



**Astana Financial Services Authority**

# **Consultation Paper**

**No. 3 of 2018**

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## **Proposed Amendments to AIFC Anti-Money Laundering, Counter- Terrorist Financing and Sanctions Rules (AML Rules)**

**April 10, 2018**

## Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the AIFC AML Rules No. FR0008 of 2017. The amendments to the rules are proposed to ensure full compliance of the AIFC legal and regulatory framework with the FATF recommendations. The proposed amendments are set out at Annex A to this Paper.
2. The proposals in this Consultation Paper will be of interest to Authorised Persons, Designated Non-Financial Business or Professions, Registered Auditors and individuals, financial organisations and investors 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 No 3” 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 **10 May 2018**. 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 International Relations  
Astana Financial Services Authority (AFSA)  
8 Kunayev Street, Building B, Astana, 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 to the proposals;
  - (b) the list of key amendments to the AIFC AML Rules;
  - (c) Annex 1: The Comparative table on the proposed amendments with the explanation notes to each of them;
  - (d) Annex 2: The draft of amendments to the AIFC AML Rules.

## Background

1. FATF is the global standard setter in the fight against money laundering and financing of terrorism. It develops Recommendations which set out the legal, regulatory and operational measures that countries should have in place to protect the financial system from misuse. These Recommendations are revised periodically, most recently in 2012, to ensure that countries respond to current money laundering and terrorist financing threats, as well as other threats to the financial system.
2. FATF monitors the progress of its members in implementing these Recommendations, through a Mutual Evaluation on how effective their AML measures are. After a Mutual Evaluation is carried out, a follow-up process provides a framework to monitor progress made to address any need for improvement.
3. In 2020 the FATF-style regional body “Eurasian group on combatting money laundering and terrorist financing” will conduct the Mutual Evaluation of the Republic of Kazakhstan and the AIFC will be a part of that evaluation.
4. During the considered evaluation the approach will be emphasised on assessing technical compliance with the FATF Recommendations, and on assessing whether or how the AML/CTF system is effective.
5. The National Risk Assessment on Money Laundering and Terrorist Financing of the Republic of Kazakhstan is scheduled for 2018 and the AFSA is in a dialogue with the Ministry of Finance of the Republic of Kazakhstan to ensure AFSA’s framework is fit for purpose and will not detract from the overall AML assessment of Kazakhstan.
6. Therefore, the AIFC AML Rules need to be fully aligned with the FATF recommendations.

## KEY AMENDMENTS

7. The AFSA identified several areas in the AIFC AML Rules that are proposed to be amended in order to be fully aligned with the FATF recommendations.
8. In this section underlining indicates new text and the striking through indicates deleted text in the proposed amendments to the AIFC AML Rules.

### ***Overview of the AML Rules***

9. The reference to the Code on Administrative Offences of the Republic of Kazakhstan No 235-V dated 5 July 2014 (the "Administrative Code") is to be deleted in Article 1.1.(a) as the article 214 "Breach of the legislation of the Republic of Kazakhstan on counteraction to legalization (laundering) of incomes received by criminal means, and financing of terrorism" of the Administrative Code are not applicable within AIFC. The AFSA view is that the cases of the breach of AML Rules or AML Law by the AIFC Participants should not be considered by the administrative courts of the Republic of Kazakhstan, the cases, according to the AIFC regulations, will be held by the AFSA courts.
10. The paragraph 1.6 "Interpretations" is to be added to clarify the definitions' location.

### ***Kazakhstan criminal law***

11. The reference to the article of Criminal Code is to be removed. All the precise references to the provisions of the external regulatory acts are to be covered in the AIFC AML/CTF Guidelines the approval of which is scheduled for IV quarter of 2018. The purpose of this is to not make AIFC AML Rules dependent on the constant changes of Kazakh domestic regulatory acts.

### ***The Risk Based Approach***

#### ***Obligation to conduct business and customer risk assessment***

12. The Paragraph 4.1.3. is proposed to be expanded in compliance with the FATF Recommendations 1 and 15 as follows:

*"In order to identify and assess the risks of money laundering and terrorist financing a Relevant Person must conduct a business risk assessment and must also conduct customer risk assessments in accordance with Chapter 5 and keep these assessments up to date.*

*The risks of money laundering and terrorist financing that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products must be identified and assessed by a Relevant Person prior to the launch or use of such products, practices and technologies."*

## **Requirements of policies, controls and procedures**

13. The Paragraph 4.3.1. is proposed to be expanded for the purpose of the consistency with the paragraph 3 of the Article 11 of the Law of the Republic of Kazakhstan No. 191-IV dated 28 August 2009 on Counteracting legalisation (laundering) of proceeds obtained through criminal means and financing of terrorism (AML Law) as follows:

*‘The policies, controls and procedures adopted by a Relevant Person under AML 4.1.1 must be:*

*(a) proportionate to the nature, scale and complexity of the activities of the Relevant Person’s business;*

*(b) comprised of, at minimum, organisation of the development and maintenance of the policies, procedures, systems and controls required by AML 4.1.1, risk management, customer identification, transaction monitoring and studying, employees training and awareness programs;*

*(c) approved by its senior management; and*

*(d) monitored, reviewed and updated regularly.”*

## **Conduct of the customer risk assessment**

14. The Paragraph 5.1.3. is proposed to be expanded in compliance with the FATF Recommendation 10 as follows:

*“identify the customer, any beneficial owner(s) and any person acting on behalf of a customer;”*

15. The new Paragraph 5.1.3. (g) is proposed to be added in compliance with the FATF Recommendation 10 as follows:

*“consider the beneficiary of a life insurance policy, where applicable; and”*

## **Customer Due Diligence**

### **Undertaking Simplified Due Diligence**

16. The Paragraph 6.1.2. is proposed to be expanded in compliance with the FATF Recommendation 10 as follows:

*“A Relevant Person may undertake SDD in accordance with AML 8.1.1 by modifying the CDD under AML 6.3.1 for any customer it has assigned as low risk. Simplified measures should not be conducted whenever there is a suspicion of money laundering and/or terrorist financing.”*

### **Establishing a business relationship before Customer Due Diligence is complete**

17. The Paragraph 6.2.3. (b). is proposed to be expanded in compliance with the FATF Recommendation 10 as follows:

*“(b) risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification have been*

*adopted and are in place; and there is little risk of money laundering occurring and any such risks identified can be effectively managed by the Relevant Person;*

### **Undertaking Customer Due Diligence**

18. The Paragraph 6.3.1. (a) is proposed to be expanded in compliance with the FATF Recommendation 10 as follows:

*“verify the identity of the customer, any beneficial owner(s) and any person acting on behalf of a customer, including his authorisation to so act, based on original or properly certified documents, data or information issued by or obtained from a reliable and independent source;”*

19. The new Paragraph 6.3.1. (b) is proposed to be added in compliance with the FATF Recommendation 10 as follows:

*“(b) obtain information on the purpose and intended nature of the business relationship;”*

### **Customer obligation for life insurance**

20. The new Paragraphs 6.3.2. (c) is proposed to be added in compliance with the FATF Recommendation 10 as follows:

*“(c) if a beneficiary of the insurance policy who is a legal person or a legal arrangement presents a higher risk, take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out; and”*

21. The new Paragraphs 6.3.2. (d) is proposed to be added in compliance with the FATF Recommendation 12 as follows:

*“(d) take reasonable measures to determine whether the beneficiaries of the insurance policy and/or, where required, the beneficial owner of the beneficiary, are PEPs, at the latest, at the time of the pay-out, and, in cases of higher risks, inform senior management before the pay-out of the policy proceeds, conduct enhanced scrutiny on the whole business relationship with the policyholder, and consider making a suspicious transaction report.”*

### **Guidance on undertaking Customer Due Diligence**

22. The Paragraph (c) (vii) is proposed to be expanded in compliance with the FATF Recommendation 10 as follows:

*“the identity of the directors, partners, trustees or equivalent persons with executive authority of the legal person or who holds the position of senior managing official; and”*

### **Guidance on identification and verification of beneficial owners**

23. The Paragraph (e) is proposed to be changed in compliance with the FATF Recommendation 10 as follows:

*“(e) For a retail investment fund, which is widely-held and where the investors invest via pension contributions, the manager of the fund is not expected to look through to underlying investors where there are none with any material control or ownership levels in the fund. However, for a closely-held fund with a small number*

*of investors, each with a large shareholding or other interest, a Relevant Person should identify and verify each of the beneficial owners, depending on the risks identified as part of its risk-based assessment of the customer. ~~For a corporate health policy with defined benefits, a Relevant Person need not identify the beneficial owners.~~*

24. The new Paragraph (g). is proposed to be added in compliance with the FATF Recommendations 10 as follows:

*“(g) Where no natural person is identified as a beneficial owner, the relevant natural person who holds the position of senior managing official should be identified as such and verified.”*

### **Failure to conduct or complete Customer Due Diligence**

25. The Paragraph 6.6.1. is proposed to be expanded in compliance with the FATF Recommendation 10 as follows:

*“Where, in relation to any customer, a Relevant Person is unable to conduct or complete the requisite CDD in accordance with AML 6.3.1 it must, to the extent relevant:*

- (a) not carry out a transaction with or for the customer through a bank account or in cash;*
  - (b) not open an account or otherwise provide a service;*
  - (c) not otherwise establish a business relationship or carry out a transaction;*
  - (d) terminate or suspend any existing business relationship with the customer;*
  - (e) return any monies or assets received from the customer; and*
  - (f) consider whether the inability to conduct or complete Customer Due Diligence necessitates the making of a Suspicious Activity Report (see Chapter 13).*
- A Relevant Person is prohibited from knowingly keeping anonymous accounts or accounts in obviously fictitious names.”*

### **Sanctions**

#### **Relevant United Nations resolutions and sanctions**

26. The Paragraph 12.1.1. is proposed to be expanded in compliance with the FATF Recommendation 6 as follows:

*“A Relevant Person must establish and maintain effective systems and controls to ensure that on an on-going basis it is properly informed as to, and takes reasonable measures to comply with, relevant resolutions or sanctions issued by the United Nations Security Council or by the Republic of Kazakhstan. A Relevant Person must freeze without delay and without prior notice, the funds or other assets of designated persons and entities pursuant to relevant resolutions or sanctions issued by the United Nations Security Council or by the Republic of Kazakhstan.”*

27. The Paragraph 12.1.2. is proposed to be expanded in compliance with the FATF Recommendation 6 as follows:

*“A Relevant Person must report to the Committee on financial monitoring of the Ministry of Finance of the Republic of Kazakhstan any assets frozen or actions taken in compliance with the prohibition requirements of the relevant resolutions or sanctions issued by the United Nations Security Council or by the Republic of Kazakhstan, including attempted transactions.”*

*A Relevant Person must immediately notify the AFSA when it becomes aware that it is:*

- (a) carrying on or about to carry on an activity;*
  - (b) holding or about to hold money or other assets; or*
  - (c) undertaking or about to undertake any other business whether or not arising from or in connection with (a) or (b),*
- for or on behalf of a person, where such carrying on, holding or undertaking constitutes or may constitute a contravention of a relevant sanction or resolution issued by the United Nations Security Council.”*

### **Money Laundering Reporting Officer, Suspicious Transactions and Tipping Off**

28. The Paragraph 13.7.2. is proposed to be added in compliance with the Article 2 of the AML Law as follows:

*“13.7.2. Threshold Transactions Controls  
A Relevant Person must establish and maintain procedures, systems and controls to monitor, detect and report transactions above defined thresholds in accordance with the AML Law.”*

29. The Paragraph 13.7.4. is proposed to be added in compliance with the FATF Recommendation 21 as follows:

*“13.7.4. Immunity from liability for disclosure of information relating to money laundering transactions  
The disclosure by a Relevant Person to the competent authorities of information relating to money laundering/terrorist financing is not a breach of the obligation of secrecy or non-disclosure or (where applicable) of any enactment by which that obligation is imposed.”*

### **General Obligations**

30. The Paragraph 14.1.1. is proposed to be changed in compliance with the FATF Recommendation 18 as follows:

*“14.1.1. Training and Other Obligations  
A Relevant Person must implement screening procedures to ensure high standards when hiring employees.  
A Relevant Person must take appropriate measures to ensure that its employees:  
(a) are made aware of the law relating to money laundering and terrorist financing;  
(b) ....”*

31. The Paragraph 14.1.2. is proposed to be expanded in the purpose of integrating the AIFC AML Regime into the domestic AML Regime as follows:

*“In determining what measures are appropriate under AML 14.1.1 Relevant Person must take account of:  
(a) the nature of its business;  
(b) its size; and  
(c) the nature and extent of the risks of money laundering and terrorist financing to which its business is subject.  
The AFSA may impose additional training requirements in respect of all, or certain, relevant employees of a Relevant Person.”*



## Annex 1

## Annex 2