AFIA Finance Industry Code of Practice By-Laws

Australian Finance Industry Association

1. Introduction

1.1 The Board (Board) of Australian Finance Industry Association Limited (AFIA) has established these AFIA Finance Industry Code of Practice By-Laws (By-Laws) under the Constitution in relation to the AFIA Finance Industry Code of Practice (the Code).

1.2 These By-Laws are administered by AFIA and are binding on all Code Members.

1.3 AFIA will review these By-Laws every three years or earlier if requested by at least 75% of Code Members.

2. Objectives

2.1 The objectives of the Code and these By-Laws are to:

(a) promote high industry standards of service to customers;
(b) provide a benchmark for consistency among Members; and
(c) support Member compliance with legal and industry obligations.

3. Membership

3.1 There are two categories of Members:

(a) Code Members: Members who have been approved in accordance with the requirements of these By-Laws as willing and able to adopt and comply with the Code. These Members are required to comply with the Code when dealing with their customers and are authorised to represent that they are Code compliant in relation to those products for which they are approved as Code compliant.

(b) Non-Code Members: Members who are not Code Members and are not authorised to represent that they are Code compliant.

3.2 Each Code Member must adhere to the standards and requirements of the Code.

3.3 When a Non-Code Member applies to become a Code Member, it must pay an application fee in such amount as is determined by the Board from time to time.

3.4 When a Member is approved as a Code Member, it must pay an annual Code compliance fee in such amount as is determined by the Board from time to time.

3.5 The application fee and the Code compliance fee are separate from the fee charged for membership of AFIA.

4. Requirements To Become a Code Member

4.1 To be a Code Member, an organisation must be a full AFIA Member and must:

(a) not have a director who is, or was within the last five years, a bankrupt (within the meaning of that term in the *Bankruptcy Act 1966*) or made any arrangement or composition with his/her creditors;

(b) not have a director who is, or was within the last five years, found to be guilty of a breach of the law by any regulatory body (including those in Part 2 of Schedule 1, as amended from time to time) which is determined by the Board (or its delegate) to be of such significance that it may reasonably be considered to bring disrepute to AFIA and/or Code Members if the organisation was to become a Code Member;

(c) not have a shareholder, who individually or through related party entities controls (within the meaning of s910B of the *Corporations Act)* the organisation, who is, or was within the last five years, found to be guilty of a breach of the law by any regulatory body (including those in Part 2 of Schedule 1, as amended from time to time) which is determined by the Board (or its delegate) to be of such significance that it may reasonably be considered to bring disrepute to AFIA and/or Code Members if the organisation was to become a Code Member;

(d) have risk management arrangements for their business and have arrangements for compensating customers in respect of any actionable claims for loss or damage for which the organisation is or may be responsible;

(e) comply with any other requirements of AFIA in relation to complying with the Code as determined by the Board (or its delegate) from time to time; and

(f) be able to demonstrate to the Board (if required) that it has the systems and processes in place to allow it to comply with the Code in relation to its products or services. In demonstrating this, the Member may be asked to provide to the Board:

(i) copies of its relevant pro-forma contract document(s) and an attestation made by a director or other appropriately authorised person stating that such pro-forma contract document(s) comply with relevant laws, including those dealing with unfair contract terms, and are enforceable;

(ii) information about how it will meet the requirements set out in the Code;

(iii) information about its internal dispute resolution, and external dispute resolution policies and procedures;

(iv) information about its hardship assistance policies and programs;

(v) written and signed certification by a director or other appropriately authorised person that it is not aware, after making reasonable inquiries, of any material issue that could result in non-compliance with the Code;

(vi) any requested information about the manner in which its processes and procedures will allow it to comply with relevant legislation and regulations (including those in Part 1 of Schedule 1, as amended from time to time); and

(vii) any other relevant information as may be requested by the Board in relation to the Code.

4.2 An application for recognition as a Code Member must be made by the Member in writing within a timeframe that the Board determines as reasonable and in such form as the Board prescribes from time to time.

4.3 An application to become a Code Member will be assessed by the Board and written notice of the result of the application will be provided within 45 Business Days of the application outlined in 4.2.

4.4 The Board may delegate all or any of its powers or actions under this clause 4 to such person or committee (such as a Code Compliance Committee) as it considers appropriate and such delegate(s) will have the authority of the Board under this clause 4 in regard to such delegated functions.

5. Rights and Obligations of Code Members

5.1 Each Code Member has a right to receive any publications and communications distributed to Code Members and to participate in any activities or educational training offered to Code Members.

5.2 Subject to compliance with any guidelines that may be issued in relation to its approved use, each Code Member has the right to use and display any Code accreditation symbol provided to it (or otherwise authorised to be displayed by it), but only while the Member is a Code Member. AFIA, in consultation with Members, will determine the guidelines for the use of the accreditation symbol.

5.3 Each Code Member must act in good faith and comply with the obligations and the standards required of it as set by these By-Laws, the Code and the Constitution.

5.4 Each Code Member must inform the Code Compliance Committee (CCC) as soon as practical but no later than 10 Business Days after it becomes aware of any matter that is of such significance that it may reasonably bring AFIA and/or Code Members into disrepute.

5.5 Each Code Member must lodge an annual attestation about compliance with the Code, in such form as the CCC may require from time to time and will include a certification by a director or other appropriately authorised person of the Code Member that it complies with the requirements of being a Code Member.

6. Non-Compliance With By-Laws or Code

6.1 If the Board considers that a Code Member has (or may have) not complied with its obligations under these By-Laws and/or the Code, it may refer the Code Member and the relevant issue for investigation and determination by the CCC.

6.2 Where a Code Member is in breach of these By-Laws, then AFIA, the Board and the CCC (or any of them) may also take such action as they are respectively authorised to take under the Constitution, these By-Laws and/or the Terms of Reference of the CCC.

7. Confidential Information

7.1 For the purpose of these By-Laws and the Code, Confidential Information means all technical, commercial and other Confidential Information and materials of a Code Member, consumer or small business and includes any information or material that discloses or relates to:

(a) a Code Member's compliance or non-compliance with these By-Laws or the Code;

(b) an actual or Alleged Breach of these By-Laws or the Code by a Code Member;

(c) the commercial, financial, or legal affairs of a Code Member including but not limited to pricing policies, costing information, supplier lists and customer lists;

(d) legal advice;

(e) a matter to which an obligation of confidence applies under applicable privacy laws, such as personal information (as defined under the *Privacy Act 1988*); and

(f) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose attention that information or material otherwise comes, would consider confidential.

7.2 Subject to clause 7.3:

(a) members of the Board must keep confidential all Confidential Information which comes to their attention; and

(b) a person who attends a Board meeting or a meeting with a member of the Board must not disclose, or use for a purpose other than contemplated by these By-Laws, the Terms of Reference of the CCC or the Code, any Confidential Information supplied to him/her in connection with the conduct of the business of the the Board.

7.3 A Board member may disclose Confidential Information:

(a) to a member of the CCC or to any person to whom disclosure is reasonably required for the purpose of the CCC or the Board exercising its functions or powers under these By-Laws, the Terms of Reference of the CCC or the Code;

(b) to any person to whom disclosure of the Confidential Information is required by law;

(c) to a person retained to provide advice to the the Board provided that the the Board explains this clause to that person and the person agrees to be bound by this clause 7; or

(d) with the prior written consent of the Code Member, subject to privacy law.

7.4 If a Code Member ceases to be a Code Member, it may request that all Confidential Information relating to it be destroyed.

7.5 If the Board (acting reasonably including after obtaining such advice as it considers prudent) is of the view that there is no material legal or other risk to AFIA by complying with that request, it will, in conjunction with the relevant former Code Member, and at that former Code Member's cost, arrange for the destruction of agreed Confidential Information relating to that former Code Member.

7.6 However, the Board is not required to delete or erase Confidential Information if:

(a) it is stored electronically on off-site servers as a result of automatic data back-up in accordance with the normal practices of the Board, provided that the Board makes no attempt to access the Confidential Information from the servers;

(b) it is included in a document required to be maintained in order to comply with any law or regulation of a regulatory body;

(c) it is included in the Board's papers, or the minutes of the Board or any committee of that board, or the papers or minutes of a credit committee of a financier of the Board, in any case to the extent that such papers and minutes contain a level of detail consistent with the normal practices of the Board or its financier (as applicable);

(d) it is included in documents that are created or retained by any professional advisers of the Board where those documents are required to be held, or it is the usual practice of the professional adviser to hold those documents, for the purposes of any relevant professional standards, practices, codes or insurance policies applicable to the professional adviser; or

(e) it is required to be retained by the Board pursuant to bona fide internal compliance or audit policies and procedures, provided that the nature and extent of the Confidential Information retained is in accordance with the normal practices of the Board.

8. Termination of Membership

8.1 A Code Member may terminate its membership as a Code Member at any time by giving at least 5 Business Days' notice in writing to the Board. Notice can be provided by any means permitted by the Constitution, including electronic means.

8.2 The Board may suspend or cancel the Code compliance certification of a Code Member and/or suspend or terminate the Code membership of a Code Member as a result of an investigation by the CCC pursuant to the Code and/or these By-Laws and/or the Terms of Reference of the CCC.

8.3 The Board may, in its absolute discretion, suspend or cancel the Code membership of a Code Member who, in the opinion of the Board, does not meet, or no longer meets, the admission requirements to be a Code Member. This power includes situations where the Code Member has had its membership cancelled for any reason.

8.4 Where the Board cancels or suspends the Code membership of a Code Member, the Code Member must immediately cease representing that it is compliant with the Code and must immediately remove references to the Code from all of its documents and from all other materials provided to, or made available for the information of its customers. For the avoidance of doubt, this paragraph does not require the removal of references to the Code from existing agreements already entered into with customers.

9. Appeals

9.1 An appeal by a Code Member from a decision by the Board in relation to any termination of membership will be considered and investigated by a person nominated by the Resolution Institute (or its successor body) at the request of the Board.

10. Revision and Amendment of By-Laws

10.1 The Board may, after consultation with, and seeking comments and suggestions from:

(a) the members of the CCC;

(b) Code Members; and

(c) such other organisations or people as it considers appropriate;

review and amend these By-Laws and/or the Code at any time it considers it appropriate to do so.

10.2 For the avoidance of doubt, the Board is not required to accept, include or act upon any comments and suggestions received.

11. Definitions and Interpretation

Definitions

In these By-Laws, unless the context indicates otherwise:

AFIA has the meaning given to that term in clause 1.1.

Alleged Breach has the meaning that term has in the Terms of Reference of the CCC.

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Board has the meaning given to that term in clause 1.1.

Business Day means a day which is not a Saturday, Sunday, or public holiday in Sydney, New South Wales, Australia.

Code has the meaning given to that term in clause 1.1.

Code Compliance Committee (CCC) means the Code Compliance Committee established by the Board for the purpose of the independent administration and enforcement of the Code.

Code Member has the meaning given to that term in clause 3.1.

Confidential Information has the meaning given to that term in clause 7.

Constitution means the Constitution of AFIA, as amended from time to time.

Industry has the same meaning as in the Code.

Member has the meaning given to that term in clause 3.1.

Non-Code Member has the meaning given to that term in clause 3.1.

Sanction means a sanction or requirement authorised to be imposed by the Code, the Terms of Reference of the CCC or these By-Laws.

Terms of Reference of the CCC means the Terms of Reference of the Code Compliance Committee, as approved by the Board and as amended from time to time.

Interpretation

Unless the context indicates or requires otherwise, in these By-Laws:

(a) headings are for convenience only and do not affect the interpretation of these By-Laws;

(b) reference to the singular includes the plural and vice versa;

(c) reference to a person includes a corporation and vice versa;

(d) reference to a body, a committee, or a position of, or in relation to, AFIA, or to an official document relating to AFIA, means that body, committee, position or document from time to time;

(e) any term which is defined in the descriptions of the parties, the recitals or elsewhere in these By-Laws will have that defined meaning;

(f) where any word or phrase is defined in these By-Laws, any other grammatical form of that word or phrase will have a corresponding meaning;

(g) terms used in these By-Laws which are not defined in it, but which are defined in the Constitution will have the same meaning as there defined;

(h) terms used in these By-Laws which are not defined in the Constitution but are defined in the Corporations Act 2001 (Cth), will have the same meaning as there defined;

(i) reference to an annexure or an appendix, or to a part, article, or other subdivision, is to an annexure or appendix, or to a part, article or other subdivision, of these By-Laws;

(j) reference to a statute, ordinance, code or other law includes any amendment to it, any replacement of it and any statute, ordinance, code or other law intended to operate in conjunction with it and, in each instance, includes every regulation, rule and other instrument;

(k) reference to "month" is to a calendar month;

(l) all monetary amounts are in Australian dollars;

(m) "including" and similar expressions are not words of limitation; and

(n) reference to a function includes a reference to a power, authority, and duty.

SCHEDULE 1

1. RELEVANT LEGISLATION

Anti-Money Laundering and Counter-Terrorism Financing Act 2006
Australian Securities and Investments Commission Act 2001
Competition and Consumer Act 2010
Corporations Act 2001
Privacy Act 1988
Spam Act 2003

2. RELEVANT REGULATORY BODIES

Australian Competition and Consumer Commission (ACCC)
Australian Financial Complaints Authority (AFCA)
Australian Prudential Regulatory Authority (APRA)
Australian Securities and Investments Commission (ASIC)
Australian Transaction Reports and Analysis Centre (AUSTRAC)
Office of the Australian Information Commissioner (OAIC)

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