



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

*CONSULTATION PAPER  
NO. 9 OF 2024*

**PROPOSED ENHANCEMENTS  
TO THE REGULATORY  
FRAMEWORK OF THE FSRA**

**29 October 2024**

**Table of Contents**

<b>Introduction</b>	<b>3</b>
<i>Why we are issuing this paper</i>	3
<i>Who should read this paper</i>	3
<i>How to provide comments</i>	4
<i>Deadline for comment</i>	4
<b>Background</b>	<b>5</b>
<b>Revisions to BCBS Principles</b>	<b>5</b>
<b>Proposals to align with the BCBS Principles</b>	<b>6</b>
<i>Corporate governance</i>	6
<i>Domestic systemically important banks (“D-SIBs”)</i>	8
<i>Additional guidance for country risk and transfer risk</i>	8
<i>Enhancement and clarification of regulatory expectations pertaining to stress testing</i>	9
<i>Additional criteria for “Connected Counterparties” and “Closely Related” Counterparties</i>	10
<i>Managing problem exposures</i>	11
<i>Prior notification requirements for major acquisitions/investments or when establishing a new subsidiary</i>	11
<i>Miscellaneous</i>	12
<i>Summary</i>	13
<b>Attachment and appendices</b>	<b>13</b>

## Introduction

### **Why we are issuing this paper**

1. The Financial Services Regulatory Authority (the “FSRA” or “we”), the financial services regulator for Abu Dhabi Global Market (“ADGM”), is approaching ten years of operations and considers this an opportune moment to take stock of our regulatory framework for financial services. Our ambition is to ensure that our regulatory framework continues to be aligned with current best practices enshrined in the following standards, as issued by the international standard-setting bodies:
  - a. *Core Principles for effective banking supervision*<sup>1</sup>, issued by the Basel Committee on Banking Supervision (the “BCBS Principles”);
  - b. *Objectives and Principles of Securities Regulation*<sup>2</sup>, issued by the International Organization of Securities Commissions (the “IOSCO Principles”); and
  - c. *Insurance Core Principles*<sup>3</sup>, issued by International Association of Insurance Supervisors (the “IAIS Principles”).

For the purposes of this Consultation Paper (“CP”) these will be referred to collectively as the “International Standards”.

2. As the first stage in benchmarking of our regulatory framework, we have considered its alignment with the BCBS Principles. The proposals in this CP seek to address those areas where enhancements to the regulatory framework will ensure further, appropriate alignment with the BCBS Principles.
3. In turn, we shall assess the regulatory framework against the other International Standards and, where associated enhancements are deemed to be necessary, undertake further consultation exercises, as appropriate.
4. Capitalised terms which appear in this paper have the meanings attributed to them in the FSRA’s Glossary Rulebook (“GLO”), unless otherwise defined herein.

### **Who should read this paper**

5. This CP proposes enhancements to regulatory expectations that should be of interest to all Authorised Persons, in particular Banks, Insurers and Authorised Persons that are authorised to carry on the Regulated Activities of Providing Credit or Managing a Profit Sharing Investment Account which is a PSIAu in ADGM.

<sup>1</sup> <https://www.bis.org/bcbs/publ/d573.pdf>, April 2024

<sup>2</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf>, May 2017

<sup>3</sup> <https://www.iaisweb.org/uploads/2022/01/191115-IAIS-ICPs-and-ComFrame-adopted-in-November-2019.pdf>, November 2019

6. We also welcome feedback from other stakeholders, particularly Corporate Service Providers (“CSPs”), entities based in ADGM or beyond, and regulated firms in other jurisdictions with banking experience or other advocacy groups.
7. We welcome suggestions for alternative approaches to address the regulatory considerations raised herein and comments supported by reasoning and evidence will be given more weight.

***How to provide comments***

8. All comments should be made in writing and sent to the physical or email address 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. We reserve the right to publish any comments you provide, including on our website, unless you expressly request otherwise when submitting those comments.

***Deadline for comment***

9. The deadline for providing comments on these proposals is 28 November 2024.

***Comments to be addressed to:***

Consultation Paper No. 9 of 2024  
Abu Dhabi Global Market  
ADGM Square  
Al Maryah Island  
PO Box 111999  
Abu Dhabi, UAE  
Email: [fsra.consultation@adgm.com](mailto:fsra.consultation@adgm.com)

## **Background**

1. Since being established in October 2015, ADGM has earned acclaim for its progressive financial services environment which is built upon its English common law legal framework. In that respect, the FSRA was established within ADGM and empowered to design, implement and maintain a robust, progressive regulatory framework for financial services and thereby uphold the reputation of ADGM as an international financial centre.
2. The regulatory framework of the FSRA, including its regulations and rules, is modelled on internationally recognised standards and best practices. The regulatory framework ensures that financial services firms operating within or from ADGM do so with certainty and confidence, and that the interests of relevant stakeholders are safeguarded.
3. The FSRA has an open and forward-looking approach to the maintenance and development of its regulatory framework, undertaking meaningful stakeholder engagement through public consultation where additions to, or updates of, the regulatory framework are believed to be necessary. It is in this spirit that we are reviewing the regulatory framework against the International Standards.
4. The FSRA intends to take a phased approach to address areas where there is an opportunity to further align with the ever-evolving International Standards. This CP represents the first phase of enhancement of our regulatory framework. Further enhancements to our regulatory framework, arising from our self-assessments against the IOSCO Principles and the IAIS Principles, will be undertaken once such assessments are completed.

## **Revisions to BCBS Principles**

5. The BCBS Principles were revised in April 2024 with changes proposed to both the structure and the contents of those principles. The amendments were informed by several thematic topics reflecting regulatory and supervisory developments internationally, structural changes affecting the banking system, and lessons learnt from Financial Sector Assessment Programs undertaken by the International Monetary Fund and the World Bank.
6. We have reviewed our regulatory framework against the revised BCBS Principles in order to ensure that it remains sufficiently robust and responsive to international developments. The proposals in this CP promote continued adherence to international best practices as laid out by the BCBS Principles.

**Proposals to align with the BCBS Principles****Corporate governance**

7. The BCBS Principles outline expectations that banks should have robust corporate governance policies and processes covering, for example, strategic direction, organisational structure, control environment, compensation, and the roles and responsibilities of the board and senior management that are commensurate with the risk profile of the bank.
8. In particular, the BCBS's *Corporate governance principles for banks*<sup>4</sup> recommend that a bank's board should have, among other best practices:
  - a. a balance of knowledge, skills, diversity and expertise;
  - b. a sufficient number of independent members, including a non-executive or independent chair;
  - c. a process for the nomination of members and the evaluation of board performance;
  - d. appropriate specialist committees where necessary, depending on the systemic importance and risk profile of the bank; and
  - e. a process to oversee the design and operation of the bank's compensation systems where necessary.
9. While our regulatory framework reflects these practices in large part, we are proposing to enhance the regulatory framework by:
  - a. requiring that the Governing Body of Banks and Insurers<sup>5</sup>, have a majority of non-executive Directors and at least one independent Director;
  - b. enabling the FSRA to require, having regard to size, risk profile, complexity, stage of operations and whether the bank is a Branch or Subsidiary, that the Governing Body of Banks and Insurers:
    - i. increase the proportion or number of non-executive Directors and independent Directors;

<sup>4</sup> <https://www.bis.org/bcbs/publ/d328.pdf>, July 2015

<sup>5</sup> "Banks and Insurers" means for the purposes of this CP: Banks; Insurers other than Captive Insurers or Authorised ISPVs; Authorised Persons that hold a Financial Services Permission to carry on the Regulated Activity of Managing an unrestricted Profit Sharing Investment Account; and any other Authorised Person or Recognised Body where deemed appropriate by the Regulator.

- ii. establish an audit, nomination, risk and/or remuneration committee, or a committee that oversees the mandate of one or more of such committees;
  - iii. have a number or proportion of non-executive Directors and independent Directors appointed to committees of the Governing Body, and specify requirements relating to the chair of such committees;
- c. augmenting the existing guidance provided in Appendix 1 of the General Rulebook (“GEN”) on best practice corporate governance, by:
- i. setting out appropriate independence criteria for “independent” Directors;
  - ii. suggesting an appropriate balance of non-executive and independent directors in the membership of Governing Bodies and Governing Body committees;
  - iii. recommending a regular review of the effectiveness of corporate governance arrangements; and
  - iv. providing additional detail on the conditions under which we might expect specific Governing Body committees to be formed, given the nature of an Authorised Person’s or Recognised Body’s risk profile and the complexity of its operations.
10. While the BCBS’s *Corporate governance principles for banks* do not specifically address branches, our benchmarking across jurisdictions suggested that there is an opportunity to enhance the guidance we have already provided in relation to bank branches operating within ADGM. Accordingly, we propose to enable the FSRA to require Banks and Insurers that are operating as a Branch to establish a committee to carry out the Governing Body’s corporate governance responsibilities in relation to its operations within ADGM, where the FSRA considers that to be appropriate.
11. In addition, we are proposing additional guidance in relation to GEN 5.3.7 setting out that Banks and Insurers should appoint an individual other than the Senior Executive Officer as a Senior Manager to advise the Governing Body and senior management of relevant risks in accordance with our existing Rule in GEN 3.3.6(1).

**Question 1:** Do you agree with the proposal for Banks and Insurers to have a specific proportion of non-executive Directors and one or more independent non-executive Directors on the Governing Body?

**Question 2:** Do you agree with the FSRA having the power to require Banks and Insurers to increase the number or proportion of non-executive and independent Directors?

**Question 3:** Do you have comments on the independence criteria that have been included for Directors and the guidance provided in relation to the recommended balance for Governing Body committees?

**Question 4:** Do you have any comments on the enhancement to branch oversight of corporate governance within ADGM where the FSRA consider it appropriate?

**Question 5:** Do you agree with the guidance on appointing an individual as a Senior Manager to advise on relevant risks?

### ***Domestic systemically important banks (“D-SIBs”)***

12. The BCBS Principles expect that there should be a process to identify those banks that are systemically important in a domestic context. Given their systemic importance, D-SIBs are expected to be subject to higher standards, where appropriate, in line with international best practices, particularly in relation to:
- additional capital buffers in order to provide higher loss absorbency;
  - a higher minimum leverage ratio; and
  - lower large exposure (“LE”) limits.
13. We are therefore proposing to update the Prudential – Investment, Insurance Intermediation and Banking Rules (“PRU”) to:
- a. enable the FSRA to designate an Authorised Person undertaking the following Regulated Activities as a D-SIB:
    - i. Accepting Deposits;
    - ii. Managing an unrestricted Profit Sharing Investment Account;
  - b. outline the procedures to be followed for the designation of a D-SIB;
  - c. enable the FSRA to impose higher capital charges in the form of an additional capital buffer;
  - d. enable the FSRA to impose a higher minimum Leverage Ratio for D-SIBs above the current minimum requirement of 3%; and
  - e. enable the FSRA to impose LE limits lower than 25% of a D-SIB’s Tier 1 Capital, where the exposure is to another D-SIB or to a subsidiary of a D-SIB, whether inside or outside the ADGM.

**Question 6:** Do you have any comments on the proposals to allow the FSRA to designate certain Authorised Persons, undertaking the Regulated Activities stated above, as D-SIBs and to introduce more stringent prudential requirements for such D-SIBs, as appropriate?

### ***Additional guidance for country risk and transfer risk***

14. The BCBS Principles outline that banks should have adequate policies and processes to identify, measure, evaluate, monitor, report and control or mitigate country risk and transfer risk in their international lending and investment activities.



15. While the current requirements within PRU require Authorised Persons in Category 1, 2, 3A or 5 to address these risks, our self-assessment and associated benchmarking across other jurisdictions indicate that we can enhance our expectations in relation to:
- a. the elements that should be contained within an Authorised Person's policy for country risk and transfer risk, including around stress testing and disclosures;
  - b. the factors or data that an Authorised Person should take into account when setting country or regional limits; and
  - c. the roles and responsibilities of the Governing Body and senior management in managing these risks.
16. We are proposing to enhance our guidance to Authorised Persons in the above areas. We note that the FSRA would expect Authorised Persons to implement such measures in a manner that is proportionate to the nature, size and complexity of their operations and resources outside its domestic jurisdiction.

***Enhancement and clarification of regulatory expectations pertaining to stress testing***

17. The BCBS Principles expect that banks should have forward-looking stress testing programmes covering all material risks and that the results of such stress testing are appropriately integrated into a bank's decision-making and risk management. Supervisors are also expected to assess the extent to which stress testing programmes:
- are designed appropriately taking into account sufficiently severe but plausible assumptions and risks,
  - benefit from governance structures where the board and senior management are actively engaged, and
  - are appropriately documented, maintained and updated.
18. While Appendix 3 of PRU provides guidance around appropriate stress testing and scenario analysis, a review of the updated BCBS Principles in conjunction with the BCBS's *Stress testing principles*<sup>6</sup> indicates that more guidance may be appropriate.
19. In particular, we propose enhancing the existing guidance to state more explicitly that stress testing frameworks for Authorised Persons, among other things:
- a. are commensurate with the risk profile and systemic importance of the Authorised Person;
  - b. are subject to appropriate governance;

<sup>6</sup> <https://www.bis.org/bcbs/publ/d450.htm>, October 2018

- c. are appropriately integrated with decision-making and risk management processes;
- d. capture all material and relevant risks;
- e. provide for sufficient data and IT capabilities to support the analysis;
- f. are subject to appropriate documentation, regular maintenance and relevant updates; and
- g. should address communication of results/analysis within the firm and to appropriate authorities within and across jurisdictions, as relevant.

**Question 7:** Do you find the more detailed guidance of the key components of an effective stress and scenario testing framework to be useful? Are there other components that ought to be explicitly referenced?

***Additional criteria for “Connected Counterparties” and “Closely Related”<sup>7</sup> Counterparties***

20. The BCBS’s standards for *Supervisory framework for measuring and controlling large exposures*<sup>8</sup> (the “BCBS LE Standard”) set out the supervisory approach where counterparties of a bank may have specific relationships and dependencies. The criteria that indicate that two or more counterparties may be connected in such a way are the following, where one or both may exist at the same time:
  - a control relationship; or
  - an economic interdependence.
21. PRU outlines certain criteria around “control” in its definition of Connected Counterparties, and more generically addresses the concept of “economic interdependence” as observed through shared financial stresses and/or cascading failures in its definition of Closely Related Counterparties. However, it lacks the specificity and granular assessment around the criteria that determines control and economic interdependence aligned with the BCBS LE Standard.

*Connected Counterparties and control*

22. We are therefore proposing to enhance the definition of Connected Counterparty to include additional criteria indicating control, as outlined in the BCBS LE Standard.

*Counterparties that are Closely Related and economic interdependence*

23. Similarly, we are proposing to enhance the definition of Closely Related by addressing the concept of economic interdependence between Counterparties, while outlining the criteria that may allow for this determination in line with the BCBS

<sup>7</sup> As referred to in PRU

<sup>8</sup> <https://www.bis.org/publ/bcbs283.pdf>, April 2014

LE Standard. In line with the BCBS LE Standard, we are proposing that firms need not conduct an assessment around economic interdependence for transactions where the sum of all exposures to one individual counterparty is less than 5% of the Authorised Person's Tier 1 capital.

24. Additionally, in line with the expectations laid out in the BCBS Principles, we are proposing amendments to allow the FSRA to designate two or more Counterparties as Connected Counterparties or those that are Closely Related for the purposes of LE limits or, where appropriate, remove such designations.

**Question 8:** Are the proposed criteria for “control” in relation to the designation of Counterparties as being Connected Counterparties appropriate?

**Question 9:** Are the proposed criteria for “economic interdependence” in relation to the designation of Counterparties as being Closely Related appropriate?

### ***Managing problem exposures***

25. The BCBS Principles require that supervisors establish criteria for classifying bank exposures as “non-performing”, any reclassification from that category to “performing”, and classification as a “forborne” exposure.
26. We are therefore proposing to add criteria and guidance for the circumstances under which an exposure would fall within these classifications in alignment with our existing requirements for credit risk assessment and classification in PRU. Alongside better alignment with the BCBS Principles, this would provide more clarity on the expected criteria for certain categories of credit classification and also provide us with a better understanding of asset quality, thereby improving the comparability of credit risk information reported/disclosed by Authorised Persons.

**Question 10:** Do you agree with the proposed criteria for non-performing exposures, re-classification of exposures as performing and forborne exposures?

### ***Prior notification requirements for major acquisitions/investments or when establishing a new subsidiary***

27. Currently, GEN 8.10.6(6) requires immediate notification relating to any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the firm's risk profile or resources. Alongside this, GEN 8.10.2(5) requires reasonable advance notice of changes to a firm's legal structure. While the FSRA requires advance notice in these instances, it is important to note that these are solely notification requirements.
28. The BCBS Principles, however, lay out the expectations that supervisors should:
- have the power to review major acquisitions or investments by relevant firms against prescribed criteria to ensure that corporate affiliations or structures resulting from such acquisitions do not expose the firm to undue risks or hinder effective supervision, and

- b. importantly, have the power to reject or impose conditions on such transactions, if required.
29. In order to be more closely aligned with these expectations in the BCBS Principles, the FSRA should have the ability to prohibit or impose conditions on certain types of major acquisitions or investments, plus the establishment of a new subsidiary, where an Authorised Person, in the view of the FSRA, does not have adequate financial, managerial or organisational resources to successfully undertake and manage in future the proposed change in its business profile.
30. We therefore propose to add a Rule clarifying that Authorised Persons in Category 1, 2 and 5 will be required to give sufficient prior notification to the FSRA of any major acquisition, investment or establishment of new subsidiary that would fall into any one of the following categories:
- Establishing or acquiring a subsidiary, regardless of its type of activity, other than an entity which is to be used purely as a special purpose vehicle to provide finance to the Authorised Person;
  - Committing to any proposal to acquire or invest, whether directly or indirectly, in an entity, regardless of its type of activity, where assets being acquired, whether by one acquisition or a series of acquisitions, are of a value of 10% or more of the Authorised Person's Capital Resources; or
  - Committing to any proposal to acquire, whether directly or indirectly, greater than or equal to 20% of the equity interest in an entity.
31. The proposed new Rule would also give the FSRA the power to reject any such proposal by an Authorised Persons in Category 1, 2 or 5 or impose conditions if it were permitted, in both cases where the FSRA decides that that course of action is appropriate.

**Question 11:** Do you have any comments on the requirement for firms in Category 1, 2 and 5 to provide sufficient prior notification to the FRSA for certain types of acquisitions or investments?

**Question 12:** Do you agree with the proposed threshold or types of transactions listed above for an acquisition or investment to be subject to the prior notification requirements and potentially have conditions applied on it or be subject to rejection by the FRSA, where deemed appropriate?

### ***Miscellaneous***

32. We are also taking this opportunity to clean up two relevant definitions as their presence in more than one piece of legislation may currently allow for misinterpretation. The Financial Services and Markets Regulations 2015 has definitions for "Bank" and "Deposit", alongside definitions for same in PRU and GLO, so in order to eliminate the potential for misinterpretation we propose to delete the definitions of those terms from PRU and GLO.

33. Additionally, we are adding some further guidance into our Guidance & Policies Manual, to clarify our policy on the use of certain terms, including that of ‘bank’ in the name of an Authorised Person.

**Summary**

34. A summary of the changes proposed in this CP, the firms that are affected as a consequence and the relevant areas of the FSRA’s Rulebooks and Guidance is included as Attachment 1 to this CP. The detailed, proposed legislative amendments to the relevant Rulebooks are included in Appendices 1 to 4.

**Attachment and appendices**

Attachment 1: Summary of proposed legislative changes and firms impacted

Appendix 1: Proposed amendments to PRU

Appendix 2: Proposed amendments to GEN

Appendix 3: Proposed amendments to GLO

Appendix 4: Proposed amendments to Guidance & Policies Manual (“GPM”)

**Attachment 1:** Summary of proposed legislative changes and the firms that are affected

Topic	Firms affected	Legislative change	Rulebook(s)/Guidance
Enhancements to corporate governance best practice	All relevant Authorised Persons	Various changes, including the remit of board committees and the independence criteria for directors	GEN APP 1.1
Enhancements to corporate governance requirements	<ul style="list-style-type: none"> <li>Banks</li> <li>Insurers, excluding Captive Insurers or ISPVs</li> <li>Authorised Persons Managing an unrestricted PSIAu</li> </ul>	Requirements around non-executive and independent representation on boards	GEN 3.3.41A, APP 1.1 and GLO
		Ability to require board committees	GEN 3.3.41A and APP 1.1
		Ability to require specific representation on board committees	
		Board nomination and assessment practices	
		Role of the Board in design and implementation of a remuneration system	
		Proxy for a board for bank branches	GEN 3.3.41A
		Requirement around minimum risk-focussed senior management appointment(s)	GEN 5.3.7
Dedicated regime for D-SIBs	Banks	Definitions of 'D-SIB'	PRU 1.2.1
		Ability and procedures for the FSRA to designate a bank as a D-SIBs	PRU 1.4
		Prudential implications of designation as a D-SIB	<ul style="list-style-type: none"> <li>PRU 3.16.3 - Individual Capital Requirement</li> <li>PRU 3.21.3(2) - Leverage Ratio</li> <li>PRU 4.15.5(2) - Large Exposure Limits</li> </ul>

<b>Topic</b>	<b>Firms affected</b>	<b>Legislative change</b>	<b>Rulebook(s)/Guidance</b>
Enhancements to expectations for country risk and transfer risk	Authorised Persons in Category 1, 2, 3A or 5	Management of country risk and transfer risk to address proportionality, stress testing, provisioning, disclosures, and governance, among other things.	PRU A4.1, paras 70 to 75
Additional guidance and enhancements to stress testing requirements	All relevant Authorised Persons	Design of stress testing framework aligned with BCBS <i>Stress testing principles</i>	PRU A3.1, paras 1 to 3
		IRAP, to cross reference the enhanced stress testing guidance in A3.1	PRU A11.1, para 9
		ICAAP, to cross reference the enhanced stress testing guidance in A3.1	PRU A11.2, para 3
		Update references to the BCBS standards for <i>Interest rate risk in the banking book</i>	PRU 7.2.6 and 7.4.1
Enhancements to "Connected" or "Closely Related" definitions	Authorised Persons in Category 1, 2, 3A or 5	Criteria for connectedness in definitions of Connected and Closely Related parties	PRU 1.2.1
		Ability for the FSRA to require an Authorised Person to treat other Persons as Closely-Related or as a Connected Counterparty	PRU A4.11.5 and A4.11.7
Updates to classification of problem exposures	Authorised Persons in Category 1, 2, 3A or 5	Included criteria for non-performing exposures, reclassification of exposures as performing, and forborne exposures	PRU 4.5.4A and 4.5.7(2)
		Expectations for firms to manage 'significant' exposures individually	PRU 4.5.6(2)
Prior notification to the Regulator	Authorised Persons in Category 1, 2 and 5	Ability of the FSRA to impose conditions or object to a major acquisition or investment	GEN 8.10.6A
Miscellaneous - inconsistent definitions and naming conventions	All Authorised Persons and Applicants	Definitions of 'Bank' and 'Credit institution' deleted in PRU	PRU 1.2.1
		Additional guidance on naming conventions	GPM 2.11