Dubai Financial Services Authority

CONSULTATION PAPER NO. 56

18 JUNE 2008

REGULATION OF SINGLE FAMILY OFFICES

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Why are we issuing this paper?

1. This Consultation Paper seeks public comments on the DFSA's proposals to facilitate an initiative of the DIFC Authority (DIFCA) to establish a Single Family Office (SFO) regime in the DIFC by removing some unnecessary regulatory burden on such offices. This paper is issued in conjunction with a separate Consultation Paper No.3 issued by DIFCA which outlines its proposals for a framework for SFOs. That paper may be accessed at www.difc.ae under "Laws & Regulations" and then under "Proposed Laws and Regulations".

2. The scope of this paper is limited to proposals granting appropriate exclusions from the DFSA financial services regulatory regime and involves some changes to the following modules of the DFSA Rulebook:

   GEN General module (see Appendix 1)
   GLO Glossary module (see Appendix 2)

Who should read this paper?

3. The proposals in this paper would be of particular interest to entities wishing to establish SFOs, Private Trust Companies and Family Fiduciary Structures, and to their financial and legal advisers.

How is this paper structured?

4. In this paper, we set out:

   (a) the background and overview of the proposals (paragraphs 8 to 12); and

   (b) a detailed description of the drafting (paragraphs 13 to 20).

How to provide comments?

5. All comments should be forwarded to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

6. The deadline for providing comments on the proposals is by close of business on 20 July 2008. Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to enact the changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.

Comments to be addressed to:

Errol Hoopmann
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE

or e-mailed to: **ehoopmann@dfsa.ae**

Definitions

7. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO) module or in DIFCA's proposed SFO Regulations. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

8. The concept of an SFO is globally recognised, and refers to a dedicated facility or platform to manage and co-ordinate the personal and business affairs of a single family and its members. It may conduct a range of activities including administration services, real estate management, investment advice, fiduciary services, asset management, and the provision of legal, accounting and compliance services. Some of these activities may constitute Financial Services falling within the scope of DFSA regulation in the DIFC.

9. As explained in DIFCA's Consultation Paper, the thrust of the SFO initiative is to encourage "super wealth bracket families" to adopt the DIFC as a centre of choice to establish a suitable SFO. It envisages the introduction of new DIFC Regulations for the DIFC SFO platform based on an initial policy statement issued by DIFCA foreshadowing these changes dated 2 August 2007. The background and summary of the proposal, including the draft SFO Regulations, is contained in DIFCA's Consultation Paper No.3.

10. To facilitate the introduction of the SFO Regulations, it is considered appropriate to amend the DFSA's GEN and GLO modules to remove from the scope of DFSA regulation certain activities relating to the operation of an SFO. In framing the exclusions, the DFSA has weighed the desirability of a flexible and confidential environment for SFOs against requiring an SFO to be regulated in the same way as other providers of Financial Services, and has particularly taken into account these factors:

    (a) the nature of risks posed by the activities undertaken by an SFO and within a Single Family environment;

    (b) the community of interest of family members;

    (c) the fact that a large range of services that would be conducted within a Single Family may in any event not satisfy the "by way of business" test which forms a threshold for the DFSA's regulatory regime to apply to such activities;

    (d) the provisions of the SFO Regulations that limit the provision of services to the Single Family and restrict services from being provided to the public; and

    (e) the benefit and effectiveness of the proposed SFO regulatory regime to be administered by the DIFC Registrar of Companies under the SFO Regulations, including in relation to anti-money laundering procedures and controls.

Overview of the proposals

11. It is proposed to exclude certain activities of an SFO, a Private Trust Company and a Family Fiduciary Structure from the "by way of business" test under GEN 2.2.1(b). These entities provide services to a Single Family which constitutes Family Members, Family Entities and Family Businesses, each of which, as a recipient of services, does not need the benefit of the "by way of business" exclusion. A Single Family may also include a Family Fiduciary Structure which is a little different, as it is envisaged to be either or both a recipient of services from an SFO and Private Trust Company, and a provider of trust services to a Single Family. Accordingly, a Family Fiduciary Structure will fall within the "by way of business" exclusion where it Provides Trust Services and only to that extent.

12. Where an activity does not meet the "by way of business" test by virtue of the proposed exclusion, the activity will not constitute a Financial Service and would as a result lie outside the scope of the Financial Services prohibition under Article 41 of the Regulatory Law. It would therefore not attract the requirement for licensing and supervision by the DFSA.

Detailed description of the drafting

(a) GEN 2.3.6(1) exclusions for an SFO

13. It is proposed to exclude an SFO from the "by way of business" test in relation to a range of activities carried on exclusively for the purposes of carrying out its duties as an SFO. This suite of exclusions comprises:

Dealing in Investments as Principal,
Dealing in Investments as Agent,
Arranging Credit or Deals in Investments,
Managing Assets,
Advising on Financial Products or Credit,
Operating a Collective Investment Fund,
Providing Custody,
Arranging Custody,
Insurance Intermediation,
Providing Trust Services,
Providing Fund Administration, and
Acting as the Trustee of a Fund.

14. Note that under proposed SFO regulations 2.1 and 2.4.1, an SFO may only provide services to a Single Family as defined. This, and the parameters of what constitutes a Single Family, are addressed in DIFCA's Consultation Paper No.3.

Issues for consideration

Do these exclusions properly represent the usual activities of an SFO?

Is the scope of the exclusions appropriate, taking into account regulatory risk? If not, what should be the scope of exclusions and why?

(b) GEN 2.3.6(2) exclusions for a Private Trust Company

15. A Private Trust Company is currently exempted from the requirement to hold a Licence in respect of Providing Trust Services under GEN 2.23.2.

16. A "Private Trust Company" is currently defined in the GLO module as a body corporate established for the sole purpose of providing trust services in circumstances where it provides those services to a specific trust or trusts involving Related Persons, and which does not provide services to the public. It is proposed to repeal and substitute the existing definition in GLO, to align with the regime under the SFO Regulations. The existing definition was interim, to meet the purpose of a regime as now contemplated under the SFO Regulations.

17. It is also proposed to exclude a Private Trust Company from the "by way of business" test in relation to Providing Trust Services where such services are provided to a Single Family. In order to avail itself of the exclusion, the Private Trust Company is restricted to carrying on the relevant activity exclusively for the purposes of, and only so far as it is, providing services to a Single Family. Accordingly, it cannot solicit trust business from, or provide trust services to, the public. As a consequence of this change, it is proposed to remove the existing exemption under GEN 2.23.2.

Issues for consideration

Are the limitations imposed on the availability of the exclusion for Private Trust Companies appropriate? If not, why not?

Is the proposed definition of Private Trust Company accurate, clear and appropriate? If not, how should it be defined?

If any Private Trust Company in the DIFC is operating within the scope of the existing definition, will it suffer any detriment by the adoption of the proposed definition? If so, what detriment and how should such detriment be alleviated?

(c) GEN 2.3.6(2) exclusions for a Family Fiduciary Structure

18. A Family Fiduciary Structure is a trust or foundation that may be expected to receive services from an SFO and Private Trust Company. In addition, or alternatively, it is envisaged that a Family Fiduciary Structure may itself Provide Trust Services to a Single Family. In that regard, a Family Fiduciary Structure differs from a Private Trust Company as it may not be a body corporate.

19. Accordingly, and similar to a Private Trust Company, it is proposed to exclude a Family Fiduciary Structure from the "by way of business" test where it engages in Providing Trust Services. In order to avail itself of the exclusion, the Family Fiduciary Structure is restricted to carrying on the relevant activity exclusively for the purposes of, and only so far as it is, providing services to a Single Family. Accordingly, it cannot solicit trust business from, or provide trust services to, the public.

Issues for consideration

Are the limitations imposed on the availability of the exclusion for Family Fiduciary Structures appropriate? If not, why not?

Is the DFSA's view of the role of a Family Fiduciary Structure accurate? If not, why not?

(d) GLO definitions

20. Aside from the definition of "Private Trust Company" above, the other proposed definitions draw their meaning from similar terms used in the SFO Regulations.

Issues for consideration

Are the respective definitions under the SFO Regulations accurate, clear and appropriate, in the context of the regulatory exemptions proposed? If not, why not?
