

**Astana Financial Services Authority**

# **Consultation Paper**

**No. 8 of 2018**

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***PROPOSED AIFC RULES ON  
SAFEKEEPING AND SETTLEMENT  
OF THE SOVEREIGN BONDS IN THE  
SYSTEMS OF NON-AIFC SECURITIES  
DEPOSITORIES***

**August 17, 2018**

## Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed rules on safekeeping and settlement of the sovereign bonds in the systems of non-AIFC securities depositories. The proposed rules are set out at Annex 1 to this Paper.
2. The proposals in this Consultation Paper will be of interest to Authorised Persons, Designated Non-Financial Business or Professions, individuals, financial organizations who are interested in doing business in the AIFC, state bodies and investors.
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 8” 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 **16 September 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

## Background

1. In 2015 Astana was designated by the President of Kazakhstan as the location of the Astana International Financial Centre (“AIFC”). He stated the need to establish the AIFC on the base of the Expo-2017 infrastructure and to confer a special status on the AIFC. The AIFC participants, bodies and organisations will enjoy a special tax regime, special migration regime, special currency exchange regulation regime.
2. According to Article 2 of the Constitutional Statute of the Republic of Kazakhstan “On the Astana International Financial Centre” (the “Constitutional Statute”), the purpose of the AIFC is to establish a leading international centre for financial services. The objectives of the AIFC are as follows:
  - (1) attracting investment into the economy of the Republic of Kazakhstan by creating an attractive environment for investment in the financial services sphere;
  - (2) developing a securities market in the Republic of Kazakhstan and integrating it with international capital markets;
  - (3) developing insurance markets, banking services, and Islamic finance markets, in the Republic of Kazakhstan;
  - (4) developing financial and professional services based on international best practice;
  - (5) achieving international recognition as a financial centre.
3. Further development of the AIFC legislation requires the establishment of a comprehensive framework for provision of the full range of financial services in the AIFC. According to Article 2 of the Constitutional Statute, as mentioned above, one of the objectives of AIFC is developing a securities market in the Republic of Kazakhstan and integrating it with international capital markets.
4. In this regard, the AFSA as financial regulator of the AIFC strives to develop legislation for securities market in the AIFC by drafting and/or amending relevant AIFC Acts.

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**SAFEKEEPING AND SETTLEMENT OF THE SOVEREIGN BONDS IN THE SYSTEMS OF NON-AIFC  
SECURITIES DEPOSITORIES RULES**

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Astana International Financial Centre, Astana

## **PART I.INTRODUCTION**

### **1. Short Title**

These Rules may be cited as the Sovereign Bonds Safekeeping and Settlement Rules.

### **2. Commencement**

These Rules come into force on \_\_\_\_\_.

### **3. Legislative Authority**

- (1) These Rules are adopted by the AFSA under Articles 3(2), 12(3) of the Constitutional Statute, Section 12(4) of the AIFC Regulations on AIFC Acts 2017, Sections 6(2), 7(2), 7(3)(a), 8 of the Framework Regulations, Section 43 of the AIFC Personal Property Regulations 2017, [Section 181 of the AIFC Companies Regulations 2017, Section 92 of the AIFC Insolvency Regulations 2017].

### **4. Application and Scope**

- (1) These Rules apply within the jurisdiction of the AIFC.
- (2) These Rules apply to the Sovereign Bonds which -
  - (a) are listed on AIX, and
  - (b) are registered on the books of the Registrar.
- (3) Except to the extent that the provisions of these Rules are issued under the legislative authority of the AIFC Personal Property Regulations 2017, the Sovereign Bonds shall not be deemed the Investments specifically for the purposes of the AIFC Personal Property Regulations 2017 and the AIFC Dematerialised Investments Rules 2017, with the effect that the AIFC Personal Property Regulations 2017 and the AIFC Dematerialised Investments Rules 2017 do not apply in respect of the Sovereign Bonds.
- (4) Without prejudice to Section 8 of the AIFC Regulations on AIFC Acts 2017, Sections 6(2), 7(2), 7(3)(a), 8 of the Framework Regulations, Section 43 of the AIFC Personal Property Regulations 2017, [Section 181 of the AIFC Companies Regulations 2017, Section 92 of the AIFC Insolvency Regulations 2017], if any other act of the AIFC, other than the Regulations, is inconsistent with the provisions of these Rules, these Rules shall prevail to the extent relevant for the issuance, placement or trading of the Sovereign Bonds in the AIFC.

### **5. Interpretation**

- (1) Schedule 1 contains definitions used in these Rules and other interpretative provisions.
- (2) Schedule 2 provides a non-exhaustive list of the conflict-of-laws provisions used in these Rules.

## **PART 2. REGISTRAR**

### **6. Status and Appointment**

- (1) The Registrar shall be appointed by the Issuer pursuant to an agreement which sets out the rights and responsibilities of the Registrar and the terms and conditions of the appointment of the Registrar.
- (2) The bankruptcy, insolvency or winding-up of the Registrar, or any other agent, shall not affect in any manner whatsoever the Sovereign Bonds kept on the books of the Registrar, or the rights or interests of the holders of such Sovereign Bonds. The Sovereign Bonds kept on the books of the Registrar do not form part of the property of the Registrar available for distributions among, or realisation for the benefit of, the creditors of the Registrar in bankruptcy or insolvency proceedings in relation to the Registrar.
- (3) The Registrar shall adopt internal rules, forms and, as appropriate from time to time, guidance on the matters related to the activities of the Registrar.

### **7. Register of the Sovereign Bonds**

- (1) The Registrar shall establish and maintain the register of the Sovereign Bonds upon instruction of the Issuer in the AIFC.
- (2) The Registrar shall increase or decrease the issued amount of the Sovereign Bonds in the register upon the instruction of the Issuer.
- (3) The CSD or the Nominee may be registered on the books of the Registrar as the holder of the entire issued amount of each issue of the Sovereign Bonds.
- (4) Each of the CSD, the Nominee, which is registered on the books of the Registrar as the holder of the Sovereign Bonds, and the Issuer shall be entitled to request subject to the terms of agreement between the CSD and the Issuer the re-registration of the Sovereign Bonds on the books of the Registrar in the name of the Participants or any other persons specified by such CSD, the Nominee or the Issuer.
- (5) The CSD or the Nominee, which is registered on the books of the Registrar as a holder of the Sovereign Bonds, shall not be deemed the beneficial owner of the Sovereign Bonds.

### **PART 3. CENTRAL SECURITIES DEPOSITORY**

#### **8. Safekeeping and Settlement of the Sovereign Bonds**

- (1) The safekeeping and settlement of the Sovereign Bonds may take place on the facilities maintained either in or outside the AIFC.
- (2) The Sovereign Bonds may be held in the omnibus accounts. For the purposes of these Rules, **'omnibus account'** shall mean any account opened in the name of a person that is not the beneficial owner of the Sovereign Bonds.
- (3) The CSD may settle the trades of the Sovereign Bonds in its system. The CSD may, but is not obliged to, engage a local (be it AIFC or Kazakhstani) appropriately authorised financial institution, person or system for the purposes of settlement of trades in the Sovereign Bonds.
- (4) The title to the Sovereign Bonds, as well as the transfer of the title to the Sovereign Bonds on the books of the CSD, and the settlement finality rules for the Sovereign Bonds shall in each case be governed by the applicable laws of the jurisdiction in which the CSD is located and (or) operates its other activity.
- (5) The Sovereign Bonds kept by the CSD shall not be subject to any attachment by any creditor of the Registrar, or any other agent, or the CSD, or the Nominee, or the beneficiary, or any other party, or any lien, pledge, retention, set-off, or any other similar right, to the detriment of the CSD.
- (6) The Sovereign Bonds kept by the CSD shall not be subject to any freeze order or attachment by or, at the request of, any AIFC Body.

#### **9. Lending and Borrowing Programme**

- (1) The CSD may include the Sovereign Bonds in its lending and borrowing programmes. The services rendered by the CSD and related to its lending and borrowing programmes shall be governed by the laws applicable to such CSD and the internal rules of such CSD.

#### **10. Collateral Management**

- (1) The services rendered by the CSD related to the collateral transactions with the Sovereign Bonds kept in the system of the CSD shall be governed by the laws applicable to the CSD and the internal rules of such CSD.

#### **11. Reporting and Liability**

- (1) Without prejudice to an agreement between the AFSA and the CSD as a Recognised Non-AIFC Market Institution, the liability of the CSD, and(or) the Nominee, and(or) the officers of such CSD or the Nominee, shall be governed by the laws applicable to such CSD, and(or) the rules of such CSD, and(or) any agreement entered into by such CSD in connection with its appointment as the CSD for the safekeeping and settlement of the Sovereign Bonds.
- (2) Without prejudice to Subsection (1) above and an agreement between the AFSA and the CSD as a Recognised Non-AIFC Market Institution, the CSD, and(or) the Nominee, and(or) their officers, are subject to general provisions on liability of the AIFC if the CSD, the

Nominee or their officers act or omit to act in such a manner that such acts or omissions constitute a contravention under the applicable laws of the AIFC.

- (3) The liability of the CSD and the Registrar in connection with the registration, safekeeping and settlement of the Sovereign Bonds vis-à-vis each other shall be stipulated in a bilateral agreement entered into between them.

## **PART 4. SOVEREIGN BONDS**

### **12. Sovereign Bonds**

- (1) Only fully fungible, freely transferable uncertificated Sovereign Bonds shall be allowed to be kept by the CSD.

### **13. Sovereign Bonds Documentation**

- (1) Draft Terms and Conditions of the Sovereign Bonds shall be available on trading date in English.
- (2) Final Terms and Conditions of the Sovereign Bonds shall be available on settlement date in English.
- (3) The documentation on the Sovereign Bonds shall provide for the possibility to register the Sovereign Bonds in the name of a person other the beneficial owner of the Sovereign Bonds (nominee registration).
- (4) The documentation on the Sovereign Bonds shall provide for the procedure to notify the CSD on the events of default of the Issuer, as well as the appointment of a representative of the holders of the Sovereign Bonds or the conferring of the rights in connection with the events of default to the beneficial owners of the Sovereign Bonds. The CSD shall not act as the representative of the holders of the Sovereign Bonds in connection with the events of defaults of the Issuer.

## SCHEDULE 1

- (1) In these Rules the following definitions apply, unless the context requires otherwise:

**CSD** means a non-AIFC central securities depository which is a legal entity that operates a securities clearing system and(or) a securities settlement system which:

- i. has been recognised by the AFSA as a Recognised Non-AIFC Market Institution; and
- ii. is appointed as the CSD for the safekeeping and settlement of the Sovereign Bonds pursuant to an agreement entered into by and between such FFI and the Issuer and for the purpose of these Rules.

**Issuer** means any of the Ministry of Finance of the Republic of Kazakhstan.

**Nominee** means a nominee company controlled by the CSD.

**Participant** means any entity which has entered into an agreement to participate in the CSD on the terms and conditions set out in the internal rules of the CSD.

**Registrar** means a company which is incorporated in the AIFC by AIX and which keeps the register of the Sovereign Bonds in the AIFC.

**Sovereign Bonds** means debt securities issued by the Issuer.

- (2) The capitalised terms used, but not defined in these Rules shall be construed in accordance with the acts of the AIFC, unless the context requires otherwise.

## SCHEDULE 2

- (1) For the purposes of these Rules, for the following matters related to the Sovereign Bonds see the applicable laws of the jurisdiction in which the CSD is located and (or) operates its other activity and (or) internal rules of the CSD:
  - (a) the title to the Sovereign Bonds,
  - (b) the transfer of the title to the Sovereign Bonds on the books of the CSD,
  - (c) the settlement finality rules for the Sovereign Bonds kept in the system of the CSD,
  - (d) the services rendered by the CSD and related to its lending and borrowing programmes,
  - (e) the services rendered by the CSD related to the collateral transactions with the Sovereign Bonds kept in the system of the CSD,
  - (f) subject to an agreement between the AFSA and the CSD as a Recognised Non-AIFC Market Institution, the liability of the CSD, and(or) the Nominee, and(or) the officers of such CSD or the Nominee,
  - (g) any other matters, where applicable.
- (2) The list provided for in (1) above is non-exhaustive.