



ABU DHABI GLOBAL MARKET
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CONSULTATION PAPER
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**PROPOSALS FOR REVISION OF THE
REGULATORY FRAMEWORK FOR
PROVIDING MONEY SERVICES IN ADGM**

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INTRODUCTION

Why are we issuing this paper?

1. The Financial Services Regulatory Authority (“FSRA”) of Abu Dhabi Global Market (“ADGM”) has issued this consultation paper to consult on proposed amendments to the regulatory framework for Authorised Persons undertaking the Regulated Activity of Providing Money Services.
2. The proposals reflect the growing importance of money services, in terms of the use of both payment accounts and stored value mechanisms to undertake transactions, and will update the existing framework to reflect the emergence of new business models and methods for the transfer of funds.
3. Unless otherwise defined, capitalised terms used in this paper have the meanings attributed to such terms as contained in the Financial Services and Markets Regulations 2015 (“FSMR”) or the Glossary (“GLO”).

Who should read this paper?

4. This Consultation Paper should be of particular interest to all entities undertaking, or aspiring to undertake, the Regulated Activity of Providing Money Services, their customers and professional advisers.

How to provide comments

5. All comments should be made in writing and sent to the address or the email address specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments.
6. The FSRA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of submitting those comments. Comments supported by reasoning and evidence will be given more weight by the FSRA.

What happens next?

7. The deadline for providing comments on the proposed framework is **26 July 2020**. After receiving your comments, we shall consider whether any modifications are required to the proposals and the Board of ADGM and the FSRA will then proceed to enact the proposals in their final form.

8. You should not act on these proposals until final rules and guidance are issued by the FSRA. We shall issue a notice on our website when this happens.

Comments to be addressed to:

Consultation Paper No. 1 of 2020
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Abu Dhabi, UAE
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BACKGROUND

1. The emphasis in ADGM on encouraging FinTech solutions has led to an interest from firms in the financial services sector in broadening the scope of available money services to consumers in the UAE. Money services in this context encompasses currency exchange, money remittance, and the use of both payment accounts and stored value; these activities, across a large number of different business models, together comprise the Regulated Activity of Providing Money Services (“PMS”).
2. The services now available under money remittance, payment accounts and stored value, facilitating the efficient transfer of funds and the purchase of items, have evolved rapidly in the past few years and the regulatory requirements under PMS need to be updated to reflect those changes. The current requirements were designed with simple remittance businesses in mind and no longer reflect the complexity of evolving, technology-intensive business models for money services.
3. In particular, the provision of payment accounts that allow the purchase of goods or services raises the important matter of the safeguarding of client funds that are kept in such an account. The issuance of stored value has similar considerations in the form of the availability of funds to honour the requests for redemption from holders of stored value. These considerations are reflected in the proposals and the provision of payment accounts and stored value services are collectively termed, “Payment Services”.
4. The FSRA is therefore proposing to revise its regulatory framework for PMS to reflect more appropriately the risks arising from the activities undertaken by Authorised Persons offering Payment Services, termed “Payment Service Providers” (“PSPs”), and those providing money remittance.

Currency exchange

5. It should be noted that the activities of currency exchange and money remittance, in the absence of the use of payment accounts or stored value, are excluded from these proposals and the current requirements will continue to apply, other than the proposals to remove the requirement to undertake client classification, which will apply across PMS. Where an Authorised Person undertakes currency exchange as an ancillary activity to its provision of the other money services, the proposals that relate to those other services are relevant.

Benchmarking

6. In drawing up its proposals the FSRA has examined the regulatory frameworks for payment services adopted in other jurisdictions, including that in the European Union (“EU”). This has reinforced the need for amendment of the current regulatory framework for firms engaging in the offering/delivery of payment services. In addition, there have been recent updates to international regulatory frameworks for the delivery

of payment services including the recent advent of EU and UK legislation concerning payment services.

Customer funds

7. It is critical to note that funds lodged by a customer in a payment account provided by an Authorised Person remain the property of the customer at all times, they must be segregated from the funds of the Authorised Person and are also subject to stringent safeguarding requirements. In the case of the sale or issuance of stored value, the customer has bought an instrument from the Authorised Person loaded with value that allows them to purchase goods or services.

UPDATING THE REGULATORY FRAMEWORK FOR MONEY SERVICES

Revision of the Regulated Activity

8. PMS currently encompasses the activities of currency exchange and Money Transmission, the latter comprising the sale or issuance of payment instruments and stored value, plus the activity of *“receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the Abu Dhabi Global Market”*. We are proposing that PMS be expanded to reflect explicitly the provision of payments accounts, a growing feature of the business models that we are seeing, and reorganised in order to better group together activities with similar characteristics.
9. Accordingly, we are proposing that the provision of payment accounts is considered alongside the activities of selling or issuing payment instruments and stored value and considered collectively as “Payment Services” under PMS. The activity of Money Transmission would be re-badged as “Money Remittance” and left to cover *“receiving money or monetary value for transmission remittance, including electronic transmission remittance, to a location within or outside the Abu Dhabi Global Market, without the use of a Payment Account, Payment Instrument or stored value”*.

Proposed Regulatory Framework

Conduct of Business Rulebook (“COBS”)

10. We are proposing the introduction of a new Chapter 19 in COBS (“COBS 19”), given the proposed expansion of the regulatory framework to reflect the provision of payment accounts and to better reflect regulatory requirements for money remittance and stored value. Significant features of the proposed framework that are proposed in COBS 19, and their associated regulatory requirements, include the following defined terms.
 - “Framework Contract” – enables ongoing execution of multiple payment transactions.

- “Low Value Payment Instrument” – a Framework Contract with reduced regulatory requirements available where there is:
 - an upper limit on the amounts of individual transactions;
 - an aggregate spending cap; or
 - a maximum stored value.
 - “Single Payment Service Contracts” – governs a single transaction and where no payment account is set up by the payer.
 - “Relevant Money” - funds received from a user and held in either a payment account or in the form of redeemable stored value, to be placed in a segregated Client Account immediately upon receipt and subject to the proposals for COBS Chapter 14.
11. A number of features are common to both Framework Contracts and Single Payment Service Contracts, namely:
- the information to be provided to the user;
 - the safeguarding of payers’ funds;
 - operational standards, including those for the execution, authentication, revocation, refusal, timing and amount of payment transactions, the response of a PSP to late, unauthorised or incorrectly executed payment transactions, including complaints handling and dispute resolution measures; and
 - risk mitigation, including periodic assessments of operational and security risks, and reporting of major operational or security incidents.
12. In order to reduce the regulatory requirements for those PSPs that facilitate business customer to business customer transactions, i.e. where there is no natural person involved, certain proposed rules in COBS 19 may not apply where both PSPs agree upon that. These would include those relating to fees and charges, authentication and execution, refunds and user liability.
13. We are also proposing that all Authorised Persons undertaking PMS would no longer need to classify clients in accordance with Chapter 2 of COBS, given the nature of the business models in this sector and the underlying activities they encompass, as this would be consistent with practices in other, comparable jurisdictions. In the EU, for example, client classification is not required for money services business (in its broadest sense) covered by the Payment Services Directive (PSD 2).

ISSUES FOR CONSIDERATION

1. The FSRA invites comments on the requirements outlined in COBS 19 and elsewhere in COBS for Authorised Persons engaged in Providing Money Services.

Prudential – Investment, Insurance Intermediation and Banking Rules (“PRU”)*Base Capital Requirement (“BCR”) and Expenditure Based Capital Minimum (“EBCM”)*

14. PMS currently falls into prudential Category 3C with the BCR component set at \$250k for the calculation of the minimum capital requirement (“MCR”). The EBCM component is either 18/52nds or 13/52nds of Annual Audited Expenditure (“AAE”), the former where customer funds, in the form of what we now propose to define as Relevant Money, are held by an Authorised Person offering payments accounts, the latter where currency exchange, money remittance or stored value is offered.
15. The current prudential requirements will remain in place for Authorised Persons offering currency exchange as a standalone activity under PMS, rather than an ancillary activity. However, the EBCM component will not apply in future for Authorised Persons offering either or both of payment accounts or stored value and where no currency exchange or money remittance is undertaken alongside one or both of those activities.

Variable capital requirement (“VCR”)

16. We are proposing an additional component of the calculation of the MCR, i.e. a variable capital requirement for all Authorised Persons other than those that provide currency exchange, on the basis that this would be more risk-sensitive than the BCR or the EBCM (where applicable). For Authorised Persons offering money remittance and payment accounts the proposed approach mirrors the tranching approach of PSD 2 in that the VCR is linked to the volume of payment transactions that the Authorised Person processes on a monthly basis.
17. Similarly, for Authorised Persons offering stored value the proposed approach replicates that of PSD 2 in that the VCR is directly linked to the average outstanding balance that the Authorised Person holds.
18. For money remittance and payment accounts, the weighting for the first tranche of the VCR that covers average monthly payment volumes up to \$5m is set at a lower value than in PSD 2. Instead, we have set a higher BCR of \$250k compared to the comparable initial capital requirements in PSD 2 (that approximate to \$23k and \$140k for money remittance and payment accounts respectively) to ensure a commitment of adequate financial resources when a firm commences those activities in ADGM. For stored value, the VCR would be calculated using a factor of 2.5% for the average outstanding stored value, which is in line with figure of 2% adopted in PSD 2.
19. For mixed business models, spanning two or more of money remittance, payment accounts and stored value, the relevant components for the calculation of the minimum capital requirement are shown below, other than the BCR of \$250k; the maximum value is taken as the binding minimum capital requirement.

MCR = max (\$250k, ...)	Money Remittance	Payment Accounts	Stored Value
Money Remittance	EBCM _{MR} , VCR _{MR}		
Payment Accounts	EBCM _{MR} , 2*VCR _{MR} + VCR _{PA}	VCR _{PA}	
Stored Value	EBCM _{MR} , VCR _{MR} + VCR _{SV}	VCR _{PA} + VCR _{SV}	VCR _{SV}

Note

- Where all three activities are undertaken at the same time, the minimum capital requirement would be calculated as max (\$250k, EBCM_{MR}, [2*VCR_{MR} + VCR_{PA} + VCR_{SV}])

Table 1 – Minimum Capital Requirement

ISSUES FOR CONSIDERATION

- The FSRA invites comments on the proposals for calculating the minimum capital requirement for Authorised Persons engaged in Providing Money Services.

Fees Rules (“FEES”)

- We are proposing that the authorisation and annual supervision fees be increased for Providing Money Services, to better reflect the level of resource that the FSRA expends in this area in relation to Applicants and Authorised Persons. There would be a differentiated approach, as outlined below, as the business models and ongoing activities of PSPs are more complex than those for entities providing solely currency exchange or money remittance. We are additionally proposing that the fees for activities that encompass both (i) currency exchange or money remittance and (ii) Payment Services are set at the level proposed for (ii).

<u>Activity</u>	<u>Authorisation and Annual Supervision fees (\$)</u>
(i) Currency exchange or Money Remittance	15,000
(ii) Payment Services	25,000
(iii) Both (i) and (ii)	25,000

Table 2 – Fees

ISSUES FOR CONSIDERATION

- The FSRA invites comments on the proposals for authorisation and annual fees for Authorised Persons engaged in Providing Money Services.

Implementation date and transitional period

- We are proposing that all money remitters and PSPs currently operating in ADGM would have a period of twelve months from the implementation date of the revised requirements to comply with them, and the same transitional period would also apply to Applicants having received as of that date an “in-principle approval” to operate as such in ADGM. Similarly, a transitional period would apply to Authorised Persons operating in the RegLab when converting that FSP into one to undertake Payment

Services or money remittance, but the transitional period would apply only from the date that the FSP is granted up to a maximum of twelve months after the implementation date.

ISSUES FOR CONSIDERATION

4. The FSRA invites comments on the proposal for a transitional period for the revision of the regulatory requirements for Authorised Persons engaged in Providing Money Services.

Anti-Money Laundering and Sanctions Rules and Guidance Rulebook (“AML”)

22. Recent Federal legislation concerning AML issues¹ has emphasised the general obligation upon firms operating in the money services sector to take responsibility for the actions of the agents they employ when conducting their business, reflecting the relevant guidance in this area issued by Financial Action Task Force². Firms using agents should therefore use all available means at their disposal when considering the ability of potential agents to comply with all AML requirements; those requirements may originate from ADGM, the wider UAE or other, international bodies that develop and impose such requirements.
23. This overarching legislative imperative therefore requires amendments to be made to AML, independent of the proposals that are the subject of this consultation exercise, to ensure that Authorised Persons engaged in PMS conduct appropriate AML oversight of all agents involved in their business activities, and train, oversee and assess the AML compliance of their agents on a continuing basis as is necessary and appropriate. Those amendments will also encompass the requirement of an Authorised Person to file a Suspicious Activity Report with the relevant authorities in the UAE and the jurisdiction(s) of any agent(s) operating overseas in the event that a suspicious transaction or activity is encountered.
24. A further safeguard that is being proposed in order to combat money laundering and terrorist financing risk would prohibit an Authorised Person from accepting physical cash from any user of its services.

Other considerations

25. There are a number of other, related considerations that will be features of the revised regulatory framework.

¹ Decree Law No. (20) of 2018 on Anti- Money Laundering and Combating the Financing of Terrorism and Illegal Organisations and Cabinet Resolution No. (10) of 2019 concerning the implementing regulation thereof

² “Guidance for a Risk-Based Approach for Money or Value Transfer Services”, FATF, (www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-money-or-value-transfer.html, Feb 2016)

- Limits on aggregate funds and transaction volumes for individual customers - the imposition of such limits is not a feature in most other jurisdictions and we believe that any limits on aggregate funds and transaction volumes are better set by PSPs in the light of their business model(s) and risk appetite(s).
- Guidance - the FSRA will draft and issue a guide to its authorisation of PSPs, highlighting the appropriate interpretation of the threshold conditions alongside other issues that would have to be addressed by applicants.
- Supplementary application form - this will allow the FSRA to better gauge the readiness, willingness and ability of prospective PSPs to meet the threshold conditions and the ongoing requirements.

PROPOSED AMENDMENTS

- **Annex A** **Financial Services and Markets Regulations 2015**
- **Appendix 1** **Fees Rules**
- **Appendix 2** **Prudential – Investment, Insurance Intermediation and Banking Rules**
- **Appendix 3** **Conduct of Business Rules**
- **Appendix 4** **Glossary**
- **Appendix 5** **Anti-Money Laundering and Sanctions Rules and Guidance**