



Consultation Paper

AFSA № AFSA-CE-2021-0001

Umbrella Sandbox

Unrestricted

January 2021

INTRODUCTION

1. Astana International Financial Centre (AIFC) has issued this Consultation Paper to seek suggestions from the market on the proposed approach on regulation of Umbrella Sandbox regulatory regime.
2. The proposals in this Consultation Paper will be of interest to current and potential AIFC participants who are interested in exercising business activities in or from the AIFC.
3. All comments should be in writing and sent to the address or email specified below.
4. If sending your comments by email, please use “Consultation Paper AFSA–CE–2021–0001” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments.
5. 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.
6. The deadline for providing comments on the proposals is 26 February 2020.
7. Once we receive your comments, we shall consider if any refinements are required to this proposal.
8. Comments to be addressed by
Consultation Paper No. AFSA–CE–2021–0001
AIFC FinTech Hub
55/18, Mangylyk El avenue, block C-3.3, Astana, Kazakhstan
or emailed to: r.abdirassilov@aifc.kz

BACKGROUND

1. AFSA is proposing the introduction of new FinTech Lab regulatory regime “Umbrella Sandbox”, which shall complement existing FinTech Lab regulatory regimes of Testing and Developing FinTech Lab Activities.
2. The concept of the Umbrella Sandbox regime envisages authorisation of a Principal (e.g. university, research organisation, venture capital fund or other financial institution) that would further allow PRep (e.g. university students, professors, investee or start-ups firms) to offer FinTech services under the Licence of Principal.
3. Umbrella sandbox is for small-scale testings of feasibility of early-stage business models and ideas to verify that some FinTech product/service has practical potential. Given that Umbrella sandbox regulatory regimes primarily is designed for small group of innovators with minimum viable products, compared to the existing FinTech Lab regime, Umbrella sandbox regime aims to attract different market of innovators, which are at their early stage of development of their FinTech products/services.
4. The analogous practice of Umbrella Sandbox has been also implemented in other leading jurisdictions such as United Kingdom and Singapore, whereby a firm or person may run regulated financial activities and act as an agent for a financial firm directly authorised by the UK Financial Conduct Authority¹.
5. Implementation of Umbrella sandbox regime jointly with another AFSA initiatives such as development of Intellectual Property regime, digital (mobile) banking, payments and e-money, venture capital frameworks is another step towards the development and enhancement of comprehensive AIFC FinTech ecosystem.

PROPOSAL

6. Conceptually the Umbrella Sandbox is a regulatory lab designed for universities, venture capital funds, financial institutions and research organisations (“Principals”) to allow its students, professors, researchers and start-ups (“Principal Representatives”) to experiment and test FinTech products/services under the licence of its Principal, whereby the authorisation and supervision will be performed by the Principal who is in turn authorised and supervised by the AFSA.
7. The Principal, “incubator”, allows its regulatory permissions to be used by the Principal Representative (hereinafter – PRep), so that the PRep can perform financial services under those regulatory permissions of the Principal whilst retaining its own identity, ownership and control. In other words, the compliance function of the PRep is outsourced to the Principal with appropriate compliance knowledge, financial and human resources, systems and controls.
8. The deployment of Umbrella Sandbox would allow:
 - a) Innovators or PRep: to grow and focus primarily on the testing and development of financial services under the regulatory wing of its Principal, establish close collaboration with universities, financial institutions and venture capital funds to

¹ <https://www.fca.org.uk/firms/appointed-representatives-principals>

get access to talents, capital, compliance systems and controls, knowledge and expertise of a Principal;

- b) Principals: gain first-hand insights from innovators and establish collaboration with financial innovative businesses.
- c) Consumers: reduce risk of consumer exposure to harm due to the outsourcing of compliance function to the Principal with appropriate financial, human and compliance resources, enable more innovative products to reach the market that may otherwise never have been tested; and
- d) AFSA and AIFC: clearly signal to the market that innovation is firmly on the regulatory agenda that would help to further promote the development of FinTech within the vibrant and innovation prone AIFC FinTech ecosystem.

REGULATORY APPROACH

- 9. AFSA seeks to establish sound and flexible AIFC regulatory regimes of a high standard that promotes sustainable and safe environment and help firms to innovate. However, new entrants with untested business models expose consumers to new risk exposures. Therefore, AFSA sees that promotion of collaboration and outsourcing of compliance function of start-ups (PRep) to established institutions (Principals) would reduce the regulatory risks for consumers.
- 10. The regulatory approach in designing the proposed Umbrella Sandbox regime is primarily based on the UK legislation and current FinTech Lab practices.

Responsibility of Principal

- 11. The Principal must apply to FinTech Lab to obtain a Licence to offer regulated activities under the existing FinTech Lab licensing process.
- 12. Before a Principal appoints a Person as a PRep, the Principal must seek an approval from the AFSA on appointment of a PRep and must have:
 - a) appropriate FinTech Lab Licence for the regulated financial activity that the PRep is willing to conduct under the Principal's FinTech Lab Licence; and
 - b) adequate controls over the PRep regulated activities for which the firm has responsibility;
 - c) appropriate resources to monitor and enforce compliance of the PRep with the relevant regulatory requirements;
 - d) complaints handling procedures, including provision of contact details of PRep, Principal and AFSA to Clients;
 - e) appropriate systems and controls to enable the PRep to comply properly with any limitations or requirements of its own permission; and
 - f) no close links with PRep and its employees which would be likely to prevent the effective supervision of the PRep by the Principal.

The eligibility criteria to become a PRep

- 13. A Person to become a PRep must:

- a) be fit and proper;
 - b) be solvent;
 - c) be capable of being effectively supervised by Principal and AFSA; and
 - d) enter into contract agreement with Principal which permits the PRep to carry on financial services under the FinTech Lab Licence of Principal.
14. The proposed FinTech Lab Activities of PRep must:
- a) fall within the scope of the permission under the Principal's Licence;
 - b) be in a sufficiently advanced stage of development to mount a live test with real customers; and
 - c) promote innovation.
15. A Principal must ensure that the PRep satisfies eligibility criteria on becoming PRep. The result of such assessment shall be presented to the AFSA. After the AFSA has been convinced that the requirements are sufficiently met, AFSA may permit a person to offer FinTech Lab Activities under the Licence of Principal in the capacity of PRep, impose additional and/or adjust/modify the individual limitations and conditions applicable to Principal and/or its PReps.
16. In reviewing the eligibility of the PRep, the AFSA, among others, shall consider the nature (including the scale and complexity) of the regulated activities of the Principal and its PReps and any associated risks that those activities pose to the AFSA's Regulatory Objectives.

Continuing obligations of Principals with PReps

17. Principal must monitor and check the activities of its PRep on a regular basis to ensure the PRep complies with obligations imposed by AIFC or AFSA regulatory requirements. Normally the Principal is expected to submit monthly reports to AFSA on the results of such checks.
18. The PRep may offer permitted activities under the Principal's Licence for a period of up to two years, but which should not exceed the validity of the Principal's Licence. Subject to AFSA approval this period may be extended or shortened, subject to extension or shortening of validity of the Principal's Licence.
19. A Principal must not permit a PRep to hold client money unless otherwise permitted by AFSA.

Final provisions

20. To ensure greater level of responsibility of Principal for compliance of PReps, anything that a PRep has done or omitted to be done as respects the business for which the Principal has accepted responsibility will be treated as having been done or omitted to be done by the Principal.
21. The senior management of a Principal should be aware that the activities of PReps are an integral part of the business that they manage. The responsibility for the control and monitoring of the activities of PReps rests with the senior management of the Principal.
22. Principals with sufficient resources that can ensure regulatory compliance of its PReps with AIFC/AFSA requirements may appoint several PReps so that PReps could offer

several types of regulated services in the AIFC under the Principal's FinTech Lab Licence/-s.

23. Principals should be aware that, under the existing AFSA regulatory regime, the Principal is responsible for submitting applications to the AFSA for the approval of a person who performs controlled functions of the Principal and/or PRep.
24. If a contract with a PRep is terminated or substantially amended, a Principal must take all reasonable steps to ensure that:
 - a) if the contract between the PRep and Principal is terminated, contract parties and AFSA shall be notified immediately that the contract is terminated, and PRep is no longer permitted to offer regulated activities;
 - b) outstanding regulated activities and obligations to Clients are properly completed and fulfilled either by Principal and/or PRep;
 - c) where appropriate, Clients are informed of any relevant changes;
25. The implementation of Umbrella Sandbox regime implies potential amendments to AIFC General Rules and mostly would entail amendments to the AIFC Financial Technology Rules.