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**AIFC REPRESENTATIVE OFFICE RULES**

**(REP)**

**AIFC RULES NO. FR0006 OF 2017**

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Astana International Financial Centre, Astana

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**AIFC REPRESENTATIVE OFFICE**

### **Guidance: Purpose of this rulebook**

The purpose of this rulebook, “REP”, is to complement the regulatory framework established by the Financial Services Framework Regulations (the "Framework Regulations").

These rules regulate the activities of Representative Offices established in the AIFC.

Representative Offices and persons carrying out financial promotions within the AIFC must be licensed by the AIFC and must act within the scope of their licenses as well as the AFSA Rules.

Chapter 1 sets out the Persons to whom the REP module is applicable within the AIFC and also lists the principles that such Persons must follow.

Chapter 2 describes the Licensing procedures for Persons who intend to apply for a Licence from the AFSA in connection with establishing a Representative Office in the AIFC, as well as listing the scope of a Licence and the circumstances and procedures for a Licence's amendment or revocation.

Chapter 3 sets out the details that a Representative Office must follow to conduct business in the AIFC including provisions relating to property, employees, representations, record keeping and marketing of information.

Chapter 4 sets out how a Representative Office should conduct its affairs with the AFSA, including provisions as to the circumstances and procedures of notifying the AFSA and the information that the AFSA may request.



## 1. APPLICATION AND PRINCIPLES

### 1.1 Application

Unless stated otherwise, these Rules ("REP") apply to every Person who to carry on the Regulated Activity of Operating a Representative Office.

### 1.2 Principles for Representative Offices

Representative Offices shall conduct all of their business in a manner that is compatible with the principles listed in this REP 1.2.

(1) Integrity	A Representative Office must conduct its business with high standards of integrity and fair dealing.
(2) Due skill, care and diligence	A Representative Office must conduct its business with due skill, care and diligence.
(3) Adequate resources	A Representative Office must maintain adequate resources to conduct and manage its affairs and be able to demonstrate the existence of such resources to the AFSA.
(4) Relationship with regulators	A Representative Office must deal with Regulators in an open and co-operative manner and must promptly disclose to the AFSA significant events or anything else relating to the Representative Office of which the AFSA would reasonably expect to be notified.



## **2. LICENSING AND AUTHORISATION**

### **2.1 Licence application**

An applicant must apply for a Licence from the AFSA by completing and submitting to the AFSA the forms prescribed in Schedule 1.

### **2.2 Consideration and assessment of applications**

- (1) An applicant will only be authorised to carry on the Regulated Activity of Operating a Representative Office and to hold a Licence if:
  - (a) the AFSA is satisfied that the applicant is fit and proper to hold a Licence; and
  - (b) the applicant is regulated by a Financial Services Regulator in a jurisdiction other than the AIFC.
- (2) In making an assessment under REP 2.2(1)(a), the AFSA may consider:
  - (a) whether the applicant is subject to supervision by a Financial Services Regulator;
  - (b) the applicant's conduct with the Financial Services Regulator mentioned in REP 2.2(2)(a), including whether the applicant's Financial Services Regulator in its home state has been made aware of the proposed application and has expressed itself as having no objection to the licensing of the applicant by the AFSA;
  - (c) whether the applicant is fit and proper to the AFSA's satisfaction;
  - (d) whether the applicant's proposed or actual Principal Representative is fit and proper to the AFSA's satisfaction;
  - (e) any matter which may harm or may have harmed the integrity or the reputation of the AFSA or AIFC;
  - (f) the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the AFSA's objectives described under the Framework Regulations;



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- (g) the cumulative effect of any factors which give the AFSA reasonable cause to doubt whether the applicant is fit and proper notwithstanding the fact that when such factors are considered individually they do not give rise to a reasonable cause to doubt whether the applicant is fit and proper; and
- (h) any other matters the AFSA may deem relevant.

### 2.3 Scope of a Representative Office's Licence

- (1) A Representative Office shall not undertake a Regulated Activity outside the scope of its Licence.
- (2) The Scope of a Representative Office's Licence may include:
  - (a) marketing activities;
  - (b) activities that increase the profile, in the AIFC, of the Representative Office's head office;
  - (c) activities that relate to correspondence with or the provision of information from the Representative Office's head office;
  - (d) activities that relate to the provision of information to the Representative Office's head office relating to business trends, business opportunities and developments in the AIFC markets; and
  - (e) any other activities that the AFSA determine may be suitable for a Representative Office to conduct.
- (3) Marketing activities as described in REP 2.3(2)(a) can include one or more of the following:
  - (a) providing information to third parties about Financial Products or financial services offered by the Representative Office's head office or a member of its Group that is based outside the AIFC;
  - (b) engaging in Financial Promotions relating to the Financial Products or financial services referred to above in REP 2.3(3)(a); and



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- (c) making introductions or referrals between third parties and the Representative Office's head office or a member of its Group for the financial services or Financial Products offered by them outside the AIFC.
- (4) A Representative Office is prohibited from marketing any products or services offered by:
  - (a) any unrelated third party, notwithstanding the fact that such a third party may have an arrangement with the Representative Office's head office or a member of its Group; or
  - (b) a related party of the Representative Office if that related party is based in the AIFC.
- (5) An Islamic Financial Institution may operate a Representative Office but it is deemed not to be conducting Islamic Financial Business through its Representative Office.
- (6) A Representative Office will not be taken to be holding itself out as conducting Islamic Financial Business in circumstances where it:
  - (a) does not represent that it provides any services that are in accordance with Shari'ah; and
  - (b) acts within the scope of its Licence and does not carry on a Regulated Activity other than Operating a Representative Office.

## 2.4 Licence Amendments

- (1) A Representative Office seeking to:
  - (a) change the scope of its Licence; or
  - (b) have a condition or restriction varied or withdrawn,must submit a request in writing to the AFSA with details of the proposed amendments.



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## 2.5 Withdrawal of a Licence

- (1) A Representative Office seeking to have its Licence withdrawn must submit a request in writing to the AFSA stating:
  - (a) the reasons for the request;
  - (b) that it has ceased or will cease to carry on the Regulated Activity of Operating a Representative Office in or from the AIFC;
  - (c) the date on which it ceased or will cease to carry on the Regulated Activity of Operating a Representative Office in or from the AIFC;
  - (d) that it has satisfied, or will satisfy, all obligations owed in respect of its business under the Licence; and
  - (e) that there are no other matters relating to its business under the Licence of which the AFSA would reasonably expect to be notified, or might reasonably expect to be resolved, before agreeing to the request.
- (2) The AFSA may withdraw a Representative Office's Licence pursuant to REP 5.1.





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### **3. CONDUCTING BUSINESS**

#### **3.1 Representation**

A Representative Office must not represent or hold itself out as representing any Person who is not:

- (a) itself;
- (b) its head office; or
- (c) another member of its Group.

#### **3.2 Place of Business**

- (1) A Representative Office must have a place of business within the geographical boundaries of the AIFC.
- (2) A Representative Office must not share an office with another Authorised Firm unless such Authorised Firm is a member of the Representative Office's Group.

#### **3.3 Fitness and Propriety**

- (1) A Representative Office must at all times be fit and proper to hold a Licence.
- (2) The AFSA may determine the fitness and propriety of the Representative Office at any time according to the criteria set out in REP 2.2.2.
- (3) If the AFSA determines that the Representative Office is not fit and proper the AFSA may revoke the Representative Office's Licence.
- (4) A Representative Office must notify the AFSA immediately if it becomes aware of any pending or actual insolvency of itself or of the entity which it is representing.

#### **3.4 Principal Representative**

- (1) A Representative Office must at all times have a Principal Representative who:
  - (a) is resident in Kazakhstan; and



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(b) has satisfied the AFSA as to his/her fitness and propriety. The AFSA may give a Representative Office written notice that a Principal Representative is not fit and proper if the AFSA makes such a determination.

(2) If:

(a) the Principal Representative ceases to be an employee of the Representative Office; or

(b) the Representative Office receives the notice described in REP 3.4(1)(b),

the Representative Office must designate a replacement Principal Representative as soon as possible after, and in any event within 28 days of, either the Principal Representative's departure in REP 3.4(2)(a) or the Representative Office's receipt of the notice mentioned in REP 3.4(1)(b). The AFSA may revoke a Representative Office's Licence if they fail to follow the procedure outlined in REP 3.4(2).

### 3.5 Employees

(1) A Representative Office must not permit any staff member to be an Employee of another Authorised Person.

(2) A Representative Office must ensure, as far as reasonably practical, that its Employees are fit and proper.

### 3.6 Dealing with property

(1) Notwithstanding REP 3.6(2), a Representative Office must not hold or control money or other property belonging to another Person.

(2) A Representative Office may hold or control money or other property belonging to a related party if such actions are necessary to deal with the Representative Office's ordinary business operating expenses.

### 3.7 Communications

General Communications

(1) The statements:



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- (a) "Regulated by the Astana Financial Services Authority as a Representative Office"; or
- (b) "Regulated by the AFSA as a Representative Office",

shall be disclosed in every key business document in connection with carrying on the Regulated Activity of Operating a Representative Office.

- (2) A Representative Office must not expressly or impliedly misrepresent its status or hold itself out as able to carry on a Regulated Activity other than Operating a Representative Office.
- (3) The AFSA logo must not be reproduced by a Representative Office without express written permission from the AFSA and in accordance with any conditions for its use.
- (4) Reasonable steps must be taken by a Representative Office to ensure that communications to a Person in relation to a Financial Product or Financial Service are clear, fair and not misleading.
- (5) A Representative Office must not attempt to limit or avoid any duty or liability it may have under the Framework Regulations, Rules or any other relevant legislation to any Person.

Marketing material

- (6) In addition to the requirements on general communications in REP 3.7, any marketing material communicated to a Person must contain:
  - (a) the name of the Representative Office communicating the marketing material and on whose behalf the marketing material is being communicated; and
  - (b) if the marketing material is directed at a specific class or category of investor, a clear statement to that effect and that no other Person should act upon it.
- (7) If the marketing material includes standard terms of a contract of insurance or banking services, or a prospectus or other offering document, the Representative Office must ensure that such material contains in a prominent position, or have attached to it, a statement that clearly:



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- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Financial Product;
- (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
- (c) describes the regulatory status accorded to the Financial Product by that Financial Services Regulator; and
- (d) includes the following warning:

“This document relates to a financial product which is not subject to any form of regulation or approval by the Astana Financial Services Authority (“AFSA”).

The AFSA has no responsibility for reviewing or verifying any prospectus or other documents in connection with this financial product. Accordingly, the AFSA has not approved this document or any other associated documents nor taken any steps to verify the information set out in this document, and has no responsibility for it.

The financial product to which this document relates may be illiquid and/or subject to restrictions on its resale.

Prospective purchasers should conduct their own due diligence on the financial product.

If you do not understand the contents of this document you should consult an authorised financial adviser authorised by the AFSA”.

- (8) A Representative Office must not distribute marketing material if it becomes aware that the Person offering the Financial Product or financial service to which the material relates is in breach of a regulatory or legal requirement that applies to that Person in relation to that product or service.
- (9) A Representative Office must ensure that any marketing material containing information or representations relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to a Person is clear, fair and not misleading and contains a prominent warning that past performance is not necessarily a reliable indicator of future results.



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- (10) A Representative Office must take reasonable steps to ensure that no Person of or associated with the Representative Office communicates or otherwise uses the marketing material on behalf of the Representative Office in a manner that amounts to a breach of the requirements in this section.

### **3.8 Marketing of Foreign Funds**

A Representative Office may only market a Unit of a Foreign Fund in accordance with the requirements set out in the CIR.

### **3.9 Record keeping**

Records relating to the activities and functions of a Representative Office, including marketing materials, must be maintained for at least six years.



## **4. RELATIONSHIP WITH THE AFSA**

### **4.1 Provision of Information**

- (1) The AFSA may request any information that a Representative Office or another member of its Group has provided to a Financial Services Regulator. Upon such a request, the Representative Office shall provide the AFSA with such information.
- (2) A Representative Office must take reasonable steps to ensure that all information that it provides to the AFSA in accordance with any legislation applicable in the AIFC is:
  - (a) factually accurate or, in the case of estimates and judgements, fairly and properly based; and
  - (b) complete, in that it should include anything of which the AFSA would reasonably expect to be notified.

### **4.2 Notifications**

- (1) A Representative Office must make a notification to the AFSA as soon as reasonably practicable if any of the following occur:
  - (a) the Representative Office changes its:
    - (i) name;
    - (ii) legal status;
    - (iii) Controller(s); or
    - (iv) Address,
  - (b) the Representative Office becomes aware of or has information that reasonably suggests a breach of a Rule or of a provision of AFSA administered legislation by the Representative Office; or
  - (c) the Representative Office becomes aware of any materially adverse information which would on reasonable grounds be considered likely to affect the fitness and propriety of the Representative Office or Principal Representative.



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- (2) A Representative Office must make a notification to the AFSA immediately if it becomes aware, or has information that reasonably suggests that:
  - (a) it has or may have provided the AFSA with information which was or may have been false, misleading, incomplete or inaccurate; or
  - (b) information previously provided to the AFSA has or may have changed in a material particular.
- (3) A notification made under REP 4.2(2) shall include the following information:
  - (a) details of the information which is or may be false or misleading, incomplete or inaccurate or has or may have changed;
  - (b) reasons why the information in REP 4.2(3)(a) was or may have been provided; and
  - (c) the correct information.
- (4) If the information in REP 4.2(3)(c) cannot be submitted with the notification it must be submitted as soon as reasonably possible.



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## **5. PENALTIES**

### **5.1 Revocation of Licence**

The AFSA may withdraw a Representative Office's Licence in the event that any of the provisions of the Framework Regulation or REP are breached by the Representative Office.

### **5.2 Fines**

The AFSA may fine a Representative Office in the event that any of the provisions of the Framework Regulations or REP are breached by the Representative Office such amount as the AFSA considers appropriate in respect of the contravention.





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## SCHEDULE 1 - FORMS

Purpose	Relevant Section or Rule	Form
Application for a Representative Office Licence	REP 2.1	
Application for Principal Representative status	REP 2.1	