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**AIFC COMMON REPORTING STANDARD REGULATIONS 2019**

**AIFC REGULATIONS No. 26 of 2019**

**\_June 13, 2019  
Nur-Sultan, Kazakhstan**

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## **AIFC COMMON REPORTING STANDARD REGULATIONS**

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## AIFC COMMON REPORTING STANDARD REGULATIONS

### **PART 1: GENERAL**

1. **Name**

These Regulations are the *AIFC Common Reporting Standard Regulations 2019*.

2. **Commencement**

These Regulations commence on 1 July 2019.

3. **Legislative authority**

These Regulations are adopted by the Governor under article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

4. **Application**

These Regulations apply to:

- (a) any Reporting Financial Institution subject to the supervision of the Relevant Authority under these Regulations;
- (b) any Account Holder of a Reportable Account held with a Reporting Financial Institution subject to the supervision of the Relevant Authority under these Regulations; and
- (c) any other Person to whom a provision is specified to apply.

5. **Interpretation**

Schedule 1 (Interpretation) contains definitions and other interpretative provisions used in these Regulations.



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### PART 2: ROLE OF THE RELEVANT AUTHORITY

#### 6. Appointment of the Relevant Authority

- (1) The Relevant Authority is hereby appointed to administer the provisions of these Regulations in the AIFC.
- (2) In exercising its powers under these Regulations, the Relevant Authority must act in an independent manner.

#### 7. Objectives, functions and powers of the Relevant Authority

- (1) In performing its functions and exercising its powers, the Relevant Authority must pursue the following objectives:
  - (a) to promote good practices and observance of the requirements of these Regulations;
  - (b) to administer these Regulations in an effective and transparent manner;
  - (c) to prevent, detect and restrain conduct which is, or may be, in contravention of these Regulations;
  - (d) to maintain reliable and up-to-date information for, and exchange information with, the Competent Authority, in accordance with these Regulations; and
  - (e) to assist the Government in complying with its obligations under any international treaty or other agreement relating to the Common Reporting Standard to which the Republic of Kazakhstan is a party.
- (2) The Relevant Authority has such functions and powers as are conferred, or expressed to be conferred, on it:
  - (a) by or under these Regulations;
  - (b) by the Acting Law of the AIFC;
  - (c) by the Competent Authority or the Government; or
  - (d) by or under any other applicable legislation.
- (3) Without limiting the generality of subsection (2), such powers of the Relevant Authority include, so far as is reasonably practicable, powers to:
  - (a) prepare or cause to be prepared draft Regulations or Rules;
  - (b) adopt Rules prescribing matters:
    - (i) required or permitted by these Regulations; or
    - (ii) necessary or convenient to be prescribed for carrying out or giving effect to these Regulations;



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- (c) draft any guidance reasonably required to enable the Relevant Authority to perform its statutory functions under these Regulations;
  - (d) issue or prescribe forms to be used for any of the purposes of these Regulations;
  - (e) issue or prescribe procedures and requirements relating to these Regulations; and
  - (f) specify the method of delivery of information pursuant to these Regulations, whether by electronic or any other means.
- (4) The Relevant Authority may prescribe the use of an electronic or computer based system for the filing or delivery of information or documents required under or governed by these Regulations, or as may be required by the Competent Authority pursuant to its duties under the Common Reporting Standard, and may specify the circumstances in which Persons are deemed to have signed or certified documents on an electronic or computer-based system for any purpose under these Regulations.
- (5) The Relevant Authority has the power to do whatever it deems necessary for, or in connection with, or reasonably incidental to, the exercise and performance of its powers and functions inclusive of the power of delegation.
- (6) Subject to subsection (7), neither the Relevant Authority nor any delegate or agent of the Relevant Authority can be held liable for anything done or omitted to be done in the performance of or purported performance of the functions of the Relevant Authority or in the exercise or purported exercise of any power or discretion of the Relevant Authority.
- (7) Subsection (6) does not apply if the act or omission is shown to have been in bad faith.



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### PART 3: REPORTING, RECORDS, INVESTIGATIONS AND INSPECTIONS

#### 8. **Collecting, reporting and keeping records of information**

- (1) A Reporting Financial Institution must collect and report to the Competent Authority the information required by the Common Reporting Standard by way of the reporting system provided by the Competent Authority for this purpose in the manner and on dates prescribed by the AIFC Common Reporting Standard Rules.
- (2) A Reporting Financial Institution must establish and implement appropriate systems and internal procedures to enable its compliance with these Regulations.
- (3) A Reporting Financial Institution must keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures and measures to obtain those records that the Reporting Financial Institution obtains or creates for the purpose of complying with these Regulations.
- (4) All records required to be kept by Reporting Financial Institutions pursuant to the provisions of these Regulations must be retained in an electronically readable format for a retention period of 6 years after the date upon which such records are created.
- (5) A Reporting Financial Institution that obtains or creates records for any purpose under these Regulations, in a language other than English must, upon request, provide an English translation to the Relevant Authority.
- (6) A Reporting Financial Institution must each year following the first year in which a Person becomes a Reportable Person, notify such Person of the information relating to that Person which is required to be reported under these Regulations to the Competent Authority.

#### 9. **Investigations and inspections**

- (1) The Relevant Authority may request information from a Reporting Financial Institution and, at all reasonable times, be permitted to enter any premises or place of business of a Reporting Financial Institution for the purposes of:
  - (a) determining whether information:
    - (i) included in an information return made pursuant to these Regulations by the Reporting Financial Institution is correct and complete; or
    - (ii) not included in an information return made by the Reporting Financial Institution was correctly not included; or
  - (b) examining the systems and internal procedures put in place by a Reporting Financial Institution for the purposes of ensuring compliance with its obligations under these Regulations.
- (2) The Relevant Authority may require a Reporting Financial Institution to provide records, information, explanations and particulars and to give all the required assistance which it may reasonably require in connection with the administration or enforcement of these Regulations.



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- (3) The Relevant Authority may request information from an Account Holder that has a Reportable Account held with a Reporting Financial Institution, inclusive of (but not limited to) Accounting Records and all other records held in connection with the information or certifications provided to the Reporting Financial Institution pursuant to these Regulations, and the Relevant Authority may ask a Reporting Financial Institution to assist it to obtain such information or records from an Account Holder.
- (4) Where an Account Holder does not comply in full with any request for information by the Relevant Authority under subsection (3), the Relevant Authority may order a Reporting Financial Institution to:
  - (a) block or suspend transfers or payments to or from any Reportable Accounts relevant to the Account Holder; or
  - (b) close any Reportable Accounts held by the Account Holder with the Reporting Financial Institution in the AIFC.

### 10. **Appointment of Inspectors**

- (1) The Relevant Authority may, if it considers it necessary or desirable in the pursuit of the objectives of these Regulations, appoint one or more Inspectors to investigate the affairs of a Reporting Financial Institution and to submit such written report as the Relevant Authority may direct.

### 11. **Powers of Inspectors to obtain information and documents**

- (1) If an Inspector has reason to believe that any Reporting Financial Institution may be able to give information or produce a document which is or may be relevant to an investigation relevant to the provisions of these Regulations, he may:
  - (a) enter the business premises of such Reporting Financial Institution during normal business hours for the purpose of inspecting, obtaining and copying information or documents stored in any form on such premises;
  - (b) require such Reporting Financial Institution to produce, or procure the production of, any books, records or other documents under its control relating to the investigation;
  - (c) require such Reporting Financial Institution to give, or procure the giving of, specified information relating to the investigation;
  - (d) require such Reporting Financial Institution to attend before them at specified times and on reasonable notice and answer all questions put to them relating to the investigation (a “compulsory interview”); and
  - (e) require such Reporting Financial Institution to give reasonable assistance to them in connection with the investigation.
- (2) Where an Inspector exercises his powers under subsection (1), he may:



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- (a) require a Reporting Financial Institution to make available any relevant information stored at those premises for inspection or copying;
  - (b) require a Reporting Financial Institution to convert any relevant information into a form capable of being copied; and
  - (c) use the facilities of the Reporting Financial Institution, free of charge, to make copies.
- (3) Where an Inspector exercises his power under subsection (1)(d) to conduct a compulsory interview, he may give a direction:
- (a) concerning who may be present;
  - (b) preventing any Person present during any part of the compulsory interview from disclosing to any other Person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
  - (c) concerning the conduct of any Person present, including as to the manner in which they shall participate in the interview;
  - (d) requiring the interviewee to swear an oath or give an affirmation that the answers are true to the best of his knowledge;
  - (e) requiring the interviewee to answer any questions relevant to the investigation; and
  - (f) requiring the interview to be audio or video recorded.
- (4) A Reporting Financial Institution required under this section to answer any question which is put to such Person by an Inspector must not:
- (a) knowingly or recklessly make a statement which is false, misleading or deceptive; or
  - (b) knowingly or recklessly withhold any information the omission of which makes the information which is furnished misleading or deceptive.

### **12. Use and effect of information and documents obtained for investigations**

- (1) Information given or a document produced as a result of the exercise by the Inspectors of powers under section 11 (Powers of Inspectors to obtain information and documents) is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (2) The requirement to give, produce or procure the information or documents specified under section 11 (Powers of Inspectors to obtain information and documents) must not apply if such information or documents constitute a Privileged Communication.
- (3) Other than for the purpose of these Regulations, an Inspector must not disclose a statement made by a Reporting Financial Institution in answer to any question asked pursuant to a





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requirement made of the Reporting Financial Institution under section 11 (Powers of Inspectors to obtain information and documents) to any individual or entity unless:

- (a) the Reporting Financial Institution consents to the disclosure; or
  - (b) the Inspector is required by the Acting Law of the AIFC or AIFC Court order to disclose the statement.
- (4) The Inspector may retain possession of any information and documents given to him pursuant to a requirement made under section 11 (Powers of Inspectors to obtain information and documents) for so long as is necessary:
- (a) for the purposes of the investigation to which the notice relates;
  - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
  - (c) for such a proceeding to be completed.
- (5) A Reporting Financial Institution is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under section 11 (Powers of Inspectors to obtain information and documents), or any other provision under these Regulations, but any such lien must not otherwise be prejudiced as a consequence of the Reporting Financial Institution complying with the provisions of these Regulations.
- (6) Where a Reporting Financial Institution is unable to produce information or documents in compliance with a requirement made under section 11 (Powers of Inspectors to obtain information and documents), the Inspector may require the Reporting Financial Institution to state, to the best of its knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (7) Where the Inspector considers that, if disclosed, the fact of the issuing of a notice requiring a Reporting Financial Institution to:
- (a) produce documents;
  - (b) give information;
  - (c) attend a compulsory interview; or
  - (d) give assistance,
- may hinder the investigation to which it relates, the Inspector may direct any Person who receives such notice not to disclose the receipt of a notice or any information relating to compliance therewith to any other Person, other than his legal representative under a duty of confidentiality.
- (8) A Reporting Financial Institution is entitled to legal representation during the course of an investigation conducted pursuant to the provisions of these Regulations.



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### 13. **Obstruction of Inspectors**

A Reporting Financial Institution must not, without reasonable excuse, engage in conduct, including without limitation the:

- (a) destruction of documents;
- (b) failure to give or produce information or documents specified by an Inspector;
- (c) failure to attend before an Inspector at a specified time and place to answer questions;
- (d) giving of information that is false or misleading; or
- (e) failure to give any assistance in relation to an investigation which the Reporting Financial Institution is able to give such assistance,

that is intended to obstruct an Inspector in the exercise of any of his powers under section 11 (Powers of Inspectors to obtain information and documents).

### 14. **Powers of the Relevant Authority to apply to AIFC Court**

- (1) The Relevant Authority may apply to the AIFC Court for an order to compel a Reporting Financial Institution to adhere to the provisions of these Regulations.
- (2) If the AIFC Court is satisfied that an application by the Relevant Authority under subsection (1) is well founded, it may make such order as it thinks fit to ensure compliance with the provisions of these Regulations.

## **PART 4: PENALTIES, ENFORCEMENT AND APPEALS**

### 15. **Contraventions**

- (1) A Reporting Financial Institution which:
  - (a) does an act or thing that is prohibited under these Regulations;
  - (b) does not do an act or thing that it is required or directed to do under these Regulations; or
  - (c) otherwise contravenes these Regulations,

commits a contravention of these Regulations and is liable to a fine under Schedule 2 (Fines Limits) of the *AIFC Common Reporting Standard Rules*, or to perform any action directed by the Relevant Authority pursuant to subsection 16(1)(c) (Enforcement and appeals), or any combination thereof.

- (2) If a Reporting Financial Institution, Person or intermediary enters into any arrangement, the main purpose or one of the main purposes, of which is to avoid an obligation imposed under subsection 8(1) (Collecting, reporting and keeping records of information), such Reporting Financial Institution, Person or intermediary is subject to the obligation as if the Reporting Financial Institution, Person or intermediary had not entered into the arrangement.



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### 16. Enforcement and appeals

- (1) Where the Relevant Authority, or its delegate, considers that a Reporting Financial Institution has contravened a provision of these Regulations, it may by written notice to such Reporting Financial Institution:
  - (a) allege that the Reporting Financial Institution has committed the relevant contravention and state the particulars of the facts it relies on;
  - (b) order that a fine be paid by the Reporting Financial Institution in respect of each contravention; and/or
  - (c) order that certain action(s) be taken in order to comply with these Regulations.
- (2) The imposition of any fine under subsection (1)(b) must be made within the period of 12 months on the later of:
  - (a) the date that the Reporting Financial Institution becomes liable to pay the fine; or
  - (b) the date that the contravention first came to the attention of the Relevant Authority.
- (3) A Reporting Financial Institution must not be liable to pay a fine under subsection (1)(b) if the Relevant Authority is satisfied that there is a reasonable defence for contravening these Regulations.
- (4) Neither of the following must be considered to be a reasonable defence for the purpose of subsection (3):
  - (a) the Reporting Financial Institution having insufficient funds to do something required to be done under these Regulations; or
  - (b) the Reporting Financial Institution relying on another Person to do something required to be done under these Regulations.
- (5) If the Relevant Authority determines that a Reporting Financial Institution has a reasonable defence for contravening these Regulations up to a particular time or event, the Reporting Financial Institution must not be liable to pay a fine if it can show that any subsequent contravention of these Regulations was remedied without unreasonable delay after it became aware that the reason(s) providing the reasonable defence had ceased to apply.
- (6) A Reporting Financial Institution may appeal against any fine imposed or action ordered under subsection (1) on any one or more of the following grounds:
  - (a) it disputes the grounds or reasons for the fine provided by the Relevant Authority;
  - (b) it disputes the amount of the fine imposed; or
  - (c) it disputes the validity of any action ordered by the Relevant Authority.
- (7) Any appeal by a Reporting Financial Institution to a fine or action ordered under subsection (1) must be instituted by a written notice of appeal setting out the grounds of appeal



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delivered to the Relevant Authority within a period of 30 days from the date of the relevant notice provided to it under subsection (1).

(8) When considering a notice of appeal delivered pursuant to subsection (7), the Relevant Authority may, after due consideration of the grounds of appeal:

- (a) confirm, cancel, increase or reduce any fine originally imposed; or
- (b) confirm, change or cancel any action originally ordered,

and the Relevant Authority must confirm such finding in writing to the Reporting Financial Institution, provided that the Reporting Financial Institution has the right to challenge any such finding by way of a judicial review application to the AIFC Court, which must stay any pending or further enforcement action under these Regulations until the final determination thereof by the AIFC Court.

(9) The Relevant Authority must take appropriate steps to prevent or manage conflicts of interest arising due to its role in:

- (a) imposing a fine or ordering an action under subsection (1);
- (b) considering a notice of appeal delivered to the Relevant Authority pursuant to subsection (7); and
- (b) determining the outcome of an appeal as specified in subsections (8)(a) or (b).

(10) A fine imposed or action ordered by a Relevant Authority under subsection (1), or confirmed pursuant to subsection (8), must be paid or performed by the Reporting Financial Institution within 30 days after the date of the relevant written notice provided by the Relevant Authority, failing which the Relevant Authority may apply to the AIFC Court for the enforcement thereof, and the AIFC Court may:

- (a) make an order requiring payment of the fine;
- (b) make an order that the required action be taken; or
- (c) make any further order it deems fit.

(11) The Relevant Authority may prescribe forms and procedures in relation to:

- (a) the imposition and recovery of any penalties imposed pursuant to this section;
- (b) the enforcement of actions required by the Relevant Authority pursuant to this section; and
- (c) any objection or right of appeal in respect of any such fine, action required or the enforcement thereof.



## AIFC COMMON REPORTING STANDARD REGULATIONS

### SCHEDULE 1: INTERPRETATION

#### Definitions

In these Regulations:

**Account Holder** has the meaning given in section VIII (E Miscellaneous) of the AIFC Common Reporting Standard Rules.

**Accounting Records** means any records and underlying documents comprising initial and other accounting entries and associated supporting documents, such as:

- (a) cheques;
- (b) records of electronic funds transfers;
- (c) invoices;
- (d) contracts;
- (e) the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries; and
- (f) work sheets and spread sheets supporting cost allocations, computations, reconciliations and disclosures.

**Acting Law of the AIFC** has the meaning given by article 4 of the Constitutional Statute.

**Body Corporate** means any body corporate, including a limited liability partnership and a body corporate constituted under the law of a country or territory outside the AIFC.

**Common Reporting Standard** means the standard for automatic exchange of financial account information developed by the OECD as amended from time to time by the OECD, the current format of which is set out in the AIFC Common Reporting Standard Rules, together with the Commentaries regarding that standard issued by the OECD from time to time.

**Competent Authority** means the competent authority designated by the Government to:

- (a) receive the information reported by Reporting Financial Institutions pursuant to the Common Reporting Standard by way of a reporting system; and
- (b) facilitate the exchange of information under the Common Reporting Standard pursuant to any agreement or treaty entered into by the Government, or its permitted delegate or nominee, in connection therewith.

**Constitutional Statute** means the Constitutional Statute of the Republic of Kazakhstan dated 7 December 2015 entitled *On the Astana International Financial Centre*.

**Financial Institution** has the meaning given in section VIII (A Reporting Financial Institution) of the AIFC Common Reporting Standard Rules.

**Government** means the government of the Republic of Kazakhstan.



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***Inspector*** means any inspector appointed by the Relevant Authority under section 10 (Appointment of Inspectors).

***New Account*** means any account defined as such in section VIII (C Financial Account) of the AIFC Common Reporting Standard Rules.

***Non-reporting Financial Institution*** has the meaning given in section VIII (B Non-Reporting Financial Institution) of the AIFC Common Reporting Standard Rules.

***OECD*** means the Organisation for Economic Co-Operation and Development which was established by the Convention on the Organisation for Economic Co-operation and Development signed in Paris on 14 December, 1960.

***Partnership*** means any partnership, including a partnership constituted under the law of a jurisdiction other than the AIFC, but not including a limited liability partnership.

***Person*** includes any natural person, Body Corporate or body unincorporated, including a legal person, company, Partnership, unincorporated association, government or state.

***Pre-existing Account*** means any account defined as such in section VIII (C Financial Account) of the AIFC Common Reporting Standard Rules.

***Privileged Communication*** means a communication attracting a privilege arising from the provision of professional legal advice and any other privilege applicable at law, but which does not include a general duty of confidentiality.

***Relevant Authority*** means the Astana Financial Services Authority.

***Reportable Account*** means any account defined as such in section VIII (D Reportable Account) of the AIFC Common Reporting Standard Rules.

***Reportable Person*** has the meaning given in section VIII (D Reportable Account) of the AIFC Common Reporting Standard Rules.

***Reporting Financial Institution*** has the meaning given in section VIII (A Reporting Financial Institution) of the AIFC Common Reporting Standard Rules.