

# FUND MANAGEMENT GUIDE



June 2020

### ***Disclaimer***

This general Guide provides information on establishing Fund Management Company and Fund in the AIFC and should be read in conjunction with the relevant legislation. This Guide does not cover other requirements as set out in the relevant legislation. The AFSA makes no representations as to accuracy, completeness, correctness or suitability of any information and will not be liable for any error or omission. Information in this Guide is not to be deemed, considered or relied upon as legal advice and should not be treated as a substitute for a specific advice concerning any individual situation. Any action taken upon the information provided in this Guide is strictly at your own risk and AFSA will not be liable for any losses and damages in connection with the use of or reliance on information provided in this Guide.

## **ASTANA INTERNATIONAL FINANCIAL CENTRE**

The Astana International Financial Centre (AIFC) plays a pivotal role in positioning itself as a global centre for business and finance, connecting the economies of the Central Asia, the Caucasus, EAEU, West China, Mongolia Middle East and Europe.

The acting law of the AIFC is based on the Constitution of the Republic of Kazakhstan and consists of:

1. the Constitutional Statute; and
2. AIFC Acts, which may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres, adopted by the AIFC Bodies in the exercise of the powers given by the Constitutional Statute; and
3. the Acting Law of the Republic of Kazakhstan, which applies in part to matters not governed by the Constitutional Statute and AIFC Acts.

The regulatory regime at AIFC is consistent with recognised international standards (IOSCO, Basel, IAIS, FATF, etc.) and promotes fairness, transparency and efficiency of the financial market, protection of the interests of investors and financial services customers, minimisation of systemic risk.

The Astana Financial Services Authority (AFSA) is the independent regulator of financial and ancillary services conducted from the AIFC, including regulation of firms responsible for managing or distributing Collective Investment Schemes (Funds).

## A. COLLECTIVE INVESTMENT SCHEME IN THE AIFC

In general terms, a Collective Investment Scheme (hereinafter – CIS, Fund) is an arrangement under which professional fund managers pool money from investors and manage it according to the pre-set investment objectives. In accordance with the paragraph 92 of the AIFC Financial Services Framework Regulations (hereinafter – FSFR):

### 92. Definition of Collective Investment Scheme

(1) "Collective Investment Scheme" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable Persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the Persons who are to participate do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics:

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single Collective Investment Scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) The AFSA may by Rules provide that arrangements do not amount to a Collective Investment Scheme:

(a) in specified circumstances; or

(b) if the arrangements fall within a specified category of arrangement.

The investment objectives can include maximising capital gains, ensuring a stable income, beating inflation and preserving capital. The reasons to invest in a CIS may include: low minimum investment amount, access to professional investment management services, access to global investment opportunities, portfolio diversification, etc. There are also various investment strategies to achieve the investment objectives: public equities and bonds, money market, derivatives, commodities, alternative investments, etc. **One must note that each strategy carries different levels of risk and return.**

As such, AFSA may require the registration of the CIS prior to its establishment or marketing (FSFR 93):

### 93. Registration of Collective Investment Schemes

(1) The AFSA may make Rules relating to the registration by it of Collective Investment Schemes.

(2) Rules made by the AFSA under section 93(1) may provide that all or certain categories of Collective Investment Schemes may not be established or promoted by Authorised Persons unless they have been registered.

(3) Rules made by the AFSA under section 93(1) may also include provisions as to:

- (a) the constitution, management and operation of such Collective Investment Schemes;
- (b) the investment and borrowing powers of such Collective Investment Schemes;
- (c) the procedure for application to the AFSA for registration of Collective Investment Schemes;
- (d) operating duties and responsibilities in respect of Collective Investment Schemes;
- (e) the registration of offering material or particulars and reporting requirements for Collective Investment Schemes; and
- (f) suspension of dealings in and termination of Collective Investment Schemes.

## B. FUND REGIME IN THE AIFC

There are two categories of funds that are promoted in the AIFC based on the investors classification.

Non-Exempt Fund - provides greater protection to retail investors through detailed regulation in line with IOSCO Standards.

Exempt Fund – has less stringent level of regulation than for Non-Exempt Funds. Exempt Funds are open to Professional Clients only by way of private placement with minimum subscription amounts of \$50,000. Exempt Funds which are managed by Domestic Fund Managers are not required to be registered in accordance with CIS Rules, as the AFSA must only be notified by Fund Manager of its intention to manage an Exempt Fund.

A Fund manager may also elect the arrangement to be not regulated as a Fund if each unitholder/investor is a company in the same group as a Fund manager.

In accordance with the paragraph 2.2 of the AIFC Collective Investment Scheme 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.

(b) A Non-Exempt Fund is any Collective Investment Scheme:

- (i) the Units of which are Offered in the AIFC; and
- (ii) which is not an Exempt Fund.

The following table demonstrates the main differences in the requirements for Non-Exempt and Exempt Funds:

	<b>Non-Exempt Fund</b>	<b>Exempt Fund</b>		
<b>Fund management function</b>	Domestic Fund Manager	Domestic Fund Manager	Board of Directors (in case of Self-managed Fund <sup>1</sup> )	Foreign Fund Manager
<b>Base capital requirement for a Fund manager</b>	US\$ 150,000	US\$ 50,000*	US\$ 300,000*	n/a
<b>Fund domiciliation</b>	AIFC and foreign jurisdictions		AIFC only	

<sup>1</sup> Although the current CIS Rules do refer to the possibility of a Self-managed Fund, AFSA is currently reviewing this due to limitations within these structures.

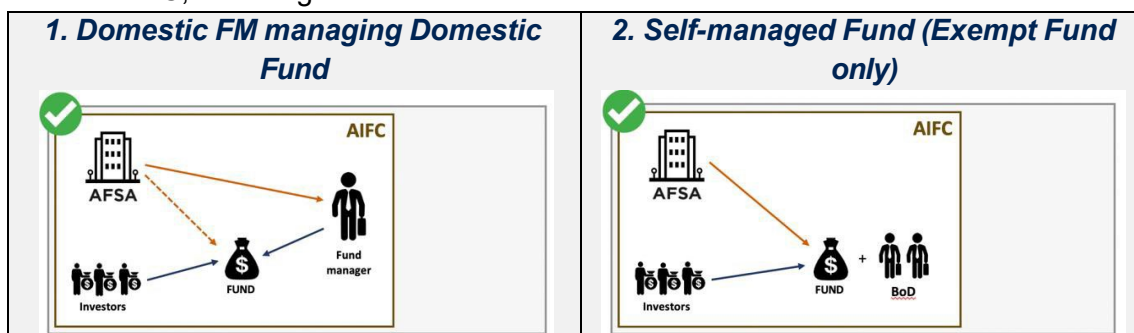
<b>Registration of a Fund</b>	Required	Not required (notification only)	Required
<b>Fund Constitution</b>	--- Required ---		
<b>Offering Materials</b>	--- Required ---		
<b>Investors/Unitholders</b>	Any	Professional Clients only	
<b>Minimum subscription</b>	-	US\$ 50,000	
<b>Appointment of an Eligible Custodian</b>	Required	Not required (unless REIT)	Required
<b>Appointment of a Fund Administrator</b>	Required	Not required (unless REIT)	Required
<b>Appointment of an Auditor</b>	Required	Not required (unless REIT)	
<b>Periodic reporting</b>	Annual and interim	Not required	
<b>Financial statement</b>	--- Required for each financial year (in accordance with IFRS or US GAAP) ---		

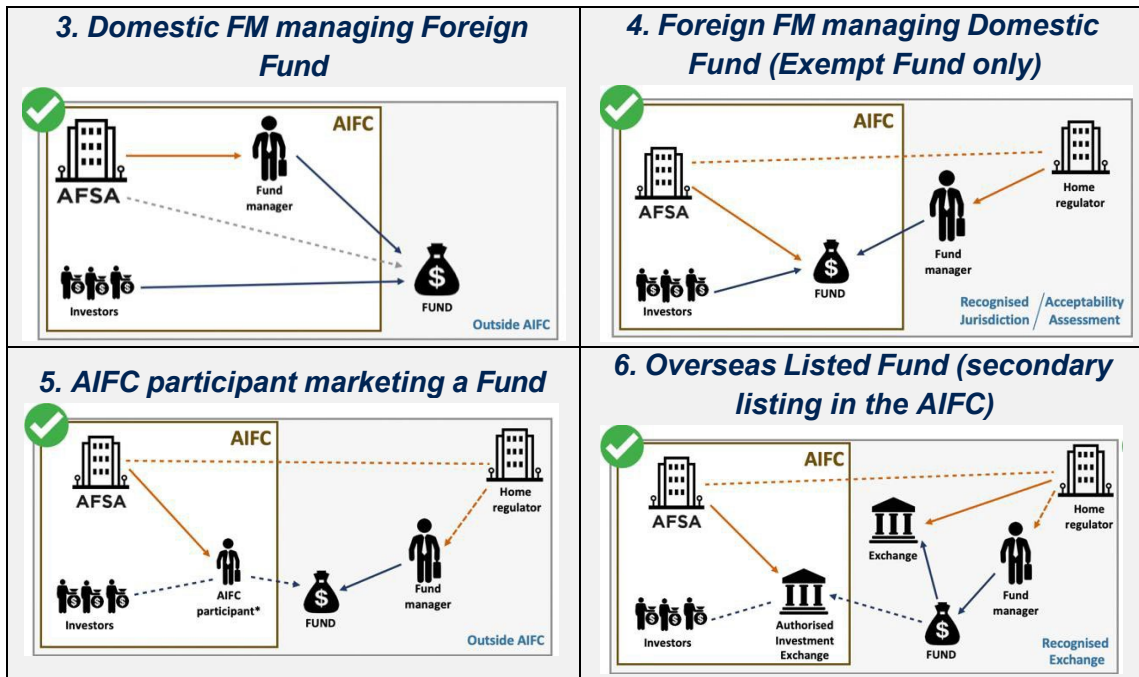
*\* Fund has an appointed Eligible Custodian, unless the appointment of an Eligible Custodian is not required due to the nature of the Fund and the type of assets which it holds. Otherwise, the base capital requirement increases to US\$ 500,000.*

One must note that AIFC legislation does not set any restriction on investments unless a Fund is a Specialist Fund, and, that is, if:

- Private equity fund: primarily invests in unlisted businesses, by means of shares, convertible debt or other equity-related investments,
- Venture capital fund: primarily invests in the equity share capital of unlisted businesses which are at an early stage of development
- Real estate investment trust: invest at least 80% of its assets in investments in income-generating real property, with the remainder invested in cash or other securities.

Investment restrictions in specific industries may be imposed by Kazakhstan legislation. Currently, the regulatory framework allows several structures that can be used to promote a CIS in the AIFC, including those shown below:





Important to note that this is not a limited list, e.g. AIFC participant (licensed to advise on investments and arrange deals in investments) marketing a Fund as shown in the structure 5 may also promote a Fund that are indicated in the structures 1-4 as well. But in any case, for each structure there are specific requirements, be it the registration, promotion to the Professional Clients only or appointment of the fund administrator and custodian. For a CIS to be listed on the Authorised Investment Exchange in the AIFC, additional requirements that are specific to Funds may apply in accordance with the AIFC Market Rules and Business Rules of the Exchange.

## C. ESTABLISHING A FUND MANAGEMENT COMPANY IN THE AIFC

Managing a CIS is a Regulated Activity and therefore an AIFC-registered firm must be authorised (i.e. get a License to carry on Regulated activities) to conduct such activity if that activity is carried on by way of business (AIFC General Rules). However, there are certain exclusions where the firm is not considered to be carrying out the Regulated Activity, e.g. in respect of acting with or for Group of companies; in respect of Single Family Offices.

AIFC General Rules describe the process of application for authorisation, categories of employees who attract regulatory attention and principles/requirements applicable to them, circumstances in which major shareholders may change, key systems and controls requirements, non-exhaustive list of circumstances for exercise of supervisory powers by AFSA, requirements relating to accounting and auditors, etc.

The short overview of the establishment process (both incorporation and authorisation) of the fund management company is shown in the table below:

<p>I. Contact the AIFC Business Development team: <i>AIFC Business Connect team</i> is the first point of contact for all establishments interested in having a presence in the AIFC. We have a dedicated team of AIFC Business Connect Ltd. who are at hand to support and guide organizations through the whole process of registration and authorisation. You may contact them via <a href="mailto:rsbd@aifc.kz">rsbd@aifc.kz</a></p> <p>There are two processes which need to be completed with AFSA in order to establish a Fund Manager: Incorporation (or registration) and Authorisation. Usually firms apply for authorisation to the Authorisations Division of the AFSA and should apply for registration to the Registrar of Companies of the AFSA.</p> <p>II. The incorporation (or registration) process of a Fund management company: The Fund management company might be in a form of a new legal entity (or subsidiary); or a branch of an existing entity outside of AIFC jurisdiction, which is regulated by financial regulator.</p> <ol style="list-style-type: none"><li>(1) You may apply online via the self-service portal (<a href="http://www.digitalresident.kz/">http://www.digitalresident.kz/</a>) or contact the office of the Registrar of Companies directly via <a href="mailto:registration@afsa.kz">registration@afsa.kz</a>.</li><li>(2) Registration fee is 300 USD (paid once). If you submit your application via the self-service portal, online payment will be available, otherwise invoice for payment will be sent by the Registrar's team.</li><li><b>(3) The AFSA aims at completing the registration process within 5 business days after accepting finalised application package.</b></li><li>(4) If application is successful, Office of the Registrar of Companies will notify you on the application status and issue Certificate of Incorporation/Recognition.</li></ol> <p>III. The authorisation process of a Fund management company: The following are some of the recommended preparation steps:</p> <ol style="list-style-type: none"><li>(1) Determine who will be part of the senior management and who will be in the mandatory positions. Prepare to complete the necessary individual application forms.</li><li>(2) Develop a comprehensive regulatory business plan that sets out your proposed activities, 3-year financial projections and budget, resources such as human, systems and financial.</li><li>(3) Familiarise yourself with the applicable AIFC Regulations and Rules and be prepared to show how you will comply with them. This might include providing a compliance manual, a compliance monitoring programme, and risk management</li></ol>
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policies. The AIFC Regulations and Regulations can be found on our website (<https://aifc.kz/afsa/>) at the Legal Framework section.

- (4) Determine your minimum regulatory capital requirements, with which you will need to comply at all times. This should be included in your 3-year financial projections.
- (5) Fill out the application forms and provide supporting documents. It is vital that you supply all relevant information.

Upon submitting the preliminary application:

- (1) The AFSA will assess the forms and the documents and consider factors including those shown below:
  - Fitness and propriety of the applicant, its shareholders and directors;
  - Track record and fund management expertise of the applicant and its parent company or major shareholders;
  - Ability to meet the minimum financial requirements prescribed under the Prudential Rules for Investment Firms;
  - Strength of internal risk management and compliance systems;
  - Business model/ plans and projections and the associated risks.
- (2) The AFSA will then provide you with the comments.
- (3) You may submit the finalised application package via post or by hand to the AFSA office.
- (4) If the application is successful, AFSA will notify you on the application status and issue an In-Principle Approval.
- (5) Upon your satisfaction of the conditions set by the AFSA (e.g. establishing legal entity, injecting the prudential capital, and resolving other regulatory matters), the AFSA will issue a Licence.

*NOTE: Authorisation fees are waived until January 2021.*

AIFC Prudential Rules for Investment Firms (PRU) describe the requirements to hold capital resources and other financial resources sufficient to cover the risks arising from the business. AIFC Collective Investment Scheme Rules describe the operating duties and responsibilities of a Fund manager.

AIFC Conduct of Business Rules set the standards of conduct expected of financial services firms, particularly regarding the treatment of their clients, but also in their dealings with counterparties and other market participants. The definition of the Professional Client is also defined in these Rules.

## D. ESTABLISHING A FUND IN THE AIFC

### Corporate Structure

A Fund may be incorporated in the AIFC in the form of Investment Company or Limited Partnership.

Investment Companies differ from conventional companies because they can create new shares and redeem existing shares much more easily than traditional companies. An Investment Company must either be an Open-Ended Investment Company or a Closed-Ended Investment Company, and must be formed, and is to operate, for the sole purpose of conducting the business of a Fund.

A Limited Partnership is comprised of a General Partner and Limited Partners, where the Fund Manager is the General Partner and clients of the Fund are Limited Partners.

### Registration Requirements

A Domestic Fund Manager that intends to manage a Non-Exempt Fund, or a Foreign Fund Manager that intends to manage an Exempt Fund must apply to the AFSA to register a Fund. The registration form must be accompanied by copies of the Fund's Constitution and Offering Materials, certification on their compliance with the AIFC Regulations and Rules, and any other documents specified in the registration form.

### Notification Requirements

Exempt Funds managed by Domestic Fund Managers are not required to be registered with the AFSA.

A Domestic Fund Manager that intends to manage an Exempt Fund must only notify the AFSA of its intention to manage a Fund. The Notification Form must be accompanied by the Constitution of the Fund, the Offering Materials relating to the Fund, and such other information as the AFSA may prescribe.

Notification requirement also applies to Self-managed Funds. Self-managed Fund is a collective investment scheme in which an external fund manager is not appointed and in such case the board of directors assume the fund management functions, but the fund must be an Exempt Fund.

### Legislative Framework.

AIFC Collective Investment Scheme (CIS) Rules define which arrangements do not amount to a CIS and which CIS must be registered before it is marketed. CIS Rules also make provisions related to the constitution, management and operation; investment and borrowing powers; procedure for registration; operating duties and responsibilities of Fund Managers; registration of offering materials and particulars and reporting requirements; and suspension of dealings in and termination of CIS.

The short overview of the establishment process (both incorporation and registration) of a Fund is shown in the table below:

I. Contact the AIFC Business Development team:

*AIFC Business Connect team* is the first point of contact for all establishments interested in having a presence in the AIFC. We have a dedicated team of AIFC Business Connect Ltd. who are at hand to support and guide organizations through the whole process of incorporation and registration/notification. You may contact via [rsbd@aifc.kz](mailto:rsbd@aifc.kz).

II. The incorporation process of a Fund:

The Fund might be in one of the following legal structures: Company, Limited Partnership or Trust.

**(1) Prior to incorporation of a Fund, you must receive In-Principle Approval for fund registration from AFSA if the registration is required.**

(2) You may apply online via the self-service portal (<http://www.digitalresident.kz/>) or contact the office of the Registrar of Companies directly via [registration@afsa.kz](mailto:registration@afsa.kz).

(3) Registration fee is 300 USD (paid once). If you submit your application via the self-service portal, online payment will be available, otherwise invoice for payment will be sent by the Registrar's team.

**(4) The AFSA aims at completing the registration process within 5 business days after accepting finalised application package.**

(5) If application is successful, Office of the Registrar of Companies will notify you on the application status and issue Certificate of Incorporation/Recognition.

III. The registration process of a Fund:

The following are some of the recommended preparation steps:

(1) Define the type of fund whether it is a specialist fund, listed fund, etc.

(2) Determine the fund manager, trustee/custodian, fund administrator, prime broker, guarantor, auditor or any other service provider where applicable.

(3) Describe the risk management controls, nature of the borrowing, valuation policy, allocation, issue and redemption processes, policy on managing conflicts of interests, etc.

(4) Submit the completed registration form and attach draft Fund Constitution, Offering Materials and any other documents prescribed in the registration form.

Upon submitting the preliminary application:

(1) The AFSA will assess the forms and the documents.

(2) The AFSA will then provide you with the comments.

(3) You may submit the finalised application package via post or by hand to the AFSA office.

(4) If the application is successful, AFSA will notify you on the application status and issue an In-Principle Approval.

(5) Upon your satisfaction of the conditions set by the AFSA, the AFSA will grant the registration of a Fund.

IV. The notification process for a Fund that is not required to be registered:

After the incorporation of a Fund, submit the completed notification form with the attached documents via post or by hand to the AFSA office.

## E. TAX REGIME IN THE AIFC

The Tax Regime in the territory of AIFC is established by the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the Budget (Tax Code), with exception of exemptions stipulated in the Article 6, [Constitutional Statute of The Republic of Kazakhstan](#) On the Astana International Financial Centre.

1. Until 1 January 2066, Fund Management Company (incorporated in the AIFC) is exempted from corporate income tax on income received from providing its services in the AIFC.
2. Until 1 January 2066, individuals and legal entities (incl. both Fund management company and Fund incorporated in the AIFC) are exempted from individual and corporate income tax on income received from:
  - profits from the sale of securities listed, on the day of their sale, on the official list of Astana International Exchange;
  - profits from the sale of shares or stakes in the capital of AIFC Participants that are legal persons registered under the Acting Law of the AIFC;
  - dividends and interest from securities listed, on the day of their distribution, on the official list of the Astana International Exchange;
  - dividends from shares or stakes in the capital of AIFC Participants that are legal persons registered under the Acting Law of the AIFC.
3. Until 1 January 2066, foreign nationals who are Employees of the Fund Management Company or Fund are exempted from personal income tax on income received under their employment contracts.