



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

CONSULTATION PAPER NO 11 OF 2015

14 OCTOBER 2015

ADGM COURTS REGULATIONS AND RULES

WHY ARE WE ISSUING THIS PAPER?

1. The Board of Directors (the "**Board**") of Abu Dhabi Global Market ("**ADGM**") has issued this Consultation Paper to invite public comment on the Board's proposals to issue regulations governing and setting out the scope of ADGM's judiciary and ADGM Courts (the "**ADGM Courts**"), to be called the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations (the "**Regulations**"). The Board would also like to invite public comment on draft rules governing the jurisdiction of the Court of First Instance, the enforcement of the ADGM Courts' judgments, and ensuring the safety and security of persons in the ADGM Courts (the "**Rules**"). Proposed drafts of the Regulations and the Rules are set out at Annexes A – E to this Paper.
2. We have summarised the main provisions of the Regulations and the Rules in this Consultation Paper. The summaries provided within should be read as an introduction to the provisions only. Many of the precise details and specifics are contained in the draft Regulations and Rules themselves. Where terms are capitalised in this Paper, unless context requires otherwise, they should be taken to have the definitions ascribed to such terms in the Regulations or the Rules.

WHO SHOULD READ THIS PAPER?

3. The proposals in this Consultation Paper would be of interest to individuals, organisations and investors with an interest in establishing a presence in ADGM or otherwise doing business in ADGM, and their professional advisers.

HOW TO PROVIDE COMMENTS

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

WHAT HAPPENS NEXT?

5. The deadline for providing comments on these proposals is **13 November 2015**. Once we receive your comments, we will consider whether any modifications are required to these proposals. The Board will then proceed to enact and publish the Regulations and the Rules. You should not act on these proposals until the relevant Regulations and Rules are published. We shall issue a notice on our website telling you when this happens.

COMMENTS TO BE ADDRESSED TO:

Consultation Paper No. 11 of 2015

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6. The Board has already enacted a set of commercial regulations and rules, which include the Application of English Law Regulations 2015, Companies Regulations 2015, Commercial Licensing Regulations 2015, Insolvency Regulations 2015, Employment Regulations 2015, Interpretation Regulations 2015 and the associated secondary legislation in the form of rules.
7. The foundation of the civil and commercial law in ADGM is provided by the Application of English Law Regulations 2015, which makes English common law (including the rules and principles of equity) directly applicable in ADGM. In addition, a wide ranging set of English statutes on civil matters are also made applicable in ADGM. All regulations in ADGM are to be construed in accordance with the general clauses and other interpretational rules set out in the Interpretation Regulations 2015. Accordingly, in reading the draft Regulations and Rules, reference should be made to the Interpretation Regulations 2015 for definitions and other provisions.
8. The draft Regulations and Rules as detailed below form the third phase of legislation developed within ADGM. The proposed legislation will establish the framework and environment of the ADGM Courts and judicial system. This is a key step forward in ADGM fulfilling its objectives, in particular, promoting ADGM as a global financial, commercial and legal centre.
9. The core principle at the heart of the Regulations and the Rules is the desire to establish a judiciary and system of law:
 - a. which is founded upon well-established, recognised and accepted principles of law;
 - b. which recognises the importance of, and provides for, the impartiality, independence and integrity of its Judges;
 - c. whose judgments and rulings are capable of being, and will be, enforced in ADGM, throughout the UAE and in other jurisdictions;
 - d. which has the confidence of the local and international commercial and legal markets; and
 - e. which seeks to complement arbitration.
10. After careful consideration of the various leading common law judicial regimes, the Board has decided that the ADGM Courts and judiciary are to be broadly modelled on the English judicial system. The Board considers that adopting this approach is likely to result in a coherent, recognised and accepted legal framework and judicial system.
11. The Regulations and Rules are modelled principally on English primary and subordinate legislation (the “**English Statutes**”). A list of the English Statutes is set out at Appendix 1 to this Paper. The English Statutes are well-established, many of which have undergone evolution and improvement over a long period of time and have been supported by judicial precedents and decisions of the English Court system, providing the legal certainty and predictability which is demanded by the commercial and legal communities.
12. In addition to the English Statutes, various provisions of the Regulations are also drawn from Scots and Australian Federal law which have been tailored specifically to the ADGM’s Courts’ requirements and combined to create a single unified statute – the Regulations – which is both effective and high quality, and recognisable by and familiar to all those practising in or familiar with, common law jurisdictions.
13. As ADGM does not have the authority to create criminal law, the ADGM Courts will not have jurisdiction over any criminal, or alleged criminal, offences. Accordingly, relevant references in the

English Statutes to criminal offences have been amended to refer to breaches of the Regulations or Rules only, punishable by a monetary fine. The Regulations and Rules classify breaches into several levels, with the amount payable at each level set in accordance with the Commercial Licensing Regulations 2015 (Fines) Rules 2015.

14. The direct application of English common law makes ADGM the first jurisdiction in the Middle East to adopt a similar approach to that of Singapore and Hong Kong. We believe that English common law will provide an environment conducive to the development of a financial services industry in ADGM and be of benefit to investors as well as market and non-market participants alike.

SCOPE AND APPROACH TO THE ADGM COURTS, CIVIL EVIDENCE, JUDGMENTS, ENFORCEMENT AND JUDICIAL APPOINTMENTS REGULATIONS

15. The Regulations establish the legislative framework for judiciary and dispute resolution process in ADGM and have been broadly modelled on and adapted from the English Statutes (see Appendix 1).
16. The Regulations do not seek to deal with every potential aspect of the framework for lawyers and do not, for example, provide for the regulation of the legal profession or legal service providers within ADGM. Nor do the Regulations seek to deal with other, non-commercial, areas of law such as family law or defamation. Accordingly, at this time, it is to be assumed that the ADGM Courts will not have jurisdiction over questions of probate, inheritance or consumer rights and no provision is made for jury trials.
17. None of the provisions in the Regulations are modelled on or adapted from EU legislation. Nor do the Regulations make provisions for class actions.
18. In most cases where the Regulations contemplate the implementation of secondary or derivative legislation (e.g. in connection with the creation of Divisions of the ADGM Courts) the power to adopt such legislation has been reserved to the Board. However, in areas involving more procedural matters (e.g. judicial conduct and discipline of Judges) this power has been delegated to the Chief Justice. References in the English Statutes to UK Parliamentary processes of affirmative and negative resolution procedures have been removed as they are not replicated in ADGM. Additionally, references to Scotland, Wales or Northern Ireland have been removed as ADGM will adopt English law.
19. It is intended for the ADGM Courts to have an elective jurisdiction, enabling parties whether or not located in ADGM to submit to the jurisdiction of the ADGM Courts at their discretion and that parties who obtain judgments from foreign Courts will be able to enforce such foreign judgments in the ADGM Courts.
20. The Regulations contain provisions under the following headings:
 - a. Part 1: Establishment of the ADGM Courts (e.g. establishment of the Court of Appeal and Court of First Instance under the ADGM Founding Law);
 - b. Part 2: Sovereignty and Jurisdiction of the ADGM Courts (e.g. no criminal jurisdiction, jurisdictions of the Court of Appeal and Court of First Instance, judgment debts to carry interest, guarantee of judicial independence, judicial review, appeals against and references from decisions of Global Market's Authorities);
 - c. Part 3: Constitution of the ADGM Courts (e.g. composition of the Court of Appeal and Court of First Instance, Judges to exercise dual (i.e. first instance and appellate) jurisdiction, power of the Board to create Divisions of the ADGM Courts);
 - d. Part 4: Powers of the Court (e.g. interim payments and provisional damages (personal injury), orders for pre-action inspection/preservation/disclosure of property, disclosure and inspection of property orders against non-parties, subpoena to attend trial or to produce documents, interim and final injunctions, appointment of receivers and assessors, "civil proceedings order" against vexatious litigants, damages in lieu of injunction or specific performance);

- e. Part 5: Evidence (e.g. hearsay evidence, admissibility of witnesses, written witness statements to be provided in advance of hearings in lieu of oral evidence, proof of statements or documents, expert and foreign law evidence, privilege of witnesses, administration of oaths and false evidence, contempt of court);
- f. Part 6: Practice, Procedure and Enforcement (e.g. all proceedings to be held in public and in English, Judges not to sit on appeal from their own judgments, sittings and vacations of the ADGM Courts, appeals, charging orders, enforcement by taking control of goods, commercial rent arrears recovery, attachment of earnings, information orders, reciprocal recognition and enforcement of foreign court judgments);
- g. Part 7: ADGM Courts Procedure Rules (e.g. Chief Justice to make ADGM Courts Procedure Rules);
- h. Part 8: Judicial and Other Appointments (e.g. ADGM Courts judicial-appointment eligibility criteria, appointment of the Chief Justice/Registrar/Judges of the ADGM Courts, tenure of judicial office, judicial affirmation, ADGM Courts security officers, powers of search, seizure, removal and restraint, judicial discipline);
- i. Part 9: Miscellaneous Provisions about Legal Services (e.g. rights of audience, ADGM public notaries, conditional fee agreements, damages-based agreements, litigation funding agreements);
- j. Part 10: Interpretation, Citation, Extent and Commencement;
- k. Schedule 1: Powers to Make Rules (i.e. rules of court);
- l. Schedule 2: Powers to Give Directions (i.e. Practice Directions);
- m. Schedule 3: Taking Control of Goods;
- n. Schedule 4: Deductions by Employer Under Attachment of Earnings Order;
- o. Schedule 5: Changing the Basis of Deductions.

21. This Paper does not seek to detail each Part or Schedule of the Regulations in full and we have highlighted only those sections of key significance for this consultation.

PART 1 – ESTABLISHMENT OF THE ADGM COURTS

22. This Part establishes that the ADGM Courts are the Court of Appeal and the Court of First Instance, together with any subsequent ADGM Courts or tribunals as may be established in ADGM

PART 2 – SOVEREIGNTY AND JURISDICTION OF THE ADGM COURTS

23. This Part is comprised of four Chapters:

- a. Chapter 1: General;
- b. Chapter 2: Court of Appeal;
- c. Chapter 3: Court of First Instance;
- d. Chapter 4: Judicial Review.

24. Chapter 1 establishes that the ADGM Courts do not have jurisdiction over criminal matters in ADGM. This Chapter also provides that the Board and the Chief Justice have responsibility for ensuring the continued independence of the ADGM Courts and the Judges of the ADGM Courts.
25. Chapter 2 sets out the general jurisdiction of the Court of Appeal, whilst Chapter 3 sets out the same in respect of the Court of First Instance.

Elective Jurisdiction of the ADGM Courts

26. Pursuant to **section 15(2)(e)**, the jurisdiction of the ADGM Courts is an elective regime. Accordingly, parties, whether or not established or located in ADGM, may submit to the jurisdiction of the ADGM Courts at their discretion.

Judicial Review

27. Chapter 4 sets out the scope of the ADGM Courts' jurisdiction to judicially review decisions of the Board or any court, tribunal, Global Market's Authority.
28. In addition to this general jurisdiction of judicial review, **section 23** empowers the Court of First Instance to hear, review and determine any appeal or reference in respect of a relevant decision of:
 - a. the Registration Authority (the "**Authority**") under the Companies Regulations 2015 and Commercial Licensing Regulations 2015;
 - b. the Financial Services Regulatory Authority (the "**Regulator**") under the Financial Services and Markets Regulations 2015; and
 - c. the Regulator's Appeals Panel (the "**Appeals Panel**").
29. This section is modelled on, and expands upon, the provisions of sections 133, 133A and 133B of the UK Financial Services and Markets Act 2000 ("**FSMA**") which relate to proceedings before the UK Financial Services and Markets Tribunal in respect of decisions of the UK Financial Conduct Authority or the Prudential Regulation Authority.
30. When determining references or appeals from decisions of the Authority, the Regulator or the Appeals Panel, the Court of First Instance may consider any evidence relating to the subject-matter of the reference or appeal (whether or not it was available at the material time) and may also consider and correct any mistake in law. The Court of First Instance may dismiss the reference or appeal, or determine whether it is appropriate for the decision to stand and in either case before either making an order to that effect, remit the matter to the Authority, Regulator or Appeals Panel with directions that they reconsider the decision in line with the Court's findings.

ISSUES FOR CONSIDERATION

Q1: DO YOU AGREE WITH THIS APPROACH?

PART 3 – CONSTITUTION OF THE ADGM COURTS

31. Part 3 establishes the minimum number of Judges of which a Court is required in order to be duly constituted.

Unitary Collegiate Court System

32. In contrast to the traditional, hierarchical, nature of many court systems, the ADGM Courts are modelled on Scotland's Court of Session which is a unitary collegiate court. Accordingly, it is intended that Judges of the ADGM Courts will have jurisdiction to sit in both the Court of First Instance and the Court of Appeal as required, save that no Judge may sit on an appeal from his or her own first instance judgment. We believe that this system, provided for under **section 28**, will allow for the more efficient and swift management and progression of cases in the ADGM Courts.

ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THIS APPROACH?

PART 4 – POWERS OF THE ADGM COURTS

33. The Regulations provide for the ADGM Courts to exercise wide ranging powers including, for example:
- a. interim payments and provisional damages for personal injury;
 - b. orders for pre-action inspection/preservation/disclosure of property;
 - c. disclosure and inspection of property orders against non-parties;
 - d. final and interim injunctions;
 - e. damages in lieu of injunctions or specific performance.

Exemption from giving undertakings as to damages

34. **Section 46** provides that the ADGM Courts may order that any party, other than the Registration Authority or the Financial Services Regulatory Authority, who applies for an injunction under **section 39** to give an undertaking as to damages to the ADGM Courts.

ISSUES FOR CONSIDERATION

Q3: ARE THERE ANY OTHER POWERS WHICH YOU CONSIDER THE ADGM COURTS OUGHT TO BE GIVEN?

Q4: DO YOU AGREE THAT THE REGISTRATION AUTHORITY AND FINANCIAL SERVICES REGULATORY AUTHORITY OUGHT TO BE EXEMPT FROM GIVING THE ADGM COURTS UNDERTAKINGS AS TO DAMAGES WHEN APPLYING FOR AN INJUNCTION?

PART 5 – EVIDENCE

35. This Part is comprised of seven Chapters:
- a. Chapter 1: Hearsay Evidence (evidence will not be excluded from proceedings merely because it is hearsay);
 - b. Chapter 2: Witnesses, Witness Statements and Admissibility (witnesses will generally be required to provide written statements in advance of hearings in lieu of oral evidence,

although oral evidence may still be required at trial. Further, evidence of facts will be admissible from other proceedings);

- c. Chapter 3: Expert Evidence (there is provision for expert evidence of facts as well as evidence on foreign law);
- d. Chapter 4: Applications to Obtain Evidence (the ADGM Courts can provide assistance in other non-ADGM civil proceedings);
- e. Chapter 5: Preserving Evidence (the ADGM Courts can make orders for the preservation of evidence);
- f. Chapter 6: Administration of Oaths & False Evidence (sets out the civil penalties – i.e. fines – which are payable where sworn or unsworn evidence is presented to the ADGM Courts in proceedings and that evidence is false);
- g. Chapter 7: Contempt (sets out the strict liability civil offence of contempt of court).

Contempt of Court (Sections 86 to 96)

- 36. As the ADGM Courts do not have jurisdiction over criminal matters the ADGM Courts do not have the powers of committal and a person held to be in contempt of Court in ADGM is therefore liable to a civil penalty – i.e. a fine.
- 37. Contempt, in relation to reporting proceedings in ADGM, is a strict liability rule although provision has been made for a defence of innocent publication.

PART 6 – PRACTICE, PROCEDURE AND ENFORCEMENT

- 38. This Part is comprised of twelve Chapters:
 - a. Chapter 1: Practice & Procedure (all proceedings to be held in public and conducted in English, Judges not to sit on appeals from their own judgments and sittings and vacations of the ADGM Courts);
 - b. Chapter 2: Enforcement (including the referral of judgment debts to arbitration where there is a dispute about the payment of money due under such judgments);
 - c. Chapter 3: Charging Orders (the Court has power to impose charging orders over real property as security for judgment debts);
 - d. Chapter 4: Stop Orders and Notices (the Court of First Instance has power to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities);
 - e. Chapter 5: Appeals (setting out the general framework of the appeals regime);
 - f. Chapter 6: Enforcement by Taking Control of Goods (setting out the framework – complemented by **Schedule 3** – for the certification of enforcement agents in ADGM and their powers to take control of and sell goods in ADGM);
 - g. Chapter 7: Commercial Rent Arrears Recovery (setting out the framework for commercial landlords in ADGM to recover unpaid amounts of rent owing to them by their tenants);
 - h. Chapter 8: Attachment of Earnings (the Court may make an attachment of earnings order against an individual judgment debtor for the amount owing and outstanding under a judgment debt. This Chapter is complemented by **Schedules 4 and 5**);

- i. Chapter 9: Information Orders and Information Subordinate Legislation (the ADGM Courts may order a person, whether or not they are a party to proceedings, to disclose prescribed information about a judgment debtor to the Court);
- j. Chapter 10: Reciprocal Enforcement of Foreign Judgments (provision is made for the registration of foreign court judgments in the ADGM Courts and the enforcement of such foreign court judgments in ADGM. Provision is also made for the reciprocal recognition and enforcement of judgments between ADGM and foreign jurisdictions);
- k. Chapter 11: Set-Off and Cross-Claims (provides for a defendant’s right to set-off claims made against him by a claimant with claims he has against the claimant);
- l. Chapter 12: Miscellaneous (provides for the Registrar of the ADGM Courts to reimburse any party in respect of additional costs which that party has incurred as a result of the death or incapacity of a Judge presiding at the proceedings).

Sittings of the ADGM Courts

- 39. The majority of the Judges of the ADGM Courts will have been judges in various common law jurisdictions and will be located in various countries. In addition, it is recognised that many of the lawyers who will have conduct of the proceedings before the ADGM Courts may not be residents of, or domiciled in, Abu Dhabi or ADGM. In such circumstances, **sections 101 and 108** of the Regulations provide that the sittings – and any other business – of the ADGM Courts may be conducted at any place in the world and provide for the Chief Justice to make directions which set out the places outside of ADGM where the ADGM Courts may sit and the manner in which any hearings may be conducted.
- 40. We believe that these provisions will enable the Judges to manage their assigned cases with greater flexibility so ensuring that parties, and their professional advisers, will have their proceedings dealt with expeditiously. For example, whilst it is expected that trials and appeals will usually be heard in ADGM, it will be open to a Judge to direct that hearings of interlocutory applications will be conducted by video-conference. This flexibility would have the added benefit of containing the parties’ costs as far as possible.

ISSUES FOR CONSIDERATION

Q5: IS THIS APPROACH ACCEPTABLE, PARTICULARLY WITH RESPECT TO CONDUCTING INTERIM HEARINGS BY VIDEO CONFERENCE?

Referral of money judgment payment disputes to arbitration

- 41. **Section 114** provides that parties who have submitted, or who have agreed to submit, to (or are bound by) the jurisdiction of the ADGM Courts, may further agree in writing that in the event of a dispute arising out of the payment of a money judgment debt, the judgment claimant has the option of referring that dispute to an arbitration panel seated in ADGM.
- 42. In the event that the arbitration panel was to issue an award in favour of the judgment creditor, it is intended that the judgment creditor would be able to seek recognition and enforcement of that arbitral award in the national courts of any New York Convention jurisdiction.

ISSUES FOR CONSIDERATION

Q6: DO YOU AGREE WITH THIS APPROACH, PARTICULARLY WITH RESPECT TO “CONVERTING” ADGM COURT JUDGMENTS INTO NEW YORK CONVENTION-COMPLIANT ARBITRAL AWARDS FOR THE PURPOSES OF ENFORCEMENT?

Q7: DO YOU AGREE WITH THE ADGM COURTS’ ENFORCEMENT POWERS AS PROVIDED BY THE REGULATIONS?

Q8: DO YOU CONSIDER THAT THE ADGM COURTS SHOULD HAVE ANY ADDITIONAL ENFORCEMENT POWERS?

PART 7 – ADGM COURT PROCEDURE RULES

43. The ADGM Court Procedure Rules (the “**ADGM CPR**”), to be contained in subsequent rules, will be made by the Chief Justice. The ADGM CPR will set out the rules for the conduct of all proceedings in the ADGM Courts and will be supplemented by separate Practice Directions, also to be made by the Chief Justice.

ISSUES FOR CONSIDERATION

Q9: DO YOU AGREE WITH THE APPROACH TAKEN THAT IT SHOULD BE THE CHIEF JUSTICE, RATHER THAN THE BOARD, WHO MAKES THE ADGM COURT PROCEDURE RULES?

PART 8 – JUDICIAL AND OTHER APPOINTMENTS

Judicial-Appointment Eligibility Condition

44. **Section 191 and 192** of the Regulations create a judicial-appointment eligibility condition that a person may be eligible for appointment as a Judge of the ADGM Courts if he is, or has been, a lawyer for a continuous period of 10 years. This is in contrast to the eligibility condition for appointment to the English Courts where a person must have at least 5 to 7 years post-qualification experience (although the eligibility condition for the UK Supreme Court is 15 years).

ISSUES FOR CONSIDERATION

Q10: DO YOU AGREE THAT AN ELIGIBILITY CONDITION OF 10 YEARS IS APPROPRIATE?

Precedence and Seniority of Judges

45. All Judges, except the Chief Justice, have equal rank within the ADGM Courts. This is the corollary of adopting the unitary collegiate court system. **Section 197** of the Regulations provides for the precedence and seniority of the Judges, with the Chief Justice – as Head of the ADGM Courts, the most senior.
46. As between the other Judges of the ADGM Courts, at any given time seniority will depend upon whether a Judge is sitting as a Justice of Appeal or a Justice of First Instance (Justices of First Instance are to rank after Justices of Appeal) and then according to the priority of the dates upon which the Judges became Judges of the ADGM Courts. If two or more Judges are appointed to the ADGM Courts

on the same day, seniority as between them will be determined according to the date when each Judge became a judge of his national High Court.

ISSUES FOR CONSIDERATION

Q11: IS THIS APPROACH ACCEPTABLE? IN PARTICULAR, DO YOU AGREE THAT AS BETWEEN JUDGES APPOINTED ON THE SAME DAY, SENIORITY SHOULD BE DETERMINED BY REFERENCE TO THE DATE UPON WHICH EACH BECAME A JUDGE OF HIS OR HER NATIONAL HIGH COURT?

PART 9 – MISCELLANEOUS PROVISIONS ABOUT LEGAL SERVICES

Rights of audience

47. Pursuant to **section 223**, rights of audience are granted to any lawyer who has been qualified for a minimum continuous period of 5 years. This enables a wide range of lawyers to appear in the ADGM Courts without imposing any other advocacy qualifications on them.
48. The minimum 5-year qualified condition in respect of rights of audience will not prevent lawyers with fewer than 5 continuous years of legal experience having conduct of proceedings.

ISSUES FOR CONSIDERATION

Q12: DO YOU AGREE WITH THIS APPROACH, IN PARTICULAR, THE MINIMUM 5-YEAR QUALIFICATION PERIOD BEFORE A LAWYER MAY APPEAR BEFORE THE ADGM COURTS?

Costs and Litigation Funding Arrangements

49. **Sections 225 to 228** of the Regulations modify those rules and make provision for parties to litigation in ADGM to enter into bespoke funding arrangements – Conditional Fee Agreements, Damages-Based Agreements and Litigation Funding Agreements.
50. We believe that these modifications to the English common law will bring ADGM into line with other leading common law jurisdictions to ensure access to justice and to the ADGM Courts for all parties. This is particularly important in the light of the intention to limit litigation in ADGM being conducted by litigants in person.
51. Pursuant to **section 47**, parties to litigation in ADGM risk paying a proportion of their opponents' costs if they are unsuccessful at the interim, trial or appeal stages.
52. **Section 229** provides that rules of court and subordinate legislation may be made by the Chief Justice to provide that the ADGM Courts may order an unsuccessful defendant to pay the claimant an additional amount as a sanction where:
 - a. the claimant makes an offer to settle which the defendant rejects or fails to accept;
 - b. the Court subsequently gives judgment in the claimant's favour; and
 - c. the judgment is at least as advantageous to the claimant as the claimant's settlement offer.

ISSUES FOR CONSIDERATION

Q13: DO YOU AGREE WITH THIS APPROACH TO THE FUNDING OF LITIGATION IN ADGM?

Q14: DO YOU AGREE THAT UNSUCCESSFUL PARTIES TO LITIGATION IN ADGM SHOULD BE LIABLE TO PAY A PROPORTION OF THE SUCCESSFUL PARTY'S COSTS OF THE PROCEEDINGS?

Q15: DO YOU AGREE THAT DEFENDANTS WHO REJECT OR FAIL TO ACCEPT A CLAIMANT'S OFFER TO SETTLE AND FAIL TO BEAT THAT OFFER AT TRIAL SHOULD INCUR ADDITIONAL COSTS SANCTIONS?

DIVISIONS AND JURISDICTION (COURT OF FIRST INSTANCE) RULES

53. **Section 29** of the Regulations provides that the Board may, on the Chief Justice’s recommendation, pass subordinate legislation (i.e. rules) for:
- a. the creation of different Divisions of the Court of Appeal and/or the Court of First Instance;
 - b. any increase/reduction in the number of Divisions of either Court;
 - c. the transfer of a court to a different Division.
54. In contrast to the English Courts and Tribunals system, there is to be no separate employment tribunal in ADGM. Instead, all employment issues will be dealt with by the Court of First Instance. In light of this decision, we consider that the Court of First Instance should comprise of two separate Divisions:
- a. the Civil Division; and
 - b. the Employment Division,

which are established pursuant to the Divisions and Jurisdiction (Court of First Instance) Rules (the “**Divisions and Jurisdiction Rules**”). A proposed draft of the Divisions and Jurisdiction Rules is set out at Annex B to this Paper.

ISSUES FOR CONSIDERATION

Q16: DO YOU AGREE THAT EMPLOYMENT ISSUES SHOULD BE DEALT WITH BY THE ADGM COURTS, RATHER THAN BY A SEPARATE TRIBUNAL?

Q17: SHOULD THE COURT OF FIRST INSTANCE BE COMPRISED OF MORE THAN 2 DIVISIONS AND, IF SO, WHAT PROCEEDINGS, QUESTIONS AND CLAIMS SHOULD THOSE ADDITIONAL DIVISIONS HAVE JURISDICTION TO HEAR AND DETERMINE?

Jurisdiction of the Civil Division

55. The scope of the Civil Division’s jurisdiction is set out at **rule 2** of the Divisions and Jurisdiction Rules and includes jurisdiction to hear and determine questions and claims:
- a. arising out of commercial agreements;
 - b. for personal injury or death occurring in ADGM whether or not in the work place;
 - c. for professional negligence;
 - d. relating to the provision, supply or management of financial services or products;
 - e. arising out of engineering, construction or technology disputes;
 - f. in relation to insolvency;

- g. relating to employment matters which arise out of contractual / tortious / equitable / common law issues.

Jurisdiction of the Employment Division

- 56. The scope of the Employment Division's jurisdiction is set out at **rule 3**. The Employment Division has exclusive jurisdiction to hear and determine all and any questions, claims and proceedings relating to the enforcement of all rights and obligations under the Employment Regulations 2015.
- 57. Both Divisions of the Court of First Instance are to have the same powers in relation to the enforcement of judgments, the award of damages, costs and interim remedies, as each other.

CERTIFICATION OF ENFORCEMENT AGENTS RULES

58. An effective regime for the prompt enforcement of Court judgments is crucial to the establishment of a judicial system which has and maintains the confidence of market participants. We recognise and embrace the fundamental premise that, having established a legitimate claim, judgment creditors must be able to pursue and obtain the enforcement of any Court judgment.
59. The enforcement regime which we have created in ADGM under **Schedule 3** of the Regulations is modelled on, and adapted from, the English system, created under the UK Tribunals, Courts and Enforcement Act 2007. The Certification of Enforcement Agents Rules (the “**Certification Rules**”) is made by the Board pursuant to **section 124** of the Regulations. A proposed draft of the Certification Rules is set out at Annex C to this Paper.
60. The Certification Rules, which are based on the English Certification of Enforcement Agents Regulations 2014, set out the process by which a person may be issued with a certificate to act as an enforcement agent within ADGM, including:
- a. the requirements which must be satisfied for the Registrar of the ADGM Courts to issue such a certificate (**rule 1**), including the lodging of bond security totalling US\$10,000 (**rule 4**);
 - b. the duration of certificates – 2 years from the date of issue (**rule 5**);
 - c. the making of complaints about a person who is issued with a certificate that he is not a fit and proper person to hold such a certificate (**rule 7**);
 - d. the circumstances in which a certificate may be suspended or cancelled (**rule 8**).

ISSUES FOR CONSIDERATION

Q18: DO YOU AGREE WITH THIS APPROACH TO LICENCE AND REGULATE THE ENFORCEMENT INDUSTRY IN ADGM?

TAKING CONTROL OF GOODS AND COMMERCIAL RENT ARREARS RECOVERY RULES

61. The Taking Control of Goods and Commercial Rent Arrears Recovery Rules (the “**Taking Control Rules**”), compliments and operates in conjunction with the Certification Rules. A proposed draft of the Taking Control Rules is set out at Annex D to this Paper. The Taking Control Rules are modelled on, and adapted from, a combination of the English Taking Control of Goods Regulations 2013 and the Taking Control of Goods (Fees) Regulations 2014.
62. The Taking Control Rules contain provisions under the following headings:
- a. Part 1: Introductory;
 - b. Part 2: Procedure for Taking Control of Goods;
 - c. Part 3: Sale of Controlled Goods;
 - d. Part 4: Securities of the Debtor;
 - e. Part 5: Abandonment of Goods;
 - f. Part 6: Third Party Claiming Controlled Goods;
 - g. Part 7: Commercial Rent Arrears Recovery (CRAR);
 - h. Part 8: Taking Control of Goods (Fees);
 - i. Part 9: Interpretation, Citation, Commencement and Extent.

PART 1 - INTRODUCTORY

63. This Part sets out the scope and application of the Taking Control Rules as well as those categories of goods which are exempt from enforcement under **Schedule 3** of the Regulations.

ISSUES FOR CONSIDERATION

Q19: DO YOU AGREE WITH THE CATEGORIES AND LIST OF GOODS TO BE EXEMPT FROM ENFORCEMENT?

Q20: SHOULD ANY OTHER GOODS BE CATEGORISED AS EXEMPT FROM ENFORCEMENT?

PART 2 – PROCEDURE FOR TAKING CONTROL OF GOODS

64. This Part sets out the procedure for taking control of goods, including:
- a. the notice requirements prior to taking control (**rules 3 to 5**);
 - b. actually taking control of goods, whether on premises or in a public place and the days on and hours in which goods may and may not be taken control of (**rules 6 to 12**);
 - c. the means of securing and removing goods, whether on premises or in a public place (**rules 13 to 16**); and

- d. the rules regarding the entry of enforcement agents onto premises (including the modes of entry, the days on and hours in which entry is and is not permitted, and the restrictions on enforcement agents as regards entry, re-entry and remaining on premises) (**rules 17 to 26**).

ISSUES FOR CONSIDERATION

Q21: DO YOU AGREE WITH THE DAYS FOR, AND PROHIBITED HOURS OF, TAKING CONTROL OF GOODS?

Q22: DO YOU AGREE WITH THE PERMITTED DAYS AND HOURS FOR ENTRY AND RE-ENTRY ONTO PREMISES FOR TAKING CONTROL OF GOODS?

Q23: DO YOU AGREE WITH THE RESTRICTIONS PLACED ON ENFORCEMENT AGENTS RELATING TO THEIR ENTRY, RE-ENTRY, REPEATED ENTRY, AND REMAINING ON PREMISES?

PART 3 – SALE OF CONTROLLED GOODS

65. This Part sets out the procedure for the sale of controlled goods other than securities, and includes provision for notice of sale to be given to the debtor and any co-owner and for the place and conduct of the sale.

PART 4 – SECURITIES OF THE DEBTOR

66. This Part sets out the procedure for the holding, protection and disposal of securities by the enforcement agent and the notice procedure where the creditor exercises the right to take proceedings under **Schedule 3** of the Regulations.

PART 5 – ABANDONMENT OF GOODS

67. This Part relates to the abandonment of goods (other than securities) and sets out the procedure to be followed by the enforcement agent to make controlled goods available for collection by the debtor.

PART 6 – THIRD PARTY CLAIMING CONTROLLED GOODS

68. This Part concerns underpayments where a third party claims that controlled goods belong to him, and not the debtor. In these circumstances, the third party may make an application to the Court pursuant to **paragraph 39 of Schedule 3** of the Regulations.

PART 7 – COMMERCIAL RENT ARREARS RECOVERY (CRAR)

69. **Section 126 to 140** of the Regulations set out the framework for enforcement by way of Commercial Rent Arrears Recovery (“**CRAR**”). **Part 7** of the Taking Control Rules enhances this framework.
70. Particular provision has been made to safeguard commercial tenants. Accordingly, **rule 49** provides that the minimum amount of net unpaid rent which needs to be outstanding before a landlord can exercise CRAR is an amount equal to 6 months’ rent. This contrasts with the equivalent provision under English Taking Control of Goods Regulations 2013, where the minimum amount of net unpaid rent is an amount equal to 7 days’ rent.

ISSUES FOR CONSIDERATION

Q24: DO YOU AGREE THAT THE MINIMUM AMOUNT OF NET UNPAID RENT WHICH MAY ACCRUE BEFORE CRAR BECOMES EXERCISABLE SHOULD BE AN AMOUNT EQUAL TO 6 MONTHS' RENT? IF NOT, WHAT DO YOU CONSIDER THE APPROPRIATE MINIMUM AMOUNT TO BE?

PART 8 – TAKING CONTROL OF GOODS (FEES)

71. This Part, together with the Schedule to the Taking Control Rules, provides for the recovery of fees and disbursements from debtors by enforcement agents in relation to the taking control of goods procedure under **Schedule 3** of the Regulations.

RETENTION OF KNIVES, GUNS AND OTHER ARTICLES RULES

72. In order to promote the security of those within the ADGM Courts, the Regulations provide for knives, guns and certain other articles (for example, tasers and bullets) to be surrendered by, or seized from, any person entering the ADGM Courts by ADGM Courts security officers. A proposed draft of the Retention of Knives, Guns and Other Articles Rules (the “**Retention Rules**”) is set out at Annex E to this Paper.
73. Items that have been surrendered or seized must be retained in accordance with **section 215 and 216** of the Regulations. The Retention Rules:
- a. set out the procedure to be followed when a knife, gun or other prescribed article is retained;
 - b. require the Registrar of the ADGM Courts to keep a written record of any knives, guns and projectiles retained by Court security officers; and
 - c. set out the procedure for making and dealing with requests for the return of a retained item.

ISSUES FOR CONSIDERATION

Q25: DO YOU AGREE WITH THE APPROACH SUGGESTED BY THE RETENTION RULES FOR SECURING PRESCRIBED ITEMS?