



AFSA

Astana
Financial
Services
Authority

Consultation Paper

AFSA-P-CE-2024-0001

Consultation Paper on the AIFC Family Offices Framework

Unrestricted

March 19, 2024

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 policy paper and proposed AIFC family offices framework.

Who should read this CP?

2. The proposals in this paper will be of interest to families or entities who are looking for an attractive base to establish family offices. In particular, family businesses, legal advisors, advisers to families, and wealth managers.

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 email specified below. If sending your comments by email, please use "Consultation Paper AFSA-P-CE-2024-0001" 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 **25 April 2024**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
6. Following the public consultation, we may proceed with making relevant changes to the AIFC Acts as appropriate to reflect the points raised in the consultation. You should not act on the proposals until the framework is enacted.
7. AFSA prefers to receive comments by email at consultation@afsa.kz.

Structure of this CP

- Part I – Background;
- Part II – Proposals;
- Part III – Public Consultation Questions;
- Annex 1 – Proposed Amendments to the AIFC Rules.

Background

1. Single Family Offices (SFO) manage assets belonging to only the family. As SFOs do not manage third party assets, they are usually not licensed by the regulators. For example, in such major jurisdictions as the United Arab Emirates, United States, United Kingdom, Hong Kong, and Singapore, SFOs are not subject to licensing.
2. In alignment with best practices, SFOs in the AIFC are presently not subject to licensing. However, this means that SFOs do not currently have access to tax benefits.
3. The tax regime within the AIFC is governed by the Tax Code of the Republic of Kazakhstan, with exceptions outlined by Article 6 of the Constitutional Law of the Republic of Kazakhstan. These exceptions include tax benefits for AIFC participants such as corporate income tax and value-added tax (CIT, VAT) on income derived from financial services within the AIFC, provided a license is obtained from AFSA.

Proposals

4. AFSA proposes to enhance the definition of a Single Family in GLO as follows:
 - a) Remove the allowance of an individual to constitute a Single Family. Instead, the Single Family must consist of a group of individuals.
 - b) Amend the requirement so that the Single Family's common ancestor may be no more than 3 generations removed from the youngest generation of family members, instead of 10. This proposal considers best practices and regulatory considerations to confirm that individuals meet the requirements to be considered family members of the Single Family.
 - c) Clarify that the requirement outlined in (b) applies only to the initial SFO and determines a qualifying Single Family as of the date of application. Afterward, all future descendants and spouses (including widows and widowers, whether remarried or not) will be considered as family members. This aligns with best practices and is crucial for succession and legacy planning.
5. AFSA proposes to introduce a SFO Fund within the AIFC Collective Investment Scheme Rules (CIS). If implemented, these arrangements would be classified as Regulated Activity, making them eligible for benefits under the AIFC tax regime. Considering the nature of the Fund and its limited investor base, AFSA proposes to develop provisions that are less stringent in relation to the SFO Fund.
6. To incorporate SFO Funds within the CIS framework, AFSA proposes to replace the term "Close Relatives" with "Single Family" in CIS. This will enable the introduction of Single Family Office within CIS. Part (b) of CIS 3.17 can be utilized to establish the arrangement, where family members may choose to be recognized as CIS. If the Single Family arrangements are treated as CIS, they will constitute Regulated Activity and can benefit from the AIFC Tax Regime.
7. Regulators typically impose minimum asset requirements on SFOs to ensure their financial stability, risk management, and ability to provide high-quality services to their clients. Considering the jurisdictional analysis, AFSA proposes that the SFO must have minimum assets under management of 1 million USD. These requirements aim to ensure that SFOs have sufficient financial resources to effectively manage the wealth and affairs of the family, thereby promoting stability and sustainability in their operations. However, this proposal is subject to comments by market participants during the Public Consultation.

8. Given the nature of the SFO Fund and its limited investor base, AFSA proposes the following provisions in relation to the SFO Fund:

a) Classify SFO Funds as Exempt Funds.

According to the AIFC Conduct of Business Rules, family members are regarded as "Assessed" Professional Clients, indicating that SFO Funds may fall under the Exempt Fund category. To enhance clarity, it is proposed to expressly state that the SFO Fund will be classified as an Exempt Fund.

b) Expressly state that there is no requirement to appoint an Eligible Custodian

According to CIS 8.2 (b), a Fund Manager is exempt from appointing an Eligible Custodian when, due to the Fund's nature and the assets it holds, such appointment is neither practical nor proportionate. Since the SFO Fund manages property for a Single Family, AFSA proposes explicitly stating that appointing an Eligible Custodian is not required for the SFO Fund.

c) Waive the requirement to maintain higher Base Capital

According to the AIFC Prudential Rules for Investment Firms 3.3, Managing a Collective Investment Scheme licence holder, which does not have an appointed Eligible Custodian, except where an Eligible Custodian is not required due to the nature of the Fund and the type of assets which it holds, has Base Capital Requirement of 500,000 USD. Considering the nature of the SFO Fund and our proposal in (b), it is not necessary for the SFO Fund to comply with this requirement. Instead, the SFO Fund must adhere to the Base Capital Requirement of 50,000 USD.

d) Waive the requirement to appoint a Governing Body (Board of Directors) as specified in the AIFC General Rules (GEN) 5.3.1-5.3.4.

e) Waive the requirement to appoint Finance Officer and Compliance Officer. Mandatory appointments such as Senior Executive Officer and Money Laundering Reporting Officer, specified in GEN 2.1.1 must be appropriately covered by Approved Individuals.

f) Reporting

In addition to requirements outlined in the Fund Manager's report (CIS 10.5-1), for report on a SFO Fund, the following information must be included:

- 1) confirmation that the "Assessed" Professional Clients of the SFO Fund continue to comprise the Single Family;
- 2) confirmation that the total number of family members in the SFO has not changed or, where it has, provide details of the change;
- 3) confirmation that the Single Family continues to maintain investable/liquid assets in excess of 1 million USD.

Public Consultation Questions

In the course of public consultation, existing and potential market participants will be invited to comment on the following questions:

1. Do you agree with the proposed amendments to the definition of the Single Family?
2. Do you agree with setting the threshold at 1 million USD? If not, please provide detailed reasons.
3. Do you agree with the proposals outlined in paragraph 8 of the Consultation paper? If not, please provide your suggestions.
4. Do you believe that structuring the SFO framework under the concept of a self-managed fund, where a Fund acts as its own Fund Manager, would be more attractive?
5. AFSA seeks any other comments relating to the AFSA's regulatory approach towards SFO Funds, including any implementation issues that AFSA should consider.

PROPOSED AMENDMENTS TO AIFC RULES

In these amendments, the underlining indicates a new text and the strikethrough indicates a removed text.

AIFC GLOSSARY

2. INTERPRETATION

Single Family	<p>An individual or <u>A group</u> of individuals that are the lineal descendants (including minors, descendants by adoption (that is, stepchildren, adopted children, foster children, children adopted by legal guardianship), and illegitimate children) of a common ancestor, (who provided that such common ancestor <u>is no more than 10-3 generations removed from the youngest generation of family members</u>), or their spouses (including widows or widowers, whether or not remarried) <u>at the time of registering a Single Family Office in the AIFC.</u></p> <p><u>After which time all future descendants and spouses (including widows and widowers, whether or not remarried) will be members of the Single Family.</u></p>
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AIFC COLLECTIVE INVESTMENT SCHEME RULES

2. CLASSIFICATION OF FUNDS AND APPLICATION OF THE RULES

2.2. Exempt Funds and Non-Exempt Funds

(a) An Exempt Fund is a Collective Investment Scheme the Units of which are Offered in the AIFC only by way of a private placement:

- (i) to Persons who are Professional Clients; and
- (ii) in minimum subscription amounts of US\$ 50,000; or
- (iii) to members of a Single Family.

3. ARRANGEMENTS NOT AMOUNTING TO A COLLECTIVE INVESTMENT SCHEME

3.17. ~~Close Relative accounts~~ Single Family Office

(a) Subject to (b), an arrangement is not a Collective Investment Scheme if every participant in the arrangement is a ~~Close Relative~~ member of a Single Family. ~~For the purposes of this Rule, the defined term "Close Relative" includes grandchildren.~~

(b) Prior to setting up the arrangement, the participants may elect to treat the arrangement as a Collective Investment Scheme by notifying the AFSA of their intention to do so.

(c) For a Single Family Office to be recognized as a Collective Investment Scheme, it must have minimum assets under management of USD 1 million.

8.2. Requirement for Eligible Custodian and Fund Administrator

...

(f) A Single Family Office Fund Manager is not required to appoint an Eligible Custodian.

10.5-1. Fund Manager’s report

The matters set out in (a) to ~~(h)~~ (f) must be included in any Fund Manager’s report:

...

(j) for a report on a Single Family Office Fund the information containing:

(i) confirmation that the Single Family Office Fund continues to comprise members of the Single Family;

(ii) confirmation that the total number of members of the Single Family has not changed or, where it has, provide details of the change;

(iii) confirmation that the Single Family Office continues to maintain investable assets in excess of USD 1 million.

AIFC PRUDENTIAL RULES FOR INVESTMENT FIRMS

3. MINIMUM CAPITAL REQUIREMENT

3.3 Minimum Capital Requirement

Table 3.3 Base Capital Requirement

Regulated Activity	Base Capital Requirement (USD)
Managing A Collective Investment Scheme, which is an Exempt Fund and 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, <u>or Single Family Office Fund</u>	50,000