



AFSA

Astana
Financial
Services
Authority

Consultation Paper

AFSA-P-CE-2024-0005

Consultation Paper on the AIFC Treasury Framework

Unrestricted

26 June 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 treasury framework.

Who should read this CP?

2. The proposals outlined in this paper will be of interest to potential applicants seeking to engage in treasury activities from the AIFC. This may include multinational corporations based in AIFC, Kazakhstan, Central Asia, Caucasuses, Central and Eastern Europe or other regions, their professional advisors and ancillary service providers.

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-2024-0005" 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 **26 July 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.

PART 1 – BACKGROUND

1. Corporate Treasury Centre (CTC), sometimes referred to as an “in-house bank”, provides treasury services across business units within a multinational corporation. Normally, CTCs consolidate corporate treasury activities of several branches of multinational corporation located in different countries of one or more geographic region(s). Functions of CTCs generally include cash pooling, liquidity management for purposes of intragroup financing, investment, risk management, and other treasury functions, depending on the needs of an organisation.
2. Multinational corporations world-wide optimise treasury operations by consolidation of such activities in one or more treasury centres in order to achieve cost-savings, fortify internal controls, manage liquidity across various subsidiaries, improve cash management efficiency, conduct hedging and investment operations, amongst other benefits.
3. Favourable CTC locations usually provide tax incentives, extensive tax treaty networks and availability of developed banking infrastructure. Currently, treasury activities are not regulated in the AIFC and, therefore, do not have access to tax benefits under the AIFC tax regime.
4. The AIFC framework does not specifically outline the establishment and regulation of CTCs. However, there is certain suitability of AIFC legislation for operation of treasury centres. Particularly, CTCs can be regulated under the AIFC Collective Investment Scheme Rules (“CIS”) because activities of CTCs share such key characteristics of CIS as (a) setting up regional and global groups for cash pooling purposes; (b) implementing a centralised management of funds; (c) managing the allocation of liquidity; and (d) enhancing the yields of cash pools by investing surplus funds.
5. If CTCs are regulated as CIS, they will need to comply with requirements in the Rules on the Substantial Presence of the AIFC Participants Applying Tax Exemptions for the Payment of Corporate Income Tax, Value Added Tax. These Rules require Centre Participants conducting financial services to submit to the local state revenue authority an economic study of the project, including the justification of costs and the number of employees.

PART 2 – LEGISLATIVE PROPOSALS

6. To enhance the AIFC’s financial infrastructure, the AFSA proposes developing a tailored framework for CTCs to carry on treasury activities within the AIFC’s existing regulatory regime for collective investment schemes.
7. Since CTCs comprise a group of interrelated companies, they may fall under the definition of a Group in the GLO. Therefore, CTCs can potentially operate under an exclusion indicated in the CIS. CIS 3.7 provides flexibility for Group arrangements, as Body Corporates within the same Group can choose whether to be treated as CIS or not. So, for those CTCs that elect to be treated as CIS, the following proposals are suggested.
8. Defining CTC as an entity within a multinational corporation carrying out only corporate treasury activities. In a broader sense, a corporate entity shall be regarded as a CTC if its sole purpose is to conduct corporate treasury activities, such as intra-group financing or providing corporate treasury services.
9. The AIFC framework allows a Director of an Investment Company, which elects to be internally managed, to be a Fund Manager. However, to establish an internally managed Fund, it must be incorporated only as an Investment Company. In this context, it appears appropriate to utilise the concept of internally managed Funds in relation to CTCs by introduction of CTC Fund, similar to

Single Family Offices Funds. It is important to highlight that a CTC Fund Manager will be allowed to manage only CTC Fund.

10. As the treasury services are related only to intra-Group activities and CTCs do not pool assets from non-Group member companies (basically managing only its own assets), less stringent provisions in relation to a Fund Manager of the CTC Fund would be appropriate. Particularly, following the analysis of best practices, the AFSA proposes to adopt the following requirements in relation to a CTC Fund Manager:
- (a) Classify a CTC Fund as an Exempt Fund;
 - (b) Exempt from the requirement to have a Board of Directors;
 - (c) Exempt from the requirement to maintain a Base Capital;
 - (d) Exempt from the requirement to appoint a Finance Officer and Compliance Officer;
 - (e) Exempt from the requirements to provide the Fund's Constitution and Offering Materials;
 - (f) Exempt from the requirement to submit the Fund Manager's report as outlined in CIS 10.5-1. Instead, the Fund Manager must report on the progress of the fund's treasury activities and include in the report:
 - (i) the Fund's annual return;
 - (ii) the Fund's audited financial statements; and
 - (iii) any additional information or document required by the AFSA.

PART 3 – PUBLIC CONSULTATION QUESTIONS

1. Do you agree with the proposed definition of a Corporate Treasury Centre (CTC)?
2. Do you agree with regulation of treasury activities under the AIFC Collective Investment Scheme framework? Please provide your rationale and any potential advantages or challenges associated with this approach.
3. Do you agree with considering a CTC Fund as an internally managed Fund, as outlined in paragraph 7 of the Consultation Paper? If not, please provide your suggestions.
4. Do you agree with the proposed tailored and proportionate requirements in relation to a CTC Fund Manager? If not, please provide your suggestions.
5. Do you have any other comments relating to the AFSA's regulatory approach towards CTC 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

<u>Corporate Treasury Centre</u>	<u>An entity within a multinational corporation carrying out only corporate treasury activities.</u>
----------------------------------	--

AIFC COLLECTIVE INVESTMENT SCHEME RULES

4. REGISTRATION AND NOTIFICATION REQUIREMENTS

4.2. Application for registration

...

(d) The registration form must be accompanied by:

(i) copies of the Fund's Constitution and Offering Materials, unless the Fund is a Corporate Treasury Centre Fund; and

...

5.3. Content requirements for Offering Materials

...

(b) ~~Prior to investing in a Fund, a potential investor must be supplied with~~ A Fund Manager (other than the Fund Manager of a Corporate Treasury Fund) must give to a potential investor Offering Materials and other documentation that contain all the information which a person and his professional advisers would reasonably require and expect to be able to make an informed decision to become a Unitholder of the Fund, including the following:

...

6. RULES REGARDING THE CONSTITUTION AND INVESTMENT POWERS OF FUNDS

6.2. General requirements

(a) Every Fund, except a Corporate Treasury Centre Fund, must have:

(i) a written Constitution which complies with these Rules and, if the Fund is a Non-Exempt Fund, contains the contents specified in Schedule 1;

...

7. RULES REGARDING THE MANAGEMENT AND OPERATION OF FUNDS

7.2 General management duties

7.2-1 Director

7.2-1.1 Application

This chapter applies to:

...

(b) a Corporate Treasury Centre Fund;

(c) the Director of an Investment Company acting as a Fund Manager of (a) or (b).

...

7.2-1.3 Requirements relating to the Corporate Treasury Centre Fund

(a) A Corporate Treasury Centre Fund must be:

(i) an Exempt Fund; and

(ii) a Group arrangement.

(b) For the purposes of these Rules, a Corporate Treasury Centre Fund is treated as a Domestic Fund that is managed by a Domestic Fund Manager.

(c) A Corporate Treasury Centre Fund Manager is not required to have a Governing Body and appoint a Finance Officer and Compliance Officer.

7.2-1.4 Requirements relating to a Director

...

(b) The Director of a Corporate Treasury Centre Fund who is managing the Corporate Treasury Centre Fund must not act as the Fund Manager of any other Fund or manage assets for another Person.

...

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, except for the Corporate Treasury Centre Fund Manager's report:

...

10.5-1.1 Corporate Treasury Fund Manager's report

For a report on a Corporate Treasury Centre Fund, the Fund Manager must report on the progress of the fund's treasury activities and include in the report:

- (i) a copy of the Fund's annual return;
- (ii) copies of the Fund's audited financial statements; and
- (iii) any additional information or document required by the AFSA.

AIFC PRUDENTIAL RULES FOR INVESTMENT FIRMS

3. MINIMUM CAPITAL REQUIREMENT

3.1 Application of Chapter 3

This Chapter does not apply to a PRU Investment Firm that is an Externally Regulated PRU Investment Firm or a Corporate Treasury Centre Fund.