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-P-CE-2019-0012” 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 November 3, 2019.** Once we receive your comments, we shall consider if any refinements are required to the proposed amendments to the AIFC Acts due to extension of the list of Regulated and Market Activities.
7. **Comments to be addressed to:**
Consultation Paper No. AFSA-P-CE-2019-0012
Innovation Policy Division
Astana Financial Services Authority (AFSA)
55/17, Mangylyk El avenue, block C-3.2, Astana, Kazakhstan
or emailed to: Fintech.Consultation@afsa.kz, Tel: +7 (7172) 647276

Background

1. Given the existing market demand to offer financial services which are currently not regulated in the AIFC and with the view to extend the proposed tax breaks for currently not-regulated financial services, the AFSA is proposing to extend the list of regulated financial services by: (1) extending definition of Regulated Activity of Providing Money Services; (2) including two new Regulated and three new Market Activities.
2. The extension of the list of regulated financial services is intended to:
 - a) ensure regulatory clarity and certainty for financial services providers, including the AIFC FinTech Lab Participants testing currently not regulated in the AIFC financial services;
 - b) provide more clarity from perspective of designing the appropriate tax policy, increase the transparency of the tax regime in the AIFC and thus help to eradicate potential harmful tax practices in the long-term run (as per recommendations of the OECD/ BEPS); and
 - c) facilitate the provision of access to AIFC financial service providers to the national interbank clearing system through introduction of new Regulated Activity of Opening and Operating Bank Accounts as required by the operator of the national interbank clearing system, which is the National Bank of Kazakhstan.
3. In addition, the proposed approach in expanding the list of the regulated financial services is aligned with international best practices followed by the international financial centres, such as DIFC and ADGM.
4. Finally, the AFSA has taken an opportunity to make some consequential amendments to AIFC Financial Services Frameworks Regulation (“FSFR”) and AIFC General Rules (“GEN”) to migrate the list of Market Activities from FSFR to GEN. This would allow to harmonize and optimize legislation development process related to the Market and Regulated Activities and increase the level of ease of reference for the readers.

ANNEX 1



**AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS 2017
AMENDMENT REGULATIONS 2019**

**AIFC REGULATIONS NO. __ of 2019
October __, 2019
Nur-Sultan, Kazakhstan**

PART 1: GENERAL

1. Name

These Regulations are the *AIFC Financial Services Framework Amendment Regulations 2019*.

2. Commencement

These Regulations commence on October __, 2019.

3. Legislative Authority

These Regulations are adopted by the Governor under paragraph 3 of article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

4. Interpretation

Terms used in these Regulations have the same meanings as they have, from time to time, in the AIFC Financial Services Framework Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

PART 2: AMENDMENTS TO AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS

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

SUMMARY CONTENTS

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~~SCHEDULE 3: MARKET ACTIVITIES~~

18. Definition of Market Activity

(1) The activities specified in Schedule ~~3~~ 4 of AIFC General Rules constitute Market Activities for the purposes of these Regulations and Rules made thereunder.

(2) The AFSA may make Rules adding to, removing activities from, or otherwise modifying the lists of Market Activities prescribed under section 18(1).

Schedule 3: Market Activities

1. Operating an Exchange

~~(1) Operating an Exchange means operating a facility which functions regularly and brings together multiple third party buying and selling interests in Investments, in accordance with its non discretionary rules, in a way that can result in a contract in respect of Investments admitted to trading or traded on the facility.~~

~~(2) The facility referred to in (1) may be organised on a temporary or permanent basis and can be an order driven system, a quote driven system or a hybrid of such systems that enables the market to operate electronic trading or trading by other means.~~

2. Operating a Clearing House

~~(1) Operating a Clearing House means operating a facility where confirmation, clearance and/or settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:~~

~~(a) becomes a Central Counterparty (“CCP”); or~~

~~(b) provides a book entry Securities Settlement System (“SSS”), regardless of whether or not such a Person also operates a Central Securities Depository.~~

~~(2) In (1):~~

~~(a) “confirmation” means verifying the terms of a transaction and checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transaction;~~

~~(b) “clearance” means transmitting and reconciling orders prior to settlement and establishing settlement positions, including the calculation of net positions arising from a transactions in Investments; and~~

~~(c) “settlement” means the completion of a transaction with the aim of securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transaction.~~

~~(3) In (1)(a), a Person operates as a CCP where it:~~

~~(a) ensures the performance of open contracts relating to Investments made on a facility for trading Securities or Units in a Listed Fund; and~~

~~(b) does so by interposing itself between counterparties to such contracts by becoming either the buyer to every seller, or the seller to every buyer.~~

~~(4) In (1)(b), a Person operates an SSS where it operates a system which enables Investments held in accounts to be transferred and settled by book entry according to a set of predetermined multilateral rules.~~

~~(5) Acting as a Central Securities Depository in (1) means holding Investments in uncertificated (dematerialised) form to enable book entry transfer of such Investments for the purposes of clearing or settlement of transactions on its own facility and on any other similar facility.~~

3. Operating a Private E-currency Trading Facility

~~Operating a Private E-currency Trading Facility means operating a facility which functions regularly and brings together multiple parties (whether as principal or agent) with a view to the entering into of contracts:~~

~~(a) to buy, sell or exchange Private E-currencies for a Fiat currency; and/or~~

~~(b) to exchange one Private E-currency for another Private E-currency, in its Facility, in accordance with its non-discretionary rules~~

4. Operating a Loan Crowdfunding Platform

~~(1) Operating a Loan Crowdfunding Platform means:~~

~~(a) operating an electronic platform that facilitates the bringing together of potential lenders and Borrowers; and~~

~~(b) administering a loan agreement that results from operating the electronic platform.~~

~~(2) Operating a Loan Crowdfunding Platform also includes making arrangements for a lender to transfer his or her rights and obligations under a loan agreement referred to in (3):~~

~~(3) In (1)(b), “administering a loan agreement” means:~~

~~(a) providing information or performing other duties under a loan agreement on behalf of the Borrower or the lender;~~

~~(b) taking steps to obtain the repayment of a loan; or~~

(c) exercising rights or performing obligations under a loan agreement on behalf of the Borrower or the lender;

Administering a loan agreement includes where a Person (A) performs a function described in (3)(a), (3)(b) or (3)(c) itself and where another Person appointed by A performs such functions, pursuant to an arrangement with A or at A's direction;

(4) In paragraph (1)(a), an "electronic platform" means a website or other form of electronic media;

(5) Where another Person appointed by A performs functions as described in paragraph (3), A shall:

(a) notify AFSA that the other Person is being appointed by A and provide details of the functions for which they are being appointed;

(b) provide AFSA with the other Person's details including their name and registered address;

(c) require the other Person to notify Borrowers or lenders that they are appointed by and acting on behalf of A and provide details of the functions for which they have been appointed in a way that is clear and not misleading; and

(d) assume responsibility at all times for the actions of the other Person in performing the function for which it has been appointed.

5. Operating an Investment Crowdfunding Platform

(1) Operating an Investment Crowdfunding Platform means:

(a) operating an electronic platform that facilitates the bringing together of potential Investors and Issuers who wish to obtain funding for a business or project, resulting in an Investor obtaining an Investment from the Issuer seeking funding; and

(b) administering an Investment that results from operating the electronic platform;

(2) Operating an Investment Crowdfunding Platform also includes making arrangements for an Investor to sell his or her Investment referred to in (1);

(3) In (1) and (2), "administering an Investment" means:

(a) providing information or performing other duties relating to Investments on behalf of the Issuer or the investor;

(b) taking steps to obtain the payment of any amount payable by the Issuer to an investor; and/or

(c) exercising rights or performing obligations relating to an Investment on behalf of the Issuer or the Investor;

Administering an Investment includes where a Person (A) performs a function described in (3)(a), (3)(b) or (3)(c) itself and where another Person appointed by A performs such functions, pursuant to an arrangement with A or at A's direction;

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(c) require the other Person to notify Borrowers or lenders that they are appointed by and acting on behalf of A and provide details of the functions for which they have been appointed in a way that is clear and not misleading; and

(d) assume responsibility at all times for the actions of the other Person in performing the function for which it has been appointed.”

Guidance: Right to operate several types of crowdfunding platforms

(1) A Person may hold Licences to operate a Loan Crowdfunding Platform and an Investment Crowdfunding Platform simultaneously.

(2) An Authorised Crowdfunding Platform must ensure that it does not provide both regulated and unregulated crowdfunding services.

(3) Unregulated crowdfunding services mean operating a Donation Based, Pre-Sale Based (or Reward Based) Crowdfunding Platform, which do not require the AFSA authorisation and, therefore, can be performed as non-regulated activities

(4) A Donation Based Crowdfunding Platform is a platform whereupon the Person operates an electronic platform that facilitates the bringing together of donors and organisations which are registered or recognised as charities by public authorities, whether in the Republic of Kazakhstan or elsewhere.

A Pre-Sale (or Reward Based) Crowdfunding Platform is a platform whereupon the Person operates an electronic platform that facilitates the bringing together of persons providing funds to entities and/or persons in return for a reward, service or product (such as event tickets).

ANNEX 2



AMENDMENTS TO THE AIFC GENERAL RULES

(GEN)

AIFC ACT NO. ***

Astana International Financial Centre, Nur-Sultan

__ October 2019

AIFC GENERAL RULES (GEN)

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

1.4. FinTech Lab Activities

1.4.1. Activities performed in FinTech Lab

...

(a) the Regulated and/or Market Activities that are specified in Schedule 1 and 4 of GEN ~~and Schedule 3 of FSFR~~ can be carried on by a Person subject to the terms and Licence issued under FINTECH.

...

(c) For the purposes of ~~(a)~~ (b), the AFSA may grant a Licence for a Person to carry on activities as specified in the Licence.

Schedule 1: Regulated Activities

...

17. Accepting Deposits

...

(1) Accepting Deposits means accepting money or funds received as a Deposit if that money or funds are:

(a) lent to other Persons; or

(b) used to finance wholly, or partly, any other activity of the Person accepting the Deposit.

(2) To the extent that any activity constitutes Opening and Operating Bank Accounts, such a Regulated Activity is taken to be incorporated within Accepting Deposits.

21. Providing money services

(1) Providing Money Services includes, without limitation: ~~means~~

(a) Providing currency exchange;

(b) ~~Money transmission services;~~

~~(c) Receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the AIFC.~~

(d) Selling or issuing payment instruments;

(e) Selling or issuing stored value;

(f) Execution of payment transactions, including transfers of funds on a bank account with the user's payment service provider or with another payment service provider:

- (i). execution of direct debits, including one-off direct debits,
- (ii). execution of payment transactions through a payment card or a similar device,
- (iii). execution of credit transfers, including standing orders.
- (g) Execution of payment transactions where the funds are covered by a credit line for a payment service user:
 - (i). execution of direct debits, including one-off direct debits,
 - (ii). execution of payment transactions through a payment card or a similar device,
 - (iii). execution of credit transfers, including standing orders.
- (h) Money remittance;
- (i) Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services; or
- (j) Issuance of electronic money.

(2) In sub-paragraph (1), “money transmission” includes, without limitation:

...

26. Opening and Operating Bank Accounts

Opening and Operating Bank Accounts means one or more of the following activities:

- (a) Opening and operating Bank Accounts;
- (b) Services enabling funds to be placed on a Bank Account as well as all the operations required for operating a bank account; and
- (c) Services enabling funds withdrawals from a Bank Account as well as all the operations required for operating a Bank Account.

27. Operation of Payment Systems

Operation of Payment Systems means operation of funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of payment transactions.

Schedule 4: Market Activities

1. Operating an Exchange

(1) Operating an Exchange means operating a facility which functions regularly and brings together multiple third party buying and selling interests in Investments, in accordance with its non discretionary rules, in a way that can result in a contract in respect of Investments admitted to trading or traded on the facility.

(2) The facility referred to in (1) may be organised on a temporary or permanent basis and can be an order driven system, a quote driven system or a hybrid of such systems that enables the market to operate electronic trading or trading by other means.

2. Operating a Clearing House

(1) Operating a Clearing House means operating a facility where confirmation, clearance and/or settlement of transactions in Investments are carried out in accordance with the non-discretionary rules of the facility, under which the Person operating the facility:

(a) becomes a Central Counterparty (“CCP”); or

(b) provides a book-entry Securities Settlement System (“SSS”), regardless of whether or not such a Person also operates a Central Securities Depository.

(2) In (1):

(a) “confirmation” means verifying the terms of a transaction and checking that Investments, cash or both, including margin, are available to secure the exposure arising from the transaction;

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(c) “settlement” means the completion of a transaction with the aim of securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities in relation to the transaction.

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(a) ensures the performance of open contracts relating to Investments made on a facility for trading Securities or Units in a Listed Fund; and

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(1) Operating a Loan Crowdfunding Platform means:

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(b) administering a loan agreement that results from operating the electronic platform.

(2) Operating a Loan Crowdfunding Platform also includes making arrangements for a lender to transfer his or her rights and obligations under a loan agreement referred to in (3).

(3) In (1)(b), "administering a loan agreement" means:

(a) providing information or performing other duties under a loan agreement on behalf of the Borrower or the lender;

(b) taking steps to obtain the repayment of a loan; or

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Administering a loan agreement includes where a Person (A) performs a function described in (3)(a), (3)(b) or (3)(c) itself and where another Person appointed by A performs such functions, pursuant to an arrangement with A or at A's direction.

(4) In paragraph (1)(a), an "electronic platform" means a website or other form of electronic media.

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Guidance: Right to operate several types of crowdfunding platforms

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(4) A Donation-Based Crowdfunding Platform is a platform whereupon the Person operates an electronic platform that facilitates the bringing together of donors and organisations which are registered or recognised as charities by public authorities, whether in the Republic of Kazakhstan or elsewhere.

A Pre-Sale (or Reward-Based) Crowdfunding Platforms is a platform whereupon the Person operates an electronic platform that facilitates the bringing together of persons providing funds to entities and/or persons in return for a reward, service or product (such as event tickets).

6. Operating a Multilateral Trading Facility

Operating a Multilateral Trading Facility or ‘MTF’, where MTF means a system which brings together multiple third parties buying and selling Investments, rights and/or interests in Investments, in accordance with its non-discretionary rules, in a way that results in a contract in respect of such Investments.

7. Operating an Organised Trading Facility

Operating an Organised Trading Facility or ‘OTF’, where OTF means a system which brings together multiple third parties buying and selling Investments, rights and/or interests in Investments, in accordance with its discretionary rules, in a way that results in a contract in respect of such Investments.

8. Operating a Private Financing Platform

(1) Operating a Private Financing Platform means operating an electronic platform which brings together multiple third parties directly or indirectly buying an instrument acknowledging or creating indebtedness arising from the supply of goods or the delivery of services.

(2) Operating an Operating a Private Financing Platform also includes:

- (a) entering into an arrangement with a party for the purpose facilitating the activity described in (1) whether through an intermediary investment vehicle or otherwise;
- (b) facilitating an arrangement described in (2)(a); and/or
- (c) holding or controlling Client Money or Arranging Custody in connection with an arrangement described in (1), (2)(a), or (2)(b) above.

ANNEX 3



AMENDMENTS TO THE AIFC CONDUCT OF BUSINESS RULES

(COB)

AIFC ACT NO. ____

Astana International Financial Centre, Nur-Sultan

__ October 2019

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.

18. BANKS

18.1. Application

This chapter applies to an Authorised Firm that is licensed by the AFSA to conduct the Regulated Activity of Accepting Deposits.

An Authorised Firm that is licensed to conduct the Regulated Activity of Accepting Deposits is defined as a Bank in BBR 1.5.

[The authorisation for Accepting Deposits and/or Opening and Operating Bank Accounts qualifies an Authorised Firm as a Bank.](#)

ANNEX 4



AMENDMENTS TO THE AIFC FEES RULES

(FEES)

AIFC ACT NO. ____

Astana International Financial Centre, Nur-Sultan

__ October 2019

AIFC FEES RULES (FEES)

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

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Schedule 1: APPLICATION FEES PAYABLE TO THE AFSA FOR REGULATED ACTIVITIES

1.1 Application fees for applying for a Licence to carry on Regulated Activities

...

Application fee by activities	Fee (USD)
<u>Opening and Operating Bank Accounts</u>	<u>5 000</u>

Schedule 2: APPLICATION FEES PAYABLE TO THE AFSA FOR MARKET ACTIVITIES

1.1 Application fees for applying for a Licence to carry on Market Activities

...

Application fee by activities	Fee (USD)
Operator of a Clearing House	125 000
Operator of an Investment Exchange	125 000
<u>Operator of a Private E-currency Trading Facility</u>	<u>5 000</u>
Operator of a Crowdfunding Platform	5 000
<u>Operating a Multilateral Trading Facility</u>	<u>5 000</u>
<u>Operating an Organised Trading Facility</u>	<u>5 000</u>
<u>Operating a Private Financing Platform</u>	<u>5 000</u>

...

ANNEX 5



AMENDMENTS TO THE AIFC GLOSSARY

(GLO)

AIFC ACT NO. ____

Astana International Financial Centre, Nur-Sultan

__ October 2019

GLOSSARY

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

<u>Bank Accounts</u>	<u>A Correspondent Account, Payment Account, or a Deposit.</u>
Borrower	A Person who seeks and/or receives funding in the form of one or more loans under an agreement with a lender via the sale of a Debenture which may be facilitated via a Loan Crowdfunding Platform as set out in paragraph 4 of Schedule 3 4 of the <u>Framework Regulations of AIFC General Rules</u>
<u>Correspondent Account</u>	<u>Means a Bank Account opened on behalf of a Correspondent Banking Client to receive Deposits from, to make payments on behalf of or to otherwise handle financial transactions for or on behalf of the Correspondent Banking Client.</u>
<u>Correspondent Bank</u>	<u>Means a firm, including bank, authorized or licensed to open a Correspondent Account.</u>
<u>Correspondent Banking Client</u>	<u>Means a Client of an Authorised Person which uses the firm's correspondent banking services account to clear transactions for its own customer base.</u>
Investment Crowdfunding Platform	An electronic platform or a facility referred to in paragraph 5(1) of Schedule 3 4 of the <u>of AIFC General Rules</u> Framework Regulations.
Loan Crowdfunding Platform	An electronic platform or a facility referred to in paragraph 4(1) of Schedule 3 4 of the <u>of AIFC General Rules</u> Framework Regulations.
Operating a Clearing House	The Market Activity as defined in paragraph 2 of Schedule 3 4 of the <u>AIFC General Rules</u> Framework Regulations.

Operating an Investment Crowdfunding Platform	The Market Activity as defined in paragraph 5 of Schedule 3 4 of the AIFC General Rules Framework Regulations .
Operating a Loan Crowdfunding Platform	The Market Activity as defined in paragraph 4 of Schedule 4 3 of the AIFC General Rules Framework Regulations .
Operating a Private E-currency Trading Facility	The Market Activity as defined in paragraph 3 of Schedule 3 4 of the AIFC General Rules of the Framework Regulations .
Operating an Exchange	The Market Activity as defined in paragraph 1 of Schedule 3 4 of the AIFC General Rules of the Framework Regulations .
Payment Account	Means an account held in the name of one or more payment service users or Bank which is used for the execution of payment transactions
Market Activity	An activity specified of Schedule 3 4 of AIFC General Rules , subject to any rules made by the AFSA adding to, removing, or otherwise modifying the activities so specified.
Opening and Operating Bank Accounts	The Regulated Activity as defined in paragraph 26 of Schedule 1 of GEN
Operating a Multilateral Trading Facility	The Regulated Activity as defined in paragraph 27 of Schedule 1 of GEN
Operating an Organised Trading Facility	The Regulated Activity as defined in paragraph 28 of Schedule 1 of GEN
Operating a Private Financing Platform	The Regulated Activity as defined in paragraph 29 of Schedule 1 of GEN