



**Guidance
on establishing a Special Purpose
Company (“SPC”) in the AIFC under
the AIFC Companies Regulations**

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INTRODUCTION

This Guidance is issued to give an overview of regulatory requirements for establishing a Special Purpose Company (“SPC”) in the AIFC under the AIFC Companies Regulations, AIFC Special Purpose Company Rules, and other applicable AIFC Acts.

For the purposes of this Guide, any term or expression appearing in capital letters shall, unless the context otherwise requires, have the meaning assigned to it under the relevant AIFC Act. Where a definition is not expressly provided therein, such terms shall be interpreted in accordance with their ordinary legal meaning or as reasonably understood within the context of this Guide.

This Guidance is issued to promote good practices and observance of the requirements of the AIFC Companies Regulations and Rules, with the purpose to clarify the intended use and permitted scope of activities of SPC in the AIFC, to outline the incorporation process, highlight key features of operations of SPC and summarize issues identified by the Office of the Registrar during the recent review of activities of SPCs.

AIFC Special Purpose Company Rules define the purpose and activities of SPC. An SPC is a legal entity that is created solely for a particular financial transaction or series of transactions. The SPC must not engage in any other business except for Exempt Activities. SPC structures are commonly used in structured finance, including securitization transactions, where an SPC typically purchases and holds the assets for the purposes of the securitisation. The SPC’s payment for the pool is typically funded by debt, including through the issue of securities by the SPC.

Although there is no AIFC Act exclusively dedicated to the securitisation, relevant aspects of securitisation, such as corporate structures, security regime and certain requirements to AIFC Participants, are governed by AIFC Companies Regulations, AIFC Special Purposes Company Rules, AIFC Security Regulations and Rules, AIFC Financial Services Framework Regulations, AIFC Banking Prudential Rules, AIFC Banking Prudential Guideline, AIFC Market Rules, AIFC Market Institutions Rules, AIFC Security Regulations and Rules.

In a traditional securitisation, title to the underlying assets is transferred to a special purpose entity, and the cash flows from the underlying pool of assets are used to service at least 2 tranches. A traditional securitisation generally assumes the movement of assets off the originator’s balance sheet.¹

Disclaimer: This Guidance is issued for general informational purposes only and does not constitute legal advice. Market participants are responsible for ensuring they are fully aware of, and compliant with, all relevant AIFC Acts and any other applicable law. Nothing in this document constitutes legal advice. Market participants and Persons considering establishing an SPC or issuing securities through an SPC should seek independent legal and professional advice to assess their specific circumstances and obligations under the Acting law of the AIFC and any other applicable law prior to undertaking any activities in the AIFC.

¹ Paragraph 70 of the AIFC Banking Prudential Guideline

1. INCORPORATION AND REGULATORY STATUS OF AN SPC

1.1 Eligibility and Purpose

An SPC must be incorporated as a Company Limited by Shares under the AIFC Companies Regulations and AIFC Special Purpose Company Rules, established solely to undertake Exempt Activities².

1.2. Key requirements:

1.2.1. Permitted Activities

Under the regulatory regime in the AIFC, an SPC is intended to be a vehicle used for conducting activities strictly connected to a specific *Transaction*³ with the following core feature:

- be structured either in an Islamic or conventional way;
- serve the benefit of the Initiator;
- involve activities of structured finance, including securitization, other capital markets transactions.

SPC must undertake activities related to Exempt Activities, whether undertaken in an Islamic or conventional way⁴:

“(a) the acquisition (by way of leasing, title transfer, risk transfer or otherwise), the holding and the disposal of any asset (tangible or intangible, including, for example, receivables and Shares) in connection with and for the purpose of a Transaction;”

During the review of the Registrar of Companies, it was established that SPCs were used as an asset-holding structure without any linkage to structured finance transactions.

(b) the obtaining of any type of financing (banking or capital markets), the granting of any type of security interest over its assets, the providing of any indemnity or similar support for the benefit of its Shareholders or any of its Subsidiaries, or the entering into any type of hedging arrangements, in connection with and for the purpose of a Transaction;

(c) the financing of the Initiator or another Special Purpose Company;

² Rules 1.4. and 2.1. of the AIFC Special Purpose Company Rules

³ Please see the definition of “Transaction” in the AIFC Special Purpose Company Rules

⁴ Please see the definition of “Exempt Activities” in the AIFC Special Purpose Company Rules

The Registrar of Companies revealed that SPCs were engaging in ongoing commercial or investment activity beyond the scope of the defined Exempt Activities (without issuing any structured finance products or debt instruments).

(d) acting as trustee or agent for any participant in the Transaction;

(e) any other activity approved in Writing by the Registrar;

The review identified that some SPCs were conducting activities outside the scope of permitted SPC activities without the prior written approval of the Registrar of Companies.

(f) any activity ancillary to an activity mentioned in paragraphs (a) to (e)".

1.2.2. Prohibited Activities

It is prohibited to conduct Financial Services unless a Person is authorized by the AFSA to conduct the activities pursuant to the AIFC Financial Services Framework Regulations⁵.

SPC must not be the trustee of an Investment Trust, the general partner of an Investment Partnership or an Investment Company.

⁵ Section 24 of the AIFC Financial Services Framework Regulations

2. REGULATORY REQUIREMENTS

2.1. Company Name: Ensure the Company name complies with AIFC Companies Regulations and includes reference to “SPC” or “Special Purpose Company” as prescribed by AIFC Special Purpose Company Rules⁶. Special Purpose Company’s name must end with ‘SPC Limited’ or ‘SPC Ltd.’

2.2. Permitted Shareholder: At least one Shareholder is required. Shareholders can include the Initiator, other participants of Transaction, another SPC or a Nominee holding shares on trust for discretionary purposes, and the beneficiaries are wholly or mainly the Initiator, other participants of Transaction⁷.

The review of the Registrar of Companies identified that, following SPC incorporation, shares in SPC were transferred – though multiple share transfer transactions - to individuals not permitted to be Shareholders in an SPC.

Note:

the AIFC Banking Prudential Guideline defines the following participants of the securitization arrangement: an originator, an issuer, an investor, a manager, a sponsor, an adviser, a servicer to carry out certain activities usually carried out by the manager of the securitisation and etc.⁸

2.3. Directors: A minimum of one Director is necessary. Directors can be individuals or bodies corporate and there is no requirement for residency in Kazakhstan. However, the CEO must have a Kazakhstani Individual Identification Number (IIN).

2.4. Corporate administration: SPCs must appoint a Company service provider⁹ authorised to conduct corporate services business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies.

2.5. Registered Office: The SPC must maintain a registered office address within the AIFC, which can be hosted by an appointed Company Service Provider, to whom all communications and notices may be addressed.

⁶ Rule 3.3. of the AIFC Special Purpose Company Rules

⁷ Rule 4.1. of the AIFC Special Purpose Company Rules

⁸ Paragraph 74 of the AIFC Banking Prudential Guideline

⁹ Rule 3.4. of the AIFC Special Purpose Company Rules. Please also see a definition of the “Corporate service provider” in the AIFC Special Purpose Company Rules

According to the results of the review, a number of SPCs failed to comply with the rule 3.4.1 of the AIFC Special Purpose Company Rules to receive its corporate administration services from a Company service provider.

In compliance with the interpretation of the AIFC Special Purpose Companies Rules Company service provider means a Person authorised (however described) to conduct corporate services business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies

Note:

Paragraph 4 of Schedule 2 of GEN provides the following definition of Consultancy Services:

“Performing Consultancy Services means providing expert knowledge or advice on a particular topic. Consultancy Services may include the activity of Company service providers.”

AIFC Glossary defines Company service provider as “a Person, not captured by (a) to (e) of the definition of DNFBP that, by way of business, provides any of the following services to a customer:

(a) acting as an agent of legal persons to form a company;

(b) acting as, or arranging for another Person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other

legal persons;

(c) providing a registered office, business address, or accommodation, correspondence or administrative address for a company, a partnership, or any

other legal person or arrangement; or

(d) acting as, or arranging for another Person to act as, a nominee shareholder

for another Person, including through acting on trust for discretionary purposes.”

Asset Administration: Can be outsourced to third-party asset administration or management providers.

2.6. Registration Process

An SPC could be incorporated by a Company service provider or law/accounting firm. However, SPC cannot conduct its business activities until all issued shares are transferred to permitted shareholders, i.e.:

The Initiator, other participants of the transaction, another SPC, or a Nominee holding shares on trust for discretionary purposes.

An application for registration may be submitted either online, via the Digital Resident Platform (<https://digitalresident.kz/>), or offline, by sending the required documentation to registration@afsa.kz. For guidance on registration and other useful tips, please refer to our website (<https://afsa.aifc.kz/registration/consider-before-opening-business/>).

2.7. Reporting obligations.

In January each year after the year of its registration, a Special Purpose Company must give the Registrar of Companies a Written confirmation that since its registration or last confirmation under this paragraph, as the case may be, there has been no amendment of its Articles of Association that was required to be submitted to the Registrar that has not been submitted to the Registrar.

Also note, accounts of the Special Purpose Company must be audited and submitted to the Registrar of Companies within 6 months after the end of each financial year of the Company in compliance with Part 10 of the AIFC Companies Regulations, if:

- the Special Purpose Company has obtained a listing on any stock exchange of Securities issued by it; or
- the Special Purpose Company is a subsidiary of a Public Company, which publishes consolidated accounts and those accounts do not include the accounts of the Special Purpose Company.

Additionally, SPCs must also comply with ongoing reporting obligations, prescribed by AIFC MAR and Business Rules of the Authorised Investment Exchange (e.g., financial disclosures, notification of material events, and changes to terms of the securities).

2.8. Additional Considerations

Compliance with AIFC Regulations and applicable law: Ensure adherence to all relevant AIFC Acts and applicable law. Please note that certain restrictions may apply in relation to originators to establish SPC and assign rights to SPC.

In general, securitisation is used by banks and other credit institutions to package loans into securities and then sell them to investors. It lets banks transfer the risk of some loans to other banks or long-term investors such as insurance companies and asset managers. This allows banks to use the capital that was set aside to cover the risk in those loans to create and sell new loans.

For example, in Kazakhstan banks and microfinance companies are allowed to assign rights of claim under banking loans or microloans to collection agencies, other banks, certain organizations and funds and to special purpose vehicles created under the Law of the Republic of Kazakhstan on Project Financing and Securitisation.

According to Laws of the Republic of Kazakhstan on banks and banking activity and on microfinance activity, any person could “purchase” rights of claim under non-performing loans of individual entrepreneurs and legal entities only.

Once purchased, such rights of claim *shall be transferred for the management of the service company* in certain cases (e.g., rights of claim under NPLs could be assigned to any persons provided that such rights of claim are to be transferred for the management of the eligible service company (except for loans provided to legal entities for the amount over 16,500 MCI).

3. ISSUANCE OF DEBENTURES BY AN SPC

3.1 General Requirements

To have Securities admitted to trading and/or to offer Securities in or from the AIFC, SPC may issue Securities in accordance with the AIFC Market Rules (MAR), subject to the following:

- the issuance must be within the scope of the SPC's constitutional documents and Exempt Activities;
- the Issuer (SPC) will prepare a Prospectus and submit it for approval by an Authorised Investment Exchange and AFSA in accordance with MAR¹⁰;
- an Authorised Investment Exchange may admit Securities to trading, and permit the offer of Securities in or from the AIFC *without a Prospectus*, if such Securities satisfy one or more of the conditions specified in MAR 1.2.2;
- Other requirements prescribed by MAR.

3.2. Listing on the Astana International Exchange (AIX)

If the SPC intends to list securities on the Astana International Exchange (AIX), the following procedures and requirements apply:

- to execute a Pre-listing Agreement with the AIX;
- to submit Listing and Trading Applications, including the approved Prospectus and other required disclosures;
- to Sign the Listing Agreement;
- other procedures and requirements prescribed by MAR and AIX Business Rules.

4. SANCTIONS AND PENALTIES

Non-compliance with the AIFC Acts may result in:

- revocation of the SPC status (e.g., under the rule 2.3.1. of the AIFC Special Purpose Company Rules, the Registrar of Companies may revoke the SPC status if a Person who is not listed in rule 4.1.2. of the AIFC Special Purpose Rules becomes a shareholder);
- imposition of a fine by the Registrar of Companies (e.g., in case SPC conducts an activity that is not an Exempt Activity);
- imposition of sanctions by AFSA under the AIFC Financial Services Regulations and Rules (e.g., in case SPC conducts Financial Services without the relevant AFSA authorization);
- disciplinary actions by the Authorized Market Institution resulting in financial and other types of penalties;
- other measures prescribed by the AIFC Acts and applicable law.

¹⁰ MAR 1.1.1., 1.1.2, 1.7 and 1.8.