



AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES

(CO-OP)

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AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES

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Guidance: Purpose of this rulebook

The purpose of this rulebook, "**CO-OP**", is to set out the arrangements made by the AFSA in relation to co-operation and the exchange of information with other authorities, including Financial Services Regulators outside the AIFC.

This rulebook is intended to ensure that the AFSA may provide the fullest assistance permissible to other authorities. In particular, it contains guidance on the scope of the AFSA's existing powers under other AIFC laws and provides additional powers to the AFSA where appropriate.

CO-OP supports Part 10 of the Framework Regulations which provides a framework for co-operation and the exchange of information. Part 10 states that the AFSA must:

- ensure the confidentiality of information received in the exercise of its functions;
- implement policies and procedures to ensure that:
 - it is able to exercise its powers to obtain information that has been appropriately requested;
 - protects the confidentiality of such information; and
 - restricts the disclosure of such confidential information; and
- where appropriate, exercise powers to assist authorities in their regulatory functions.

CO-OP is also intended to enable the AFSA to comply with international standards on co-operation and the exchange of information, including the IOSCO Multilateral Memorandum of Understanding (MMoU), the IOSCO Enhanced MMoU and the IAIS MMoU.

1. GENERAL

1.1. Name

These Rules are the AIFC Co-operation and Exchange of Information Rules (CO-OP).

1.2. Commencement

These Rules will commence on 15 December 2018.

1.3. Application of these Rules

These Rules apply within the jurisdiction of the AIFC.

2. FRAMEWORK FOR CO-OPERATION AND EXCHANGE OF INFORMATION

2.1. Arrangements for co-operation and the exchange of information

The AFSA may at its discretion, and in relation to its obligations under Part 10 (Co-operation and Exchange of Information) of the Framework Regulations enter into memoranda of understanding or other arrangements for co-operation and the exchange of information with other authorities, including Financial Services Regulators.

Guidance: Obligation in Part 10 (Co-operation and Exchange of Information) of the Framework Regulations

Part 10 of the Framework Regulations requires the AFSA to:

- (a) ensure the confidentiality of information received in the exercise of a regulatory function; and
- (b) assist the exercise by specified persons of their regulatory functions.

2.2. Exercise of powers on behalf of other authorities

Subject to subsection 2.3, the AFSA may exercise its powers, including the power to obtain information from Centre Participants, on behalf of other authorities if the request for assistance is made by:

- (a) the National Bank of the Republic of Kazakhstan;
- (b) a Financial Services Regulator;

- (c) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
- (d) a self-regulatory body or organisation exercising and performing powers and functions in relation to Financial Services;
- (e) a law enforcement agency; or
- (f) a governmental or other regulatory authority including a self-regulatory body or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers,

for the purpose of assisting the exercise by any such authority of its regulatory functions.

2.3. Restrictions on regulatory co-operation

The AFSA shall not exercise its powers at the request of an authority listed in subsection 2.2 if:

- (a) any exercise of the AFSA's powers would require the AFSA to act in a manner that would violate applicable criminal laws of the Republic of Kazakhstan or any AIFC Regulations or Rules;
- (b) any request is in relation to criminal or enforcement proceedings that have already been initiated in the AIFC or the Republic of Kazakhstan relating to the same facts or same Persons, or the same Persons have already been penalised or sanctioned on substantively the same allegations or charges and to the same degree by the AFSA or the competent authorities in the Republic of Kazakhstan;
- (c) the request is prejudicial on the grounds of public or national interest;
- (d) the requesting authority refuses to give reciprocal assistance within its jurisdiction in response to a comparable request from the AFSA;
- (e) complying with the request would be so burdensome as to prejudice or disrupt the performance of the AFSA's regulatory functions and duties; or
- (f) the requesting authority fails to demonstrate a legitimate reason for the request.

2.4. Legitimate reasons for requesting assistance

In deciding whether to comply with a request for assistance, including a request to disclose confidential information, the AFSA will assess if:

- (a) there are legitimate reasons for the request; and
- (b) the authority requesting the information has appropriate standards in place for dealing with confidential information.

Guidance: Factors determining legitimate requests

In determining the legitimacy of a request, the AFSA may consider if:

- (a) the request will enable the requesting authority to discharge more effectively its regulatory responsibilities to enforce and secure compliance with the financial services laws administered by the requesting authority;
- (b) the request is for the purpose of actual or possible criminal, civil or administrative enforcement proceedings relating to a violation of financial services laws administered by the requesting authority;
- (c) the requesting authority is governed by laws that are substantially equivalent to those governing the AFSA concerning regulatory confidentiality, data protection, legal privilege and procedural fairness;
- (d) the request involves the administration of justice of a law, regulation or requirement that is related to enforcing and securing compliance with the financial services laws of the requesting jurisdiction;
- (e) any other authority, governmental or non-governmental, is cooperating with the requesting authority or seeking information from the confidential files of the requesting authority; and
- (f) fulfilling the request will foster the integrity of, and confidence in, the financial services industry in the AIFC and the requesting jurisdiction.

2.5. Asset freezing

Subject to the restrictions in subsection 2.3, the AFSA may, where appropriate, freeze or sequester funds or assets in the possession or control of a Centre Participant at the request of a Financial Services Regulator, provided that the AFSA and the Financial Services Regulator shall have entered into an MoU that allows either party to request the freezing or sequestration of such funds or assets.

3. CONFIDENTIALITY

3.1. Protecting confidential information

3.1.1. Permitted disclosures

The AFSA may disclose confidential information where such disclosure:

- (a) is permitted or required under these Regulations or under any other AIFC Regulations or Rules;
- (b) is made to any of the authorities listed in subsection 2.2 for the purpose of assisting the exercise by any such authority of its regulatory functions; or
- (c) is made in good faith for the purposes of the exercise of the functions and powers of the AFSA.

3.1.2. Obligation to keep disclosed information confidential

If the AFSA is requested to disclose confidential information to an authority referred to in subsection 2.2, in circumstances other than those referred to in subsection 117(2) of the Framework Regulations, the AFSA shall:

- (a) ensure that the information must be used for the sole purpose of assisting the requesting authority in performing its regulatory functions; and
- (b) require the requesting authority:
 - (i) to keep the information confidential; and
 - (ii) not to disclose the information to any other Person without the written consent of the AFSA.

Guidance: Obligation in subsection 117(2) of the Framework Regulations

Under subsection 117(2) of the Framework Regulations, the AFSA must disclose an individual's compelled testimony to a law enforcement agency for the purpose of criminal proceedings if:

- (i) the person consents to the disclosure; or
- (ii) the AFSA is required by law or court order to disclose the statement.

3.2. Requests to obtain information

3.2.1. Requests made under an MoU

The AFSA may obtain confidential information following a request made under a Memorandum of Understanding (MoU) or other information-sharing agreement with another Financial Services Regulator.

3.2.2. Requests by a Financial Services Regulator

The AFSA may, in accordance with the powers granted under section 114 of the Framework Regulations, conduct an investigation and obtain confidential information from Centre Participants at the request of a Financial Services Regulator.

3.2.3. Requests by an authority listed in subsection 2.2

The AFSA may exercise its powers under subsection 2.2 to obtain confidential information from Centre Participants at the request of an authority listed in subsection 2.2.

3.2.4. Scope of powers to obtain information

In order to respond to a request from an authority listed in subsection 2.2, the AFSA may require a Centre Participant to provide information, including but not limited to the following:

- (a) information sufficient to reconstruct orders and transactions;
- (b) information that identifies or traces funds or assets into which such funds are converted;
- (c) auditing information, including audit work papers, communications and other information relating to audit or review of financial statements;
- (d) subscriber records held or maintained by telephone service providers that identify subscribers (name and address), payment details and identification of phone numbers from which communications are made or received;
- (e) subscriber records held or maintained by internet service providers and other electronic communications providers that identify subscribers (name and address), payment details, length of service, type of service utilised, network addresses, and session times/dates and durations; and/or
- (f) recordings of telephone conversations or other electronic communications held or maintained by Centre Participants.

3.2.5. Confidentiality of requests for information

The existence and content of requests for assistance by an authority listed in subsection 2.2, and any communications between the AFSA and that authority, must not be disclosed by:

- (a) the AFSA or by an officer, employee, delegate or agent of the AFSA; or
- (b) any Person coming into possession of the information,

without the consent of the other authority unless, and to the extent that, the AFSA is required by law or court order to disclose such information.

3.2.6. Applications to request confidential information

The AFSA may require that an application submitted by an authority listed in subsection 2.2 requesting confidential information shall:

- (a) be in writing, except that an urgent request may be oral provided that it is confirmed in writing within ten business days;
- (b) describe the confidential information requested and the purpose for which the requesting authority seeks the information;
- (c) provide a brief description of the facts supporting the request and the relevant legal powers authorising the request;
- (d) specify whether the purpose of the request is for actual or possible criminal, civil or administrative enforcement proceedings relating to a violation of the laws and regulations administered by the requesting authority;
- (e) agree that it will not use the confidential information for any other purpose than that for which it was requested unless it has the express permission of the AFSA;
- (f) indicate, if known, the identity of any Persons whose rights or interests may be adversely affected by the disclosure of confidential information;
- (g) indicate whether obtaining the consent of, or giving notice to, the Person to whom the request for confidential information relates would jeopardise or prejudice the purpose for which the information is sought;
- (h) specify whether any other authority, governmental or non-governmental, is co-operating with the requesting authority or seeking information from the confidential files of the requesting authority;

- (i) specify whether onward disclosure of confidential information is likely to be necessary and the purpose such disclosure would serve;
- (j) agree to revert to the AFSA in the event that it seeks to use the confidential information for any purposes other than those specified in the request;
- (k) agree to keep requested confidential information confidential, including the fact that a request for confidential information was made, except as it conforms to these requirements or in response to a legally enforceable demand;
- (l) agree, in the event of a legally enforceable demand, that it, the requesting authority, will notify the AFSA prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such confidential information as may be available;
- (m) agree that, prior to providing information to a self-regulatory organisation, the requesting authority will ensure that the self-regulatory organisation is able and will comply on an ongoing basis with the confidentiality provisions agreed to between the requesting authority and the AFSA; and
- (n) agree to use its best efforts to protect the confidentiality of confidential information received from the AFSA.

3.2.7. Procedures for handling disclosure of confidential information

The AFSA must implement appropriate procedures for assessing and approving the disclosure of confidential information provided by a Financial Services Regulator under an MoU or other information-sharing arrangement to an authority listed in subsection 2.2, which shall take into account these Rules.

Guidance: Appropriate procedures for handling disclosure

The procedures for assessing whether or not to disclose confidential information should include the following:

- (a) the receiving party must be notified of the protected status of the confidential information;
- (b) the providing Financial Services Regulator must be approached to request written approval for the disclosure of the confidential information to the receiving party;
- (c) if a providing Financial Services Regulator does not approve the release of the confidential information, the AFSA must take all reasonable efforts, including any legal steps, to protect the information from disclosure;

- (d) if the AFSA's efforts to protect the confidential information from disclosure are unsuccessful, the AFSA must:
 - (i) inform the providing Financial Services Regulator; and
 - (ii) request that the receiving party does not make the confidential information public or disclose it to a third party.

3.2.8. Notice of disclosure

If the AFSA intends to disclose confidential information received from a Financial Services Regulator to any of the Persons specified in subsection 2.2.1(b), the AFSA may give notice to the Person(s) to whom the disclosure relates in the following circumstances:

- (a) the disclosure relates to a Person's compelled testimony to a law enforcement agency for the purpose of criminal proceedings against that Person;
- (b) the disclosure relates to private civil litigation, in order that the Person may challenge the request according to the Rules of the AIFC Court; or
- (c) there are serious and legitimate concerns about the appropriateness of the disclosure, including where the body requesting the confidential information does not perform a financial services related regulatory function.

Guidance: Factors in determining not to give notice of disclosure

The AFSA will not normally give notice of disclosure to the person that is the subject of disclosure if giving notice may:

- (a) prejudice an ongoing or pending investigation, whether carried out by the AFSA or another Financial Services Regulator or supervisory agency, or prejudice actions which the AFSA or the Financial Services Regulator or supervisory agency may want to take as a result of an investigation, including freezing assets;
- (b) reveal the identity of persons who have made reports in accordance with the provisions on whistleblowing under Part 17 (Whistleblowing) of the Companies Regulations;
- (c) prejudice or jeopardise the AFSA's ability to effectively discharge its monitoring and other regulatory functions;
- (d) result in disclosure of information that is not adverse to the person concerned;
- (e) undermine other Financial Services Regulators' fitness and propriety tests; or
- (f) seriously prejudice the AFSA's relations with Financial Services Regulators, taking into account the AFSA's bilateral and international obligations and the need for effective mutual cooperation and information sharing.

3.3. Where information is subject to a legally enforceable demand

If the AFSA receives a legally enforceable demand requiring the disclosure of confidential information obtained from a Financial Services Regulator under a MoU or similar information-sharing arrangement, the AFSA will:

- (a) notify the providing Financial Services Regulator; and
- (b) seek to enforce any legal rights, exemptions or privileges to protect such confidential information that are legally available to it, which may include but are not limited to an objection on the grounds of public interest or legal privilege, or a claim for injunctive relief.

Guidance: Examples of legally enforceable demands

Examples of legally enforceable demands (such as a subpoena, notice or court order) may include:

- (a) An order from the AIFC Court requiring the AFSA to disclose confidential information. The Constitutional Statute provides the AIFC Court with jurisdiction in proceedings other than criminal and administrative proceedings in the AIFC and over AIFC bodies including the AFSA.
- (b) A legally enforceable order from a competent authority responsible for administering the criminal laws in the Republic of Kazakhstan. The criminal laws of the Republic of Kazakhstan apply in the AIFC, requiring the AFSA to comply with any legally enforceable order.

3.4. Public interest objections

Where appropriate, including where the AFSA has received a legally enforceable demand requiring the disclosure of confidential information obtained from a Financial Services Regulator under a MoU or similar arrangement, the AFSA may apply to the AIFC Court in accordance with Rule 17.15 of the AIFC Court Rules for an order permitting the AFSA to withhold production of a document on the ground that production would damage the public interest.

Guidance: Public interest objections

The AFSA considers that an application to the AIFC Court to withhold information would be appropriate where disclosure of confidential information would:

- (a) prejudice the AFSA's ability to perform its functions; or
- (b) jeopardise the AFSA's ability to receive information in the future from certain sources, including Financial Services Regulators.

