



AFSA

Astana
Financial
Services
Authority

Consultation Paper

AFSA № AFSA-P-CE-2021-0003

Amendments to the AIFC Banking Business Framework

Unrestricted

September 30, 2021

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 amendments to the AIFC Banking Business Framework, including the AIFC Banking Business Prudential Rules (BBR), the AIFC General Rules (GEN). This consultation has been approved by the Legislative Committee of the Board of AFSA.

Who should read this CP?

2. The proposals in this paper will be of interest to firms authorised by the AFSA to conduct the Regulated Activity of Providing Credit, to firms interested in obtaining such authorisation and to firms and professionals consulting on banking business authorisation in the AIFC.

What are the next steps?

3. We invite comments from interested stakeholders on the proposed Amendments to the AIFC BBR and GEN. Comments should be preferably provided in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper AFSA-P-CE-2021-0003” in the subject line. You may, if relevant, identify the organization 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.
4. The deadline for providing comments on the proposed framework is **30 October 2021**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
5. Comments to be addressed by post:

Policy and Strategy Division (Attention: M Ishaq Burney, MD and CLO)
Astana Financial Services Authority (AFSA)
55/17 Mangilik EI, building C3.2, Kazakhstan

or emailed to: consultation@afsa.kz

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Structure of this CP

Introduction

Background

Benchmarking

Proposal

Questions

Annex 1 – Amendments to the AIFC Banking Business Framework

Background

Providing Credit “from own funds”

1. The existing definition of the Credit provider, set out in [BBR 1.7 \(5\)](#) excludes an Authorised Firm licenced to conduct the Regulated Activity of Providing Credit from its own funds from the definition of Credit Provider and entirely disapply the BBR to such firm. The BBR and the rest of the AIFC Legal Framework do not further specify what definition such firms would fall under and what prudential framework they should be subject to instead.
2. Providing credit from own funds would typically fall into the scope of providing captive finance when a subsidiary is set up to finance purchases of products, such as equipment, from a parent or group entity. Currently the AIFC legal framework does not include provisions specifically enabling captive finance.

Exclusion in respect of acting with or for Group companies

3. According to GEN 1.1.12 , a Person does not carry on any of the Regulated Activities specified in paragraphs 1, 2, 3, 5, 6, 10, 11, 12 or 15 of Schedule 1 of General Rules where that Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporates:
 - (a) which are within the same Group as that Person; or
 - (b) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise;
4. Currently this exemption does not apply to provision of credit. Provision of credit to third parties is deemed to be carried out “by way of business”, as it would generally be holding itself out as providing the credit and requires an authorisation.

Benchmarking

5. The AFSA has conducted best practice analysis of several model jurisdictions of financial centers with relevant banking business frameworks, specifically, DIFC, ADGM and QFC. AFSA has also studied the impact of the proposed change on the relevant AIFC Participants.
6. Based on the absence of similar provisions in the analysed international jurisdictions and on the results of a broader research, providing credit from own funds particularly when such credit is offered to third parties is not excluded from regulated activities.
7. Although it is acknowledged that credit providers using their own funds pose lesser risk for prudential regulation as opposed to credit providers using capital markets funding or deposits, it may not be sufficient to entirely exclude such firms from rules otherwise applicable to credit providers.
8. In most of the analysed jurisdictions, providing credit (and carrying on other financial services) within the same group does not qualify as a regulated activity under the group exemption. As such, if credit is provided by one group member to another, is it not a regulated activity.

Proposal

9. To make the AIFC BBR clearer and more aligned with the international practice adopted at other financial centers and address the identified gap the proposal is to remove subsection (5) of the AIFC BBR 1.7, as indicated below:

Credit Provider

(1) An Authorised Firm is a Credit Provider if it is authorised to conduct the Regulated Activity of Providing Credit and it is not a Bank.

(2) Credit Providers may raise funds from capital markets or money markets using debt instruments of any type but must not accept Deposits.

(3) An Authorised Firm is a Credit Provider even if it is also authorised to conduct any Regulated Activity (except Accepting Deposits). The authorisation for Providing Credit and the absence of an authorisation for Accepting Deposits qualifies an Authorised Firm as a Credit Provider.

(4) A Credit Provider may conduct the Regulated Activity of Dealing in Investments as Principal, if it receives the necessary authorisation from the AFSA.

~~*(5) An Authorised Firm licensed to conduct the Regulated Activity of Providing Credit from its own funds does not fall under the category of Credit Provider. Such firms are not subject the BBR rules.*~~

10. It is then proposed to modify the AIFC General Rules, 1.1.12. Exclusion in respect of acting with or for Group companies, to exclude providing credit within the same group from being classified as a regulated activity:

A Person does not carry on any of the Regulated Activities specified in paragraphs 1, 2, 3, 5, 6, 10, 11, 12, or 15 or 18 of Schedule 1 where that Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporates:

(a) which are within the same Group as that Person; or

(b) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise; and for the purposes of the activities specified in paragraphs 3, 5, 6 and 12 of Schedule 1 the assets in question belong to a Body Corporate falling within (a) or (b).

In the proposed modification, "18" refers to the Regulated Activity of Providing Credit.

11. The AFSA provides to its existing Authorised Firms providing credit a transition period of 6 months to comply with the proposed amendments.

Questions

12. The AFSA invites comments on the attached Proposed Amendments to the AIFC Banking Business Framework. We set out some of the questions of interest below:

Question 1. Does your business (intend to) provide credit solely from its own funds? If yes, do you expect such business model to be sustainable in the future?

Question 2. Does your business (intend to) provide credit solely in the form of commercial captive finance, i.e., finance B2B purchases from the parent firm?

Question 3. Will the proposed transition period upon enactment be sufficient for your business to comply with the impact of the proposed amendments? If not, what will be reasonable timeframe?

Annex 1. Proposed Amendments to the AIFC Banking Business Framework

In these Rules the underlying indicates a new text and the ~~strikethrough~~ indicates a removed text

AIFC Banking Business Prudential Rules

1.7. Credit Provider

- (1) An Authorised Firm is a Credit Provider if it is authorised to conduct the Regulated Activity of Providing Credit and it is not a Bank.
- (2) Credit Providers may raise funds from capital markets or money markets using debt instruments of any type but must not accept Deposits.
- (3) An Authorised Firm is a Credit Provider even if it is also authorised to conduct any Regulated Activity (except Accepting Deposits). The authorisation for Providing Credit and the absence of an authorisation for Accepting Deposits qualifies an Authorised Firm as a Credit Provider.
- (4) A Credit Provider may conduct the Regulated Activity of Dealing in Investments as Principal, if it receives the necessary authorisation from the AFSA.
- (5) An Authorised Firm licensed to conduct the Regulated Activity of Providing Credit from its own funds does not fall under the category of Credit Provider. Such firms are not subject the BBR rules.

AIFC General Rules

1.1.12. Exclusion in respect of acting with or for Group companies, to exclude providing credit within the same group from being classified as a regulated activity:

A Person does not carry on any of the Regulated Activities specified in paragraphs 1, 2, 3, 5, 6, 10, 11, 12, or 15 or 18 of Schedule 1 where that Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporates:

- (a) which are within the same Group as that Person; or
- (b) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise;

and for the purposes of the activities specified in paragraphs 3, 5, 6 and 12 of Schedule 1 the assets in question belong to a Body Corporate falling within (a) or (b).