
DRAFT AIFC FINANCIAL TECHNOLOGY RULES
(AIFC FINTECH RULES)

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Guidance: Purpose of these Rules

The purpose of these Rules is to establish the AIFC framework in FinTech, which regulates the FinTech Lab, a special regulatory environment to (1) Test and/or (2) Develop the FinTech Activities.

Part 1 reviews the title of these Rules, commencement date, application scope, interpretation and administration matters.

Part 2 reviews the features of the FinTech Lab.

Part 2.1. provides for the general introduction to the FinTech Lab, which is a live environment within the AIFC which allows a Person to Test and/or Develop the FinTech Activities without immediately incurring full set of regulatory requirements envisaged under the AIFC acts for Regulated and Market Activities.

Part 2.2. describes the regime of Testing the FinTech Activities within the FinTech Lab;

Part 2.3. describes the regime of Developing the FinTech Activities within the FinTech Lab.

Part 2.4. describes a Licence application process.

Part 2.5. describes the waivers, conditions and restrictions to which the Licence may be subject.

Part 2.6. describes the reporting obligations of the FinTech Lab Participant.

Part 2.7. describes the results of Testing and/or Developing the FinTech Activities within the FinTech Lab.

Part 3. provides for the general overview of the AFSA FinTech Office, outlines objectives and scope of functions performed by the CFTO.

PART 1. INTRODUCTION

1.1. Title

These Rules may be cited as the *AIFC Financial Technology Rules* (or *AIFC FinTech Rules*).

1.2. Commencement

These Rules commence on [TBD February] 2019.

1.3. Application

These Rules apply within the jurisdiction of the AIFC.

1.4. Interpretations

Words and expressions used in these Rules and interpretative provisions applying to these Rules are specified in the Glossary.

1.5. Administration of the Rules

These Rules are administered by the Chief FinTech Officer (hereinafter, the “CFTO”) of the AFSA FinTech Office.

PART 2. FINTECH LAB

2.1. General introduction to FinTech Lab

- 2.1.1. The FinTech Lab is a regulatory environment within the AIFC that allows a Person to Test and/or Develop the FinTech Activities without immediately incurring full set of regulatory requirements envisaged under the AIFC acts for Regulated and Market Activities.
- 2.1.2. FinTech Lab is designed to deliver more effective competition in the interests of consumers by:
- (a) reducing the time and, potentially, the cost of getting FinTech to market;
 - (b) enabling greater access to finance for innovators, including start-ups;
 - (c) allowing the AFSA to collaborate with the applicant to ensure that appropriate consumer protection safeguards are built into their FinTech Activities; and
 - (d) enabling more FinTech Activities to be Tested and/or Developed, thus, potentially introduced to the market.
- 2.1.3. Given that the FinTech Lab is a live environment, Testing and/or Developing the FinTech Activities in the FinTech Lab may result in financial loss or other risks to the FinTech Lab Participants, their customers and the financial system.
- 2.1.4. The FinTech Lab is not intended to create a risk-free FinTech environment, rather incorporates appropriate safeguards to identify and manage potential risks that promotes the FinTech Activities, however, minimises the risks of poor customer outcomes posed by these FinTech Activities.

2.2. Testing the FinTech Activities

2.2.1. Eligibility Criteria

- (a) The regime of Testing the FinTech Activities is a live environment which allows a Person to test the validity of the following types of activities in a cost-effective and time-bound manner, in close collaboration with the AFSA:

1. Financial Activities which are similar to those that are already being regulated in the AIFC, where:
 - i. a different technology or process is being applied; or
 - ii. the same technology is being applied differently; or
2. Financial Activities not regulated in the AIFC; or
3. Activities likely to be regulated in the AIFC as a financial or an ancillary service.
 - (b) The FinTech Activities specified in (a) above, should bring benefits to consumers, which may include, for example, improvement accessibility, efficiency, security and quality in the provision of financial services, promoting better risk management solutions and regulatory outcomes for the financial industry.

2.3. Developing the FinTech Activities

2.3.1. Eligibility Criteria

4. The regime of Developing the FinTech Activities is a live market environment in which a Person can engage into the activities that are currently regulated or not regulated by the AFSA without immediately incurring full set of regulatory requirements envisaged under the AIFC acts for Regulated and Market Activities.
5. The regime of Developing the FinTech Activities is tailored in the circumstances where:
 - (i) it is less clear whether the proposed FinTech Activity would have demand in Kazakhstani or regional market (test the waters), or
 - (ii) an applicant is a start-up that does not meet full-set of requirements for the regulated activities but seeks to deploy the FinTech Activities and comply with regulatory obligations gradually, or
 - (iii) an applicant holds a licence to operate the proposed FinTech Activity in other jurisdiction(s) which is not currently regulated by the AFSA.

6. For the purposes of 2.3.1(b), the FinTech Activities eligible for being Developed include those that fall under the Regulated and/or Market Activities specified in GEN Schedule 1 and/or Framework Regulations Schedule 3, and other non-regulated by AFSA activities.

2.4. Application process

2.4.1. General overview

- (a) A Person seeking to Test and/or Develop the FinTech Activities within the FinTech Lab must qualify the eligibility criteria specified in 2.2.1. and 2.3.1. and satisfy the application requirements specified in 2.4.3(b) to get an authorisation.
- (b) A Person may apply to the AFSA for a Licence authorising a Centre Participant to Test and/or Develop the FinTech Activities by:
 - (i) completing the pre-application and application form and filing such completed form with the AFSA accompanied by such documents as are specified in the form; and
 - (ii) providing such further information as the AFSA may require.

2.4.2. Pre-application form

- (a) The pre-application form is designed to verify eligibility of a Person to Test and/or Develop the FinTech Activities within the FinTech Lab.
- (b) The pre-application form is further designed to provide an insight to the AFSA regarding the proposed FinTech and to verify its suitability for support from the FinTech Lab as well as allows the applicant to familiarize with the AFSA's approach in fostering innovation within the FinTech Lab.
- (c) A Person must justify compliance with the eligibility criteria to proceed further with the application form.

2.4.3. Application form

- (a) Once the AFSA is satisfied that the Person meets the edibility criteria, such Person can complete and submit an application form for obtaining a License to carry on a Testing and/or Developing the FinTech Activities.
- (b) In assessing the application, the AFSA will consider whether:
 - (i) the Person has performed a rigorous due diligence on legal and regulatory requirements of AIFC for deploying the proposed FinTech Activities and understands them;
 - (ii) the Person has identified the risks discovered from the preliminary testing and the potential risks to financial industry and consumers that may arise from the Testing and/or Developing of the proposed FinTech Activities in the FinTech Lab, and has proposed appropriate safeguards to address the identified risks to the best of its ability;
 - (iii) the Person has the necessary financial and non-financial resources to support Testing and/or Developing the FinTech Activities in the FinTech Lab; and
 - (iv) the Person has prepared the business, testing and/or development plan(s).
- (c) The AFSA reviews the application within up to 30 business days from the date of receipt and informs the applicant on authorisation decision within 3 business days.
- (d) The procedures of assessing the application, terms and conditions of issuance of the License is defined by the AFSA.
- (e) Nothing in these Rules prevents the Person whose application had been rejected to apply to the FinTech Lab again, provided that the reasons causing the rejection of application have been addressed or the different FinTech Activities or the same FinTech Activities under the different business model shall be proposed for being Tested and/or Developed by that Person.

2.5. Licence

2.5.1. General

- (a) Person must not Test and/or Develop the FinTech Activities within the FinTech Lab unless it holds a Licence issued by the CFTO.
- (b) A Licence issued by the CFTO, which can be subject to the set of conditions, serves as an authorisation of a Centre Participant to:
 - (i) Test the FinTech Activities within the FinTech Lab; and/or
 - (ii) Develop the FinTech Activities within the FinTech Lab.
- (c) The Licence has effect for 2 years from the date of its issuance.

2.5.2. Extension, varying, withdrawal of the Licence

- (a) The FinTech Lab Participant is entitled to apply to the AFSA to extend, vary or withdraw the Licence.
- (b) The FinTech Lab Participant submits application for the Licence extension at least 2 months prior to the Licence expiration date.
- (c) The FinTech Lab Participant is entitled to apply to the AFSA to extend the validity, to change the scope, to have a condition/restriction varied or withdrawn, or to have its Licence withdrawn by:
 - (i) filing the form with the AFSA accompanied by such documents as are specified in the form or as may be requested by the AFSA;
 - (ii) providing such further information as the AFSA may require.
- (d) Each application for an extension, varying or withdraw of the Licence must be accompanied by the sufficient reasons behind such an application.
- (e) In the case of withdrawal of the Licence, the FinTech Lab Participant follows the procedure specified in 2.5.3(d) of these Rules.
- (f) The CFTO approves the extension, varying or withdrawal of the Licence on a case-by-case basis at his/her own discretion.
- (g) The CFTO's decision on the extension, varying or withdrawal of the Licence is final.

- (h) The CFTO may vary the terms of the Licence on his/her own initiative and at his/her own discretion based on the progress of the FinTech Lab Participant in Testing and/or Developing the FinTech Activities.

2.5.3. Suspension, revocation of the Licence

- (a) The CFTO may suspend the Licence based on an application of the FinTech Lab Participant.
- (b) The CFTO is entitled to suspend or revoke all or some of the terms of the Licence or the full Licence at his/her own discretion.
- (c) For the purposes of 2.5.3(b), the CFTO may exercise its power only if the CFTO:
 - (i) is satisfied that there is a breach, or likely breach of a provision of legislation administered by the AFSA; or there is a failure, or likely failure, to comply with any obligation to which the FinTech Lab Participant is subject under the Licence;
 - (ii) considers that the exercise of the power is necessary or desirable in the interests of the AIFC as the risks posed by the Tested and /or Developed FinTech Activities exceed the benefits to consumers or the financial system.
- (d) Upon revocation or withdrawal of the Licence, the FinTech Lab Participant must:
 - (i) immediately implement its exit strategy to cease the provision of the FinTech to new and existing customers;
 - (ii) provide notification to customers informing them of the cessation and their rights to redress, where relevant;
 - (iii) compensate any customers who had suffered the incurred financial losses from engaging with the FinTech Lab Participant pursuant the safeguards submitted by the FinTech Lab Participant while the application for authorisation;
 - (iv) ensure all the existing obligations to its customers must be fully fulfilled or addressed before exiting the FinTech Lab; and

- (v) submit a final report to the AFSA on the actions taken pursuant the paragraph 2.7.3. of these Rules within 30 days after the revocation or withdrawal.

2.6. Waivers, conditions, restrictions

2.6.1. General

- (a) The regime of Testing and/or Developing the FinTech Activities envisages the blank-sheet approach as the normal regulatory requirements applicable to the AIFC Participants, to whom the Framework Regulations apply, would initially not apply to the Person to carry on the Regulated Activity of Testing and / or Developing the FinTech Activities within the FinTech Lab.
- (b) The AFSA may, on the application of a Person or its own initiative and by written notice, waive or modify the conditions, restrictions and/or requirements of the AIFC Regulations or Rules made thereunder, and define the appropriate boundary conditions at authorization and through different stages of Testing and / or Developing the FinTech Activities.

2.7. Reporting

2.7.1. Monitoring

- (a) The FinTech Lab Participant is subject to the monitoring from the AFSA throughout the Licence validity period, whereby the FinTech Lab Participant submits the information on fulfilling of the testing and/or developing plan according to the paragraph 2.4.3(b)(iv) of these Rules.
- (b) The FinTech Lab Participant must ensure proper maintenance of records during the Testing and/or Developing period to support reviews of the testing and/or developing plan by the AFSA.

2.7.2. Interim reports

- (a) The FinTech Lab Participant must submit interim reports to the AFSA on the progress of fulfilment of the testing and/or developing plan, which may, without limitations, include information on the following:

- (i) key performance indicators, key milestones and statistical information;
 - (ii) key issues arising as observed from fraud or operational incident reports;
and
 - (iii) actions or steps taken to address the key issues referred to in (ii) above.
- (b) The frequency and specific details for reporting, depends on duration, complexity, scale and risks associated with the Testing and/or Developing the FinTech Activities and shall be defined by AFSA.

2.7.3. Final report

- (a) The FinTech Lab Participant must submit a final report containing the following information to the AFSA within 30 calendar days from the expiry, or the revocation, or withdrawal of the Licence:
- (i) key outcomes, key findings of the Testing and/or Developing the FinTech Activities;
 - (ii) a full account of all incident reports and resolution of customer complaints (if any); and
 - (iii) in the case of a failed Test and/or Development – the lessons learnt from the Test and/or Development.

2.8. Miscellaneous

- 2.8.1. Upon expiry of the Licence's validity, the legal and regulatory requirements which have been tailored, waived or modified by the AFSA will expire.
- 2.8.2. Unless the extension of the Licence is requested pursuant paragraph 2.5.2. of these Rules, or at such time as otherwise might be necessary and agreed by the CFTO, the FinTech Lab Participant will have to exit the FinTech Lab and choose to either:
- (a) migrate to the full authorisation and supervisory regime under the AIFC regulatory framework and deploy its FinTech on a broader scale; or
 - (b) continue a business as a non-regulated activity under the commercial license obtained from the Registrar of Companies;

(c) employ an exit strategy and follow the procedure specified in paragraph 2.5.3(d).

2.8.3. Migration to full authorisation is possible provided that:

(a) both AFSA and the FinTech Lab Participant are satisfied that the intended Test and/or Development outcomes are achieved; and

(b) the FinTech Lab Participant can fully comply with the relevant legal and regulatory requirements envisaged under the AIFC acts to carry on the Regulated and/or Market Activities.

2.8.4. The FinTech Lab Participant may continue its business under the commercial licence obtained from the Registrar of Companies in certain circumstances when, for instance, the Tested and/or Developed FinTech Activities remain non-regulated by the AFSA, or when the intention of the FinTech Lab Participant or its financial/non-financial resources suggests continuing the business as a non-regulated by the AFSA activity.

2.8.5. The exit strategy of the FinTech Lab Participant may vary based on commercial needs, and may include the ceasing the business, or transferring the FinTech and engaged customers to the other authorised financial institution(s).

PART 3. THE AFSA FINTECH OFFICE

3.1. Overview

3.1.1. The FinTech Lab is administered by CFTO who has an office established within the framework of AFSA.

3.1.2. In exercising the CFTO's functions, the CFTO must act in an independent way, even though the CFTO is an agent of the AFSA.

3.2. Objectives and functions

3.2.1. Objectives

- (a) In exercising the CFTO's functions, the CFTO acts in an independent and non-biased way.
- (b) The CFTO exercises the CFTO's functions only in pursuit of the following CFTO's objectives:
 - (i) to promote good practices and observance of the requirements of these Rules;
 - (ii) to pursue effectiveness and transparency in administering of these Rules.

3.2.2. Functions

- (a) The CFTO has the functions given to the CFTO by or under the AIFC Acts, decisions of Governor and AFSA Executive Body.
- (b) Without limiting the paragraph (a), the CFTO's functions include the following:
 - (i) preparing draft rules, standards and codes of practice and submitting them to the AFSA Board Legislative Committee for consideration;
 - (ii) preparing and adopting non-binding guidance for the AIFC Participants, and advising the Board of Directors of the AFSA of any guidance adopted by the CFTO;
 - (iii) issuing or adopting the necessary forms, procedural guidance and other necessary documents pertinent to these Rules;
 - (iv) initiating and convening the AFSA Committee on authorisation of the FinTech Lab applicants;

- (v) devising the tailored regulatory regime for the FinTech Lab Participant to Test and/or Develop the FinTech Activities within the FinTech Lab, including, without limitations, the following:
 - i. modify eligibility criteria on a case by case basis at his/her own discretion with due consideration of risks posed by the proposed FinTech; and/or
 - ii. impose waivers, conditions, restrictions and cancel and/or vary any waiver, condition, restriction; and/or
 - iii. impose such further waiver, condition, restriction as it may think fit; and/or
 - iv. issue an individual guidance subject to specific characteristics and risk(s) posed by the FinTech Activity; and/or
 - v. vary the applicable legislative requirements as the FinTech Lab Participant progress through different stages of Testing and/or Developing the FinTech Activities.

- (vi) holding the signature right over various legal matters:
 - i. approve the form of the Licence and other application forms, make modifications thereto;
 - ii. issue of the Licence;
 - iii. modify, suspend or revoke the Licence at any time at his/her own discretion due to necessity to pursue one or more regulatory objective.

3.2.3. Other powers

- (a) These Rules are not an exhaustive source of the CFTO's policy on the exercise of its statutory powers and discretions. In discharge of its regulatory mandate, the CFTO is entitled to exercise other powers or functions which the CFTO considers necessary or desirable for or in connection with, or reasonably incidental to, the exercise of the CFTO's functions, where it might be relevant to address any specific matter in FinTech.

- (b) The CFTO may delegate all or any of the CFTO's functions to any AFSA employee.
- (c) The CFTO, and any delegate of the CFTO, is not liable to third parties for anything done or omitted to be done in the exercise or purported exercise of the CFTO's functions (including any function delegated to the CFTO) under the AIFC Acts, decisions of Governor and AFSA Executive Body, except when it is established that such an action or omission was committed with unfair intentions and/or malicious intent and/or for the purpose of deliberate non-fulfillment or violation of his/her official duties.