

# Consultation Paper

**AFSA-L-CE-2020-0001**

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## **AIFC Special Rules Declaring Provisions of AIFC Regulations and Rules to be Subject to Section 9 of the AIFC Financial Services Framework Regulations (“Special Rule”)**

**Unrestricted**

**24 June 2020**

## Introduction

1. This paper summarises the approach taken to drafting the Special Rule. The Annex sets out the proposed draft of Special Rule, which may be subject to change depending on the scope of the regulatory framework requested by the AIFC.
2. The proposals in this Consultation Paper will be of interest to current and potential AIFC Participants who are interested in doing business in 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 AFSA-L-CE-2020-0001” 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 **24 July 2020**. 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](mailto:consultation@afsa.kz)  
Tel: +8 7172 613781
6. The remainder of this Consultation Paper contains the following:
  - (a) Background
  - (b) The Rules
  - (c) Annex 1

## Background

1. In 2017-2019 the AFSA worked on the development of the body of the AIFC legislation. As of 2020, the key legislative acts based on the best international practices and international standards were developed and approved. Given that, at the beginning the AIFC participants from Kazakhstan and the whole region could experience some difficulties in meeting the highest regulatory requirements, the AFSA would like to enhance its approach for granting waivers, modifications and other types of reliefs.
2. Currently, AFSA can only waive and modify FSFR and provisions of the Rules made pursuant to FSFR, which significantly limits the powers of the AFSA on providing waivers or modifications direction. At this stage of development such approach does not allow AFSA to provide timely and efficient responses to business needs of AIFC participants.
3. This necessitates the change of the approach by granting AFSA's Board of Directors power to enact other types of Regulations outside the scope of FSFR and AFSA's CEO the broader power to waive, modify and provide other types of reliefs in order to avoid constant need to amend legislation.
4. To implement the abovementioned amendments to the section 9 of the FSFR (AFSA Power to modify or waive Rules) has been made, that provides AFSA with executive power to waive and modify a provision of FSFR and other Regulations, the Rules..
5. Amended Section 9 of FSFR gives the AFSA power to waive and modify the application to a Person of certain "relevant provisions" in and under the FSFR. Also, gives the AFSA power to waive and modify not only Rules pursuant to FSFR, but Regulations as well in order to make the regulations much more flexible and for AFSA to be more pro-active, when it is needed for businesses, and the regulations much more flexible.
6. For these purposes, "relevant provision" means any provision (a) of FSFR, the Rules or any other legislation administered by the AFSA, and (b) of any other Regulations and Rules which (i) relate to the functions of the AFSA and (ii) are declared by Rules adopted by the Board of Directors of the AFSA to be a provision to which Section 9 of FSFR applies.
7. Considering that the language of Section 9 is enabling in that it permits provisions of the (i) AIFC Trust Regulations, (ii) AIFC Personal Property Regulations, (iii) AIFC Payment System Settlement Finality Regulations, (iv) AIFC Netting Regulations to be made subject to the AFSA's waiver capacity under Section 9 through the issuance of Rules, including for present purposes such rules as may be issued by the Board of Directors of the AFSA.
8. It is proposed that the Special Rule be issued as a special stand-alone Rule. The Rule could be made to, by its own terms.

## The Rules

1. In summary, the contents of the draft Special Rule are as follows:
2. **Part 1: (General)**: which include:
  - 1.1. Name
  - 1.2. Commencement
  - 1.3. Legislative Authority
  - 1.4. Application of these Rules
  - 1.5. Definitions, etc.
3. **Part 2: (AIFC REGULATIONS AND RULES SUBJECT TO SECTION 9 OF THE AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS)**: which include:
  - 2.1. The provisions of AIFC Regulations and Rules and AIFC Regulations and Rules specified in Schedule 1 are hereby subject to Section 9 (AFSA power to modify, waive or grant a relief) of the AIFC Financial Services Framework Regulations.
  - 2.2. Where a waiver, modification or no-action letter is granted pursuant to Section 9 of the AIFC Financial Services Framework Regulations, any other provisions referencing such relevant provision shall be read with the necessary changes being made in order to give effect to such waiver, modification or no-action letter.
    - 2.2.1. Includes an example of applicability of the Special Rule.
4. **Schedule 1**: Provides the list of Regulations which are subject to Section 9 (AFSA power to modify, waive or grant a relief) of FSFR. Which include:
  1. AIFC Trust Regulations
  2. AIFC Personal Property Regulations
  3. AIFC Payment System Settlement Finality Regulations
  4. AIFC Netting Regulations

**Annex 1 to Consultation Paper: AIFC Special Rules Declaring Provisions of AIFC Regulations and Rules to be Subject to Section 9 of the AIFC Financial Services Framework Regulations (“Special Rule”)**

**AIFC SPECIAL RULES DECLARING PROVISIONS OF AIFC REGULATIONS AND RULES TO BE SUBJECT TO SECTION 9 OF THE AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS**

**PART 1: GENERAL**

**1.1 Name**

These Rules are the *Special Rules Declaring Provisions of AIFC Regulations and Rules to be Subject to Section 9 of the AIFC Financial Services Framework Regulations*.

**1.2 Commencement**

These Rules commence on \_\_\_\_\_.

**1.3 Legislative Authority**

These Rules are adopted by the Board of Directors of the Astana Financial Services Authority under Section 5(23) of the Charter of the Board of Directors of the Astana Financial Services Authority.

**1.4 Application of these Rules**

These Rules apply within the jurisdiction of the AIFC.

**1.5 Definitions, etc.**

Terms used in this Rule have the same meanings as they have, from time to time, in the AIFC Regulations and AIFC Rules, or the relevant provisions of those Regulations and Rules, unless the contrary is stated.

**PART 2: AIFC REGULATIONS AND RULES SUBJECT TO SECTION 9 OF THE AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS**

2.1 The provisions of AIFC Regulations and Rules and AIFC Regulations and Rules specified in Schedule 1 are hereby subject to Section 9 (AFSA power to modify, waive or grant a relief) of the AIFC Financial Services Framework Regulations.

2.2 Where a waiver, modification or no-action letter is granted pursuant to Section 9 of the AIFC Financial Services Framework Regulations, any other provisions referencing such relevant provision shall be read with the necessary changes being made in order to give effect to such waiver, modification or no-action letter.

2.2.1. **Example:** if a modifications is granted from the requirement of Section 56(9) of the AIFC Trust Regulations that the Trustees may make payment on fines imposed by the AFSA within 60 days not 30 days, shall be read as permitting such Trustee to make fine payment within 60 days.

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**SCHEDULE 1**

1. AIFC Trust Regulations, AIFC Regulations No. 31 of 2019
2. In relation to matters related to the regulation conducted by the AFSA, modifying or waiving the application of provisions of the AIFC Personal Property Regulations in relation to the holding of Investments or interests or entitlements in Investments, pursuant to Section (43) of the AIFC Personal Property Regulations, AIFC Regulations No.15 of 2017
3. AIFC Payment System Settlement Finality Regulations, AIFC Regulations No.9 of 2017
4. AIFC Netting Regulations, AIFC Regulations No.8 of 2017