

CERTIFICATION OF ENFORCEMENT AGENTS RULES 2015

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CERTIFICATION OF ENFORCEMENT AGENTS RULES 2015

Date of Enactment: [●] 2015

The Board of Directors of the Abu Dhabi Global Market make the following Rules in exercise of the powers conferred by sections 124 and 140 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015:-

1. Issue of certificates

A certificate may be issued under section 124 of the Regulations only –

- (a) on application by the person to whom the certificate is to be issued; and
- (b) if the Registrar is satisfied that –
 - (i) the applicant is a fit and proper person to hold a certificate;
 - (ii) the applicant possesses sufficient knowledge of the law and procedure relating to powers of enforcement by taking control of goods and of commercial rent arrears recovery to be competent to exercise those powers;
 - (iii) the forms which the applicant intends to use when exercising powers of taking control of goods or commercial rent arrears recovery conform to the design and layout prescribed in the Schedule to these Rules;
 - (iv) the applicant has lodged the security required by rule 4(1), or such security is already subsisting; and
 - (v) the applicant does not carry on, and is not and will not be employed in, a business which includes the buying of debts.

2. Information about certificates and applications

- (1) The Court must compile and maintain a list of all certificated persons who hold a certificate which has not expired or been cancelled.
- (2) The list required by paragraph (1) must contain, for each certificated person –
 - (a) the certificated person's name;
 - (b) the name of the certificated person's employer, if any;
 - (c) the certificated person's business address;
 - (d) the date of issue of the certificate; and
 - (e) the date on which the certificate ceases to have effect.

- (3) The list required by paragraph (1) must be published on a website maintained by or on behalf of the Courts.
- (4) The Court must also publish, on the website referred to in paragraph (3), notice of every application made to the Court for a certificate to be issued under section 124 of the Regulations.
- (5) The notice required by paragraph (4) must contain the following information –
 - (a) the applicant's name;
 - (b) the name of the applicant's employer, if any;
 - (c) the date on which the application will be heard, which must be at least 7 business days after the date in sub-paragraph (f);
 - (d) that any person who knows of any reason or reasons why the applicant may not be a fit and proper person to hold a certificate may give the reason or reasons to the Court;
 - (e) that the reasons given under sub-paragraph (d) must be given in writing in English;
 - (f) the date by which a person must give a reason or reasons to the Court under sub-paragraph (d), which must be at least 28 business days from the date on which the notice is published on the website.

3. When an application may be heard

No application for a certificate to be issued will be heard before the date in rule 2(5)(c).

4. Security

- (1) The applicant must, before a certificate is issued –
 - (a) lodge in Court by way of bond security totalling US\$10,000; or
 - (b) satisfy the Registrar that security totalling that amount is already subsisting by way of bond.
- (2) The security must be retained once the certificate has been issued for the purpose of securing the certificated person's duties as an enforcement agent and the payment of any reasonable costs, fees and expenses incurred in the investigation of any complaint made to the Court against the certificated person in the capacity of an enforcement agent.
- (3) The certificated person must maintain the security throughout the duration of the certificate.
- (4) If at any time during the duration of the certificate the security no longer exists, or is reduced in value so it totals less than US\$10,000, the certificated person must, by

such time as the Court may direct, provide fresh security to the satisfaction of the Court.

5. Duration of certificates

- (1) A certificate has effect, unless cancelled, for 2 years from the date on which it was issued, subject in the case of a replacement certificate to rule 6(3).
- (2) Every certificate must state the date on which it ceases to have effect.

6. Issue of replacement certificate following change of relevant details

- (1) If there is for any certificated person a change in any of the matters referred to in rules 2(2)(a), (b) and (c) (name, employer and business address of certificated person), the certificated person must as soon as possible provide written notification in English to the Court of the change or changes, and produce the certificate to the Court.
- (2) Where a certificated person notifies the Court and produces the certificate in accordance with paragraph (1), the certificate must be cancelled, and a replacement certificate issued to the certificated person, as soon as possible.
- (3) The replacement certificate must reflect the change notified, but in all other respects, including the date on which it ceases to have effect, must be the same as the cancelled certificate.
- (4) No fee is payable for cancellation of a certificate and issue of a replacement certificate under this regulation.

7. Complaints as to fitness to hold a certificate

- (1) Any person who considers that a certificated person is by reason of the certificated person's conduct in acting as an enforcement agent, or for any other reason, not a fit person to hold a certificate, may submit a written complaint in English to the Court.
- (2) No fee is payable for submitting a complaint under paragraph (1).
- (3) A complaint submitted under paragraph (1) must provide details of the matter complained of and explain the reason or reasons why the certificated person is not a fit person to hold a certificate.
- (4) No complaint submitted under paragraph (1) may be considered by the Registrar until the certificated person has been provided with a copy of the complaint and given an opportunity to respond to it in writing.
- (5) If on considering the complaint and the certificated person's response the Registrar is satisfied that the certificated person remains a fit and proper person to hold a certificate, the complaint must be dismissed.
- (6) If –
 - (a) the certificated person fails to respond; or

- (b) on considering the complaint and the certificated person's response the Registrar is not satisfied that the certificated person remains a fit and proper person to hold a certificate,

the complaint must be considered at a hearing.

- (7) If a complaint is to be considered at a hearing under paragraph (6) –
 - (a) the certificated person must attend for examination and may make representations; and
 - (b) the complainant may attend and make representations, or may make written representations in English.
- (8) If after a hearing the Registrar is satisfied that the certificated person remains a fit and proper person to hold a certificate, the complaint must be dismissed.
- (9) No appeal lies against the dismissal of a complaint under paragraphs (5) or (8).

8. Cancellation or suspension of certificates

- (1) If, following consideration of a complaint at a hearing, the Registrar is satisfied that the certificated person is not a fit and proper person to hold a certificate, the Registrar may –
 - (a) cancel the certificate; or
 - (b) suspend the certificate.
- (2) If the certificate is cancelled, the Registrar may order that the certificated person must, before making any further application to be issued with a certificate, have fulfilled such conditions as to training or any other conditions as the Registrar considers necessary for the certificated person to be a fit and proper person to hold a certificate.
- (3) If the certificate has been suspended, the Registrar may order that the suspension is not to be lifted until the certificated person has fulfilled such conditions as to training or other conditions as the Registrar considers necessary for the certificated person to be a fit and proper person to hold a certificate.
- (4) The Court must, whether the certificate is suspended or cancelled, consider whether to make an order under rule 11(2).

9. Application of security after consideration of complaint at a hearing

- (1) When a complaint has been considered at a hearing, the Registrar may, if satisfied that the complaint was well founded, order that the security be forfeited either wholly or in part, and that the forfeited amount be paid, in such proportions as the Registrar considers appropriate –
 - (a) to the complainant by way of compensation for failure in due performance of the certificated person's duties as an enforcement agent or for the

complainant's costs or expenses in attending and making representations;
and

- (b) where costs or expenses have been incurred by the Court in considering the complaint at a hearing, to the Registrar by way of reimbursement of those costs or expenses.
- (2) The Registrar may make an order under paragraph (1) whether or not the certificate is cancelled or suspended.
- (3) If an order is made under paragraph (1) but the certificate is not cancelled, rule 4(4) applies.
- (4) If the certificate is cancelled, the security must, subject to the making of an order under paragraph (1), be cancelled and the balance of any deposit, following payment of any amounts ordered to be forfeited, returned to the certificated person.

10. Surrender of certificate

- (1) Where a certificate is cancelled or expires, it must be surrendered to the Court, unless the Registrar directs otherwise.
- (2) If a certificated person ceases to carry on business as an enforcement agent, the certificated person must, unless the Registrar orders otherwise, surrender the certificate to the Court, and the certificate will be treated as if it had expired on the date on which it was surrendered.
- (3) The security must be cancelled and the balance of any deposit returned to the certificated person following surrender of a certificate.

11. Continuing effect of certificate in certain circumstances

- (1) This rule applies in any case where –
 - (a) a certificate is cancelled or has expired, or is suspended; and
 - (b) before the cancellation, expiry or suspension, the certificated person took control of goods (within the meaning given by paragraph 11(1) of Schedule 3 (ways of taking control)).
- (2) In such a case, unless the Court orders otherwise, the goods continue to be controlled goods and the certificate continues to have effect, for the purpose of any action which may be taken in relation to the goods as controlled goods under Schedule 3, as if it had not been cancelled, or expired, or suspended as the case may be.

12. Interpretation

In these Rules, unless the context otherwise provides or requires –

- (a) “Abu Dhabi Global Market” has the meaning given in section 1 of the Interpretation Regulations 2015;

- (b) “applicant” means a person applying for a certificate to be issued under section 124 of the Regulations;
- (c) “Board” has the meaning given in section 1 of the Interpretation Regulations 2015;
- (d) “certificate” means a certificate under section 124 of the Regulations to act as an enforcement agent;
- (e) “certificated person” means a person to whom a certificate has been issued;
- (f) “commercial rent arrears recovery” has the meaning given by section 127 of the Regulations;
- (g) “complainant” means a person who makes a complaint to the Court under rule 7 of these Rules;
- (h) “Court” means the Court of First Instance and “Courts” has the meaning given in section 1 of the Regulations;
- (i) “enforcement agent” has the meaning given in paragraph 2(1) of Schedule 3;
- (j) “Registrar” has the meaning given in section 230(1) of the Regulations;
- (k) “the Regulations” means the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;
- (l) “Schedule 3” means Schedule 3 to the Regulations;
- (m) “the security” means the security required by rule 4(1) of these Rules.

13. Short title, extent and commencement

- (1) These Rules may be cited as the Certification of Enforcement Agents Rules 2015.
- (2) These Rules shall apply in the whole of the Abu Dhabi Global Market.
- (3) These Rules shall come into force on the date of their publication (the “Commencement Date”). The Board may by rules make any transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Rules as the Board thinks fit.
- (4) Nothing in these Rules shall have retrospective effect.
- (5) On and from the Commencement Date, any law previously in force in the Abu Dhabi Global Market which is inconsistent with, or deals with the same subject matter as, these Rules shall, subject to the ADGM Founding Law or the Regulations, cease to have any effect or force in the Abu Dhabi Global Market.

SCHEDULE

Rule 1

(Forms to be drafted).