



Consultation Paper

AFSA-L-CE-2022-0003

Proposed Guidance on Establishment Collective Investment Scheme for Fund Managers

Unrestricted

December 8, 2022

Introduction

Why are we issuing this Consultation Paper (CP)?

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to seek suggestions from the market on the proposed Guidance on Establishment of Collective Investment Scheme for Fund Managers (“Guidance”).

Who should read this CP?

2. The proposals in this paper will be of interest to current and potential AIFC participants who are interested in exercising business activities in or from the AIFC.

Terminology

3. Defined terms have the initial letter of the word capitalised, or of each word in a phrase. Definitions are set out in the AIFC Glossary ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

4. We invite comments from interested stakeholders on the proposed framework. 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 AFSA-L-CE-2022-0003” 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.

5. The deadline for providing comments on the proposed framework is **9 January 2023**. Once we receive your comments, we shall consider if any refinements are required to this proposal.

6. AFSA prefers to receive comments by email at consultation@afsa.kz.

Comments may also be posted to:

Policy and Strategy Division

Astana Financial Services Authority (AFSA)

55/17 Mangilik EI, building C3.2, Astana, Kazakhstan

Structure of this CP

Part I – Background;

Part II – Key items;

Part III – Questions in this Consultation Paper;

Annex 1 – Draft Guidance Establishment of Collective Investment Scheme for Fund Managers.

Part I - Background

1. The proposed Guidance provides the existing and prospective Fund Managers with understanding of the Collective Investment Scheme (“CIS”) legal framework in the AIFC and guidance on the process of CIS establishment.
2. The Guidance includes the following provisions:
 - i. introduction, objectives and scope of application of the Guidance;
 - ii. CIS framework and legislation;
 - iii. CIS classification;
 - iv. registration and notification processes when assessing and reviewing Funds; and
 - v. main information requirements when assessing and reviewing Funds.

Part II - Key items

1. The Guidance is for information purpose to assist Fund Managers to understand the AIFC CIS legal framework, processes and steps towards establishing a CIS, and criteria and requirements taken into consideration by the AFSA when assessing applications for registration of a Fund or notifications on managing of a Fund.
2. There are some matters in this Guidance which apply to all types of Funds and some which are specific to certain types of Funds (exempt or non-exempt funds, specialist funds, etc.), so this Guidance must be read in conjunction with all applicable AIFC Acts relating to each specific Fund and case.
3. The Guidance applies to existing and prospective Fund Managers who are seeking to establish and manage Funds in the AIFC and be authorised by the AFSA to do so. This Guidance is not intended to apply any new legislative requirements on existing and prospective Fund Managers.
4. The Guidance includes the following provisions:
 - a. Introduction
 - b. CIS Legal Framework
 - c. CIS Classification
 - d. Fund Establishment Process
 - e. Requirements for Constitution and Offering Materials.
5. The Guidance explains in detail the fund establishment process by breaking it down into the following main steps:
 - Initiation
 - Application Fees
 - Documents Submission
 - Completeness Check
 - Documents Analysis

- Decision
 - Incorporation of Fund.
6. In addition to the information listed in the AIFC Collective Investment Scheme Rules the Guidance contains a list of requirements, though not exhaustive and universal, that the AFSA expects to be covered by the Constitution and Offering Materials of a Fund. Thus, for example, it is advisable the Constitution contains corporate procedures and litigation related aspects of the Fund. The Offering Materials are advised to have information on business process flows, governance arrangements, clear reporting lines, control and IT systems environments, etc.

Comprehensive and clear disclosure of the aspects of engagement between Fund Manager, Fund and investors significantly assists potential investors in their decision-making process and AFSA in exercising its supervisory powers.

Part III - Questions in this Consultation Paper

1. Does the proposed Guidance provide sufficient information explaining AFSA's approach on registration and notification processes when assessing and reviewing Funds? Is the approach clear?
2. Does the proposed Guidance provide sufficient information explaining AFSA's approach on providing main information requirements when assessing and reviewing Funds? In your opinion, is there any other information required?
3. Does the proposed Guidance create difficulties for potential AIFC participants? If yes, please provide examples.

GUIDANCE ON ESTABLISHMENT OF COLLECTIVE INVESTMENT SCHEME FOR FUND MANAGERS



AFSA

Astana
Financial
Services
Authority

[date, month] 2023

Disclaimer

This Guidance on Establishment of Collective Investment Scheme for Fund Managers (“**Guidance**”) provides general information on establishing of a Fund in the AIFC and must be read in conjunction with the relevant AIFC Acts. Anything stated in this Guidance shall be treated solely as clarification or explanation of provisions of the relevant AIFC Acts and in any case must not be regarded as setting out any requirements in addition to those provided in the AIFC Acts. Should anything in this Guidance be in contradiction with any provision of the relevant AIFC Acts, the provisions of AIFC Acts shall have prevailing force with any statement of this Guidance falling in contradiction with such AIFC Act being invalid for the purposes of explanation or clarification of the AIFC Act. Any such contradicting statement of this Guidance shall be treated merely as an example of good practice in the given business industry.

This Guidance does not cover all applicable requirements set out in the relevant AIFC Acts. The AFSA makes no representations as to accuracy, completeness, correctness or suitability of any information provided herein and must not be liable for any error, omission, inconsistency or irrelevance of any of provisions set out herein. Information in this Guidance must not be deemed, considered or relied upon as legal advice and must not be treated as an equivalent or substitute for a specific advice concerning any individual situation. The AFSA is not liable for any losses and damages arising directly or indirectly in connection with the use of or reliance on information provided in this Guidance, and professional advice should be obtained prior to relying on this Guidance.

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1. Introduction

The purpose of this Guidance is to provide existing and prospective Fund Managers with an understanding of the framework of Collective Investment Scheme (“CIS”) in the AIFC, processes and steps towards establishing a CIS and criteria and requirements taken into consideration by the AFSA when assessing applications for registration of a Fund or notifications on managing of a Fund.

There are some matters in this Guidance which apply to all types of Funds and some which are specific to certain types of Funds (exempt or non-exempt funds, specialist funds, etc.), so this Guidance must be read in conjunction with all applicable AIFC Acts relating to each specific Fund and case.

For the purpose of this Guidance, the terms “CIS(s)” and “Fund(s)” may be used interchangeably.

This Guidance contains:

- a. description of CIS framework and legislation;
- b. description of CIS classifications;
- c. description of the Registration and Notification processes that the AFSA follows when assessing and reviewing Funds; and
- d. description of main information requirements which the AFSA considers when assessing and reviewing Funds.

This Guidance is therefore relevant to existing and prospective Fund Managers who are seeking to establish and manage Funds in the AIFC and be authorised by the AFSA to do so.

2. CIS Legal Framework and CIS Classification

CIS Legal Framework

In general terms, a CIS is an arrangement under which professional Fund Managers pool money from investors and invest and manage it according to the pre-set investment objectives and parameters. An official definition of CIS may be found in Section 92 of AIFC Financial Services Framework Regulations. For an arrangement to be qualified as a CIS, following conditions must be satisfied:

- Investors participating in a CIS must not have day-to-day control over the management of a Fund;
- Arrangements must have either or both of the following characteristics:
 - a. contributions of investors and distributions to investors must be pooled;
 - b. assets must be managed as a whole by or on behalf of the Fund Manager;
- In case the contributions of investors and distributions to investors are pooled for separate parts of assets, an arrangement is not a CIS unless investors are entitled to exchange rights in one part of assets for rights in other part of assets.

Existing and prospective Fund Managers planning to establish and manage Funds in the AIFC must familiarise themselves and comply with the relevant AIFC Acts, including, but not limited to:

- AIFC Financial Services Framework Regulations;

- AIFC General Rules;
- AIFC Conduct of Business Rules;
- AIFC Collective Investment Scheme Rules;
- AIFC Prudential Rules for Investment Firms;
- AIFC Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Rules;
- AIFC Companies Regulations;
- AIFC Companies Rules; and
- AIFC Market Rules (if CIS is to be listed on Authorised Investment Exchange).

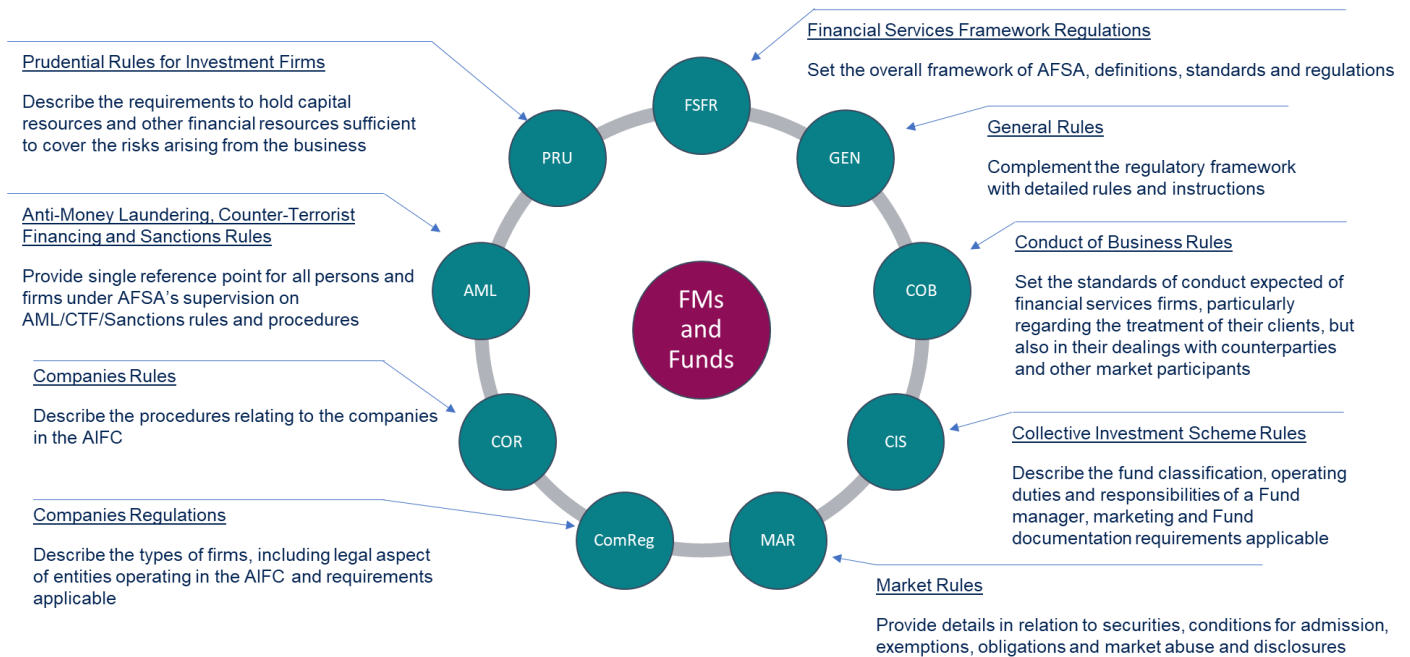


Figure 1: Legal framework for CIS

Fund Manager's ability to present its compliance and adherence to the above AIFC Acts, as well as all other applicable AIFC Acts, its competence in the chosen field and evidence of operating with due skill, care and diligence affects the assessment of the Fund Manager by the AFSA and the consequent decision of the AFSA on giving its written consent to establish and operate CIS in the AIFC.

CIS Classification

There are two main classifications of Funds established, promoted or marketed in the AIFC:

- Exempt Funds – which are open to Professional Clients only by way of private placement with minimum subscription amount of USD 50,000; and
- Non-Exempt Fund – which are open to Retail Clients, units of which are offered in the AIFC and which is not Exempt Fund.

Considering the Retail Clients oriented nature of Non-Exempt Funds, the degree and extent of disclosures and requirements applicable to Non-Exempt Funds are more stringent than for Exempt Funds. The following table outlines general requirements applicable to Non-Exempt Funds and Exempt Funds:

	Non-Exempt Fund	Exempt Fund	
Fund Manager	Domestic Fund Manager	Domestic Fund Manager	Foreign Fund Manager
Minimum capital requirements of Fund Manager	US\$ 150,000	US\$ 50,000	n/a
Fund Domiciliation	AIFC and foreign jurisdictions		
Fund Registration/Notification	Registration	Notification	Registration
Fund Constitution	Required		
Offering Materials	Required		
Investors/Unit holders	Any	Professional Clients only	
Minimum Subscription amount	-	US\$ 50,000	
Eligible Custodian	Required	Not required (unless REIT)	Required
Fund Auditor	Required	Not Required (unless REIT)	
Periodic reports	Annual and quarterly	Not Required	
Financial reports	Annually (IFRS or US-GAAP)		

Figure 1: General requirements for CIS

* Fund has an appointed Eligible Custodian unless the appointment of an Eligible Custodian is not required due to the nature of the Fund and the type of assets which it holds. Otherwise, the base capital requirement increases to US\$ 500,000.

Funds, whether established as Non-Exempt Funds or Exempt Funds, may be formed as a Specialist Funds with specific nature of business and investment objectives. The AIFC allows following types of Specialist Fund:

- Islamic Investment Fund;
- Private Equity Fund;
- Venture Capital Fund;
- Real Estate Investment Trust;
- Any other Funds which comply with specific rules or guidelines that may be published by AFSA from time to time.

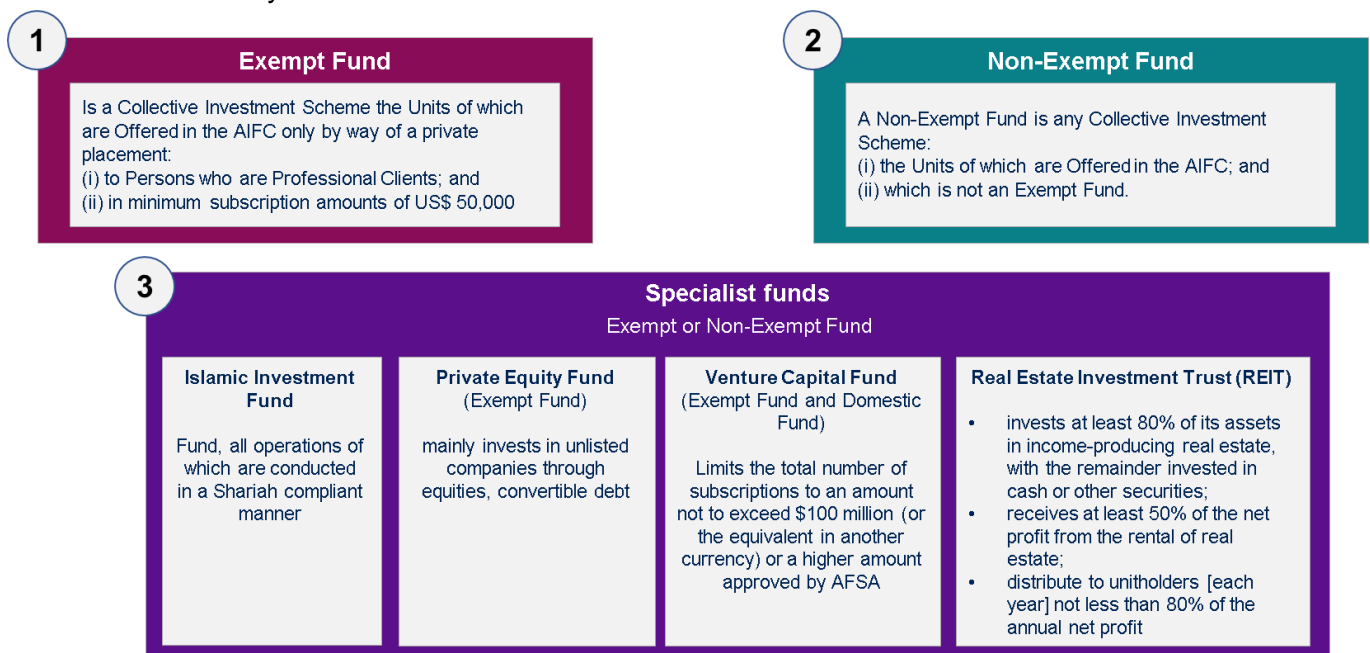


Figure 2: CIS classification

3. Fund Establishment Process

Before the AFSA issues its written consent to a Fund Manager to establish a Fund (both Non-Exempt or Exempt Fund), they must provide evidence, satisfactory to the AFSA, on its ability to manage a Fund on an ongoing basis. A Fund Manager, when exercising its powers and carrying out its duties, must, among other duties, act diligently, with due skill, care, honesty and integrity to Unitholders.

For the avoidance of doubt, “establishment” includes procedures on registration of a Fund and notification on managing of a Fund, as relevant from case to case.

The AFSA will only review applications for registration of Funds or notifications for managing a Fund from:

1. Fund Managers authorised by the AFSA; and
2. Foreign Fund Managers that are authorised by a Financial Services Regulator:
 - in Recognised Jurisdictions (please see Schedule 2 of AIFC Collective Investment Scheme Rules); or
 - in a jurisdiction that is otherwise acceptable to the AFSA (please see Schedule 3 of AIFC Collective Investment Scheme Rules).

In case the above criteria are met, the Fund Manager (domestic or foreign) undergoes Fund establishment process which involves certain steps towards obtaining the AFSA written consent to establish Fund and incorporate legal entity for that Fund as shown in the below figure.

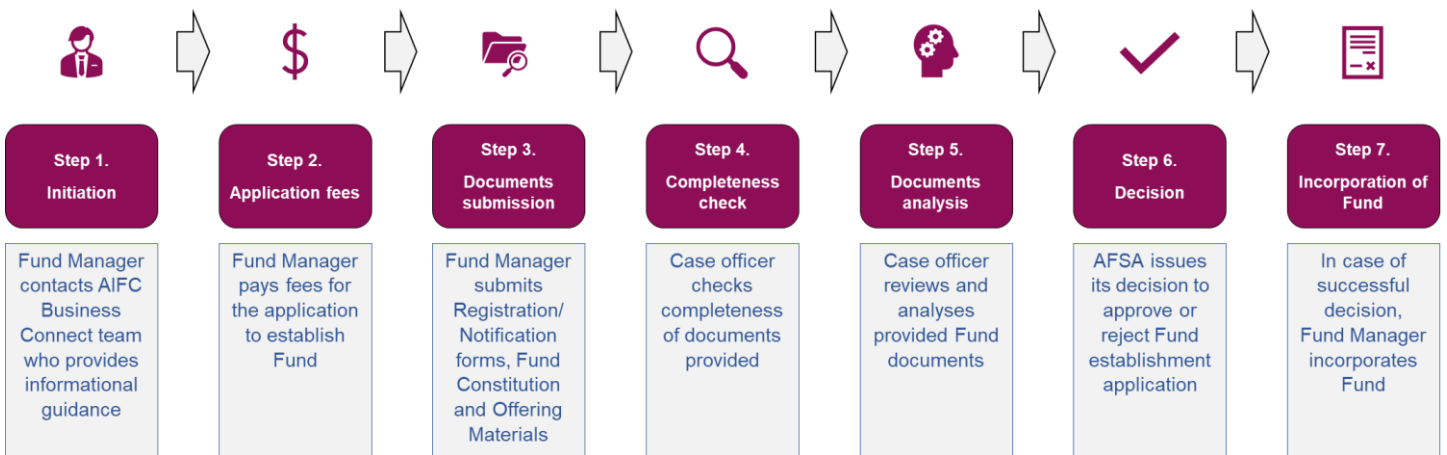


Figure 3: Fund establishment process

Step 1: Initiation

We strongly recommend that firms, in the first instance, engage with the AIFC Business Connect. They will help you understand the value proposition of the AIFC to assist your evaluation of whether a presence here will make business sense for your firm.

Existing and prospective Fund Managers may contact the AIFC Business Connect team by emailing bc@aicf.kz and obtain informational guidance.

Next, you can contact the AFSA and express your intention to establish and manage a Fund in the AIFC either in written form (signed hardcopy or via authorised emails) or during initial meeting with AFSA's representatives.

Step 2. Application fees

After preliminary discussions between you and the AFSA have taken place and preliminary details and parameters of the Fund have been taken into consideration, you will need to pay application fees according to the invoice issued by the AFSA. Application fees amounts and deadlines for payment are outlined in AIFC Fees Rules – USD 1,000 for Exempt Funds and USD 2,000 for Non-Exempt Funds. You should note that the payment of these fees does not guarantee the positive decision of the AFSA on establishment of a Fund. Application fees should be recognised as fees paid for the review of your Fund documents only. The application fees are considered as fully paid only when:

- application fees are paid in full amount, excluding any bank commissions/fees; and
- application fees are paid in a timely manner; and
- receipt of application fees to AFSA's bank account is confirmed by the AFSA.

Step 3. Documents submission

You will need to submit the following Fund documentation to the Case Officer:

- Registration form (for Non-Exempt Fund) or Notification form (for Exempt Fund)
- Fund Constitution
- Fund Offering Materials
- Any other significant documents related to the Fund (i.e., investment/subscription agreements, articles of association, etc.).

Step 4. Completeness check

Case Officer reviews the package of Fund documentation and conducts the completeness check.

To be considered materially complete, the Fund documentation must be:

- filled out in all applicable sections of Registration or Notification forms; and
- accompanied by Fund Constitution and Offering Materials, contents of which must include all significant/material matters of the Fund and be compliant with requirements set out in applicable AIFC Acts; and
- accompanied by the appropriate supporting documents (if any).

After the check, Case Officer will inform you on completeness/incompleteness of package of Fund documentation.

Step 5. Documents analysis

Case Officer reviews and analyses Fund documentation for its compliance with relevant AIFC Acts. It is important to note that obtaining AFSA written consent to establish Fund is a reiterative process, which involves multiple rounds of reviews and discussions.

During the review stage, Case Officer will contact you to discuss or clarify the information submitted as part of Fund documentation, provide comments, set up interviews with key individuals of Fund Manager, and request any information which it considers relevant for consideration of an application. Your responsibility and ability to provide full, frank and quality information as well as your responsiveness and readiness to cooperate and provide requested information in a timely manner affects the overall timing of review. General details and explanations on content requirements of Fund documentation are discussed in section 4.

Step 6. Decision

After the review stage, Case Officer informs you on AFSA's decision to:

- approve issuance of written consent to establish Fund;
- approve issuance of written consent to establish Fund with conditions;
- sent for revision of submitted Fund documentation according to comments provided;
- reject issuance of written consent to establish Fund.

You should note that if AFSA decided to reject applications, which were previously sent for revision, Fund Managers will need to repay the application fees and start the process from scratch. Same goes for applications which were rejected from the first time.

Step 7. Incorporation of Fund

In case of AFSA's decision to approve the issuance of written consent to establish Fund without or with conditions, you are liable to begin incorporating and registering the legal entity for the Fund. Based on AFSA's written consent to establish Fund, you must apply for incorporation/registration of Fund either online via the self-service portal (<http://www.digitalresident.kz>) or offline via AFSA Registration division (registration@afsa.kz). Registration fees are paid once and equals to USD 300 (for online applications) and USD 500 (for offline applications). If application is successful, AFSA Registration Division will notify you on the application status and issue Certificate of Incorporation/Recognition.

4. Requirements for Constitution and Offering Materials

The main information requirements are the same for all Funds, but each application will be assessed on its own merits depending on the nature, scale and complexity. You should note that despite the notion of "Notification" for the Exempt Funds, it does not relieve Fund Managers planning to establish and manage Exempt Funds from complying with relevant AIFC Acts. However, the requirements which the Fund Manager must follow and comply with as well as the degree of responsibility of Fund Manager are more stringent for Non-Exempt Funds. In this regard, during review stage Case Officer analyses Fund documentation related to Non-Exempt Funds more comprehensively and in-depth with focus on detailed disclosures and explanations, considering the involvement of unsophisticated retail investors in Non-Exempt Funds.

Registration

The following entities must apply to the AFSA to register the following types of Fund:

- a Domestic Fund Manager that intends to manage a Non-Exempt Fund;
- a Centre Participant that wishes to market a Non-Exempt Fund in the AIFC; and
- a Foreign Fund Manager that intends to manage an Exempt Fund.

The registration form must be accompanied by:

- copies of the Fund's Constitution and Offering Materials; and
- certification by the Fund Manager that the Constitution and Offering Materials comply with any relevant requirements prescribed under these Rules and any other applicable regulations of the AFSA; and
- such other information as the AFSA may from time-to-time request.

Notification*

A Fund Manager must notify the AFSA of its intention to manage a Fund as soon as reasonably practicable before launch if that Fund is not required to be registered in accordance with Rule 4.2.

(b) The AFSA may prescribe the form of the notification, which must include the following information:

- the Constitution of the Fund;
- the Offering Materials relating to the Fund; and
- such other information as the AFSA may prescribe.

*Practical implications

According to Article 6.3.3 of AIFC Companies Rules, a Company must not be incorporated as an Investment Company, an existing Company must not be converted into an Investment Company, and a Company must not operate an Investment Company, unless:

- the Company is formed, and is to operate, for the sole purpose of conducting the business of a Fund; and
- the AFSA has given its prior Written consent.

AFSA conducts overview of the Notification similar to Registration cases to the degree and extent as the AFSA considers necessary or desirable to meet its regulatory objectives. After the overview, AFSA provides Fund manager its prior Written consent to establish Investment Fund formed as an Investment Company.

Figure 4: Registration and Notification requirements

Constitution

Fund Constitution represents general document, which describes, for example, general framework, strategy and rationale for establishing a Fund in the AIFC, investment objectives and policies, corporate, legal matters and main duties and responsibilities of Fund Manager and its corporate bodies and committees. Fund Constitution should also include, *inter alia*, information on organizational structure and terms of engagement of its management team. As well as, for instance, corporate procedures and litigation aspects of the Fund must be also disclosed in Fund Constitution. Existing and prospective Fund Managers may use Schedule 1 of AIFC Collective Investment Scheme Rules as a starting point in drafting Fund Constitution (although it is applicable to Non-Exempt Funds, it serves good purpose for any Funds as it reflects significant and material matters of Fund's operations). A Fund's Constitution may be considered as an appropriately compliant (with the CIS Rules) articles of association of an investment company or a partnership agreement of a limited partnership, or a trust deed in the case of a trust (as the case may be) when establishing the Fund in the AIFC.

Offering Materials

Offering Materials represent a marketing document offered/circulated among potential investors which should allow them to make informed and weighted decision based on their investment objectives, risk appetites and sophistication. In this regard, Offering Materials should be written in-detail and extensively to help investors in decision making. Offering Materials should cover all aspects of the engagement between Fund Manager – Fund – investors, including but not limited to:

- Description of investment objective / strategy / policy and description of procedures on amending strategy and/or policy;
- Investment / Asset Policy: for example, types of investments/assets, limits placed on each investment/asset, allocation of funds for each investment/asset, restrictions to certain investment/asset, disposal;
- Investors: for example, type (retail, professional, legal entities), types of units/shares, minimum subscription amounts and limits, redemption terms and conditions, units exchange process, client on-boarding and KYC procedures;
- Third party service providers (for example, custodian, administrator, banks, appraiser, broker, auditor, registrar): for example, criteria to appoint, due diligence, duties of third party service providers, terms and conditions of engagement with third party service providers, fees/penalties calculations
- Fees and expenses: for example, disclosure of the entire structure of fees, including all other direct/indirect expenses and costs, calculations of these fees and expenses, limits on expenses, procedures to change the fee structure;
- Borrowing / Leverage: for example, terms, limits, purpose, collateral options, approval/decision making procedures;
- Internal decision making and corporate procedures (including AGMs, ad-hoc meetings, replacement of Fund Manager etc.): for example, description, procedures, deadlines, voting powers, rights and duties;
- Fund characteristics: for example, size, duration, termination, information about Fund Manager and its top management;
- Client Money and Investments: for example, protection mechanisms, description of accounting and reporting matters related to investors' money and investments;
- Distribution policy: for example, waterfall, types and periodicity of distribution

(dividends, re-investment, etc);

- Listing: for example, description, procedures, terms and conditions, valuation;
- Risk and Liquidity Management: for example, description, disclosure, responsibility;
- Communication with investors: for example, procedures, channels, reporting, forms of communication and complaints handling;
- Disclaimers / Statements: for example, regulatory, responsibility, Fund-specific;
- Record-Keeping Policy: for example, description, types of info to be recorded, retention periods;
- Any warrants, representations, covenants, restrictions, indemnities specific to a Fund;
- Any other details that are un-covered by the above points, but represent importance to Fund Manager and Fund's activities.

Please note that the above list of Fund characteristics is not exhaustive and not universal. Certain characteristics may apply to only certain types of Funds, while others may be inapplicable. At the same time, comprehensively disclosing the above areas with sufficient level of details may significantly assist the AFSA in its decision-making process.

You are advised to include diagrams and graphics illustrating corporate structures, business process flows, governance arrangements, organisational design, clear reporting lines, control and IT systems environments and other relevant aspects of the Fund.

You should also bear in mind that the degree of disclosure and description of the above Fund characteristics should be more extensive and user-friendly for Non-Exempt Funds, considering that in most cases, retail investors do not possess relevant knowledge and experience in investing into Funds and/or may lack understanding of the financial sector as a whole.