

# CONSULTATION PAPER NO 1 OF 2015

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6 JANUARY 2015

## APPLICATION OF ENGLISH LAW REGULATIONS

## WHY ARE WE ISSUING THIS PAPER?

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1. The Board of Directors (the "**Board**") of Abu Dhabi Global Market ("**ADGM**") have issued this Paper to invite public comment on the Board's proposals to adopt new regulations for ADGM to be called the Application of English Law Regulations (the "**Regulations**"). A proposed draft of the Regulations is set out at Annex A to this paper.

## WHO SHOULD READ THIS PAPER?

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2. 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 advisors.

## HOW TO PROVIDE COMMENTS

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3. 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 comments. Comments supported by reasoning and evidence will be given more weight by the Board.

## WHAT HAPPENS NEXT?

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4. The deadline for providing comments on this proposal is 5 February 2015. Once we receive your comments, we will consider whether any modifications are required to this proposal. We will then proceed to enact the Regulations. You should not act on these proposals until the relevant regulations are issued by the Board. We shall issue a notice on our website telling you when this happens.

## COMMENTS TO BE ADDRESSED TO:

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### **Consultation Paper No. 1 of 2015**

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## BACKGROUND

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5. ADGM was established pursuant to Abu Dhabi Law No. 4 of 2013 as a financial free zone in the Emirate of Abu Dhabi, with its own civil and commercial laws. ADGM will offer market participants a world-class legal system and regulatory regime.

## APPROACH TO LEGAL SYSTEM

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6. ADGM has decided to legislate for English common law to apply in, and form part of the law of, the Global Market. English common law, as it stands from time to time, will therefore govern matters such as contracts, tort, trusts, equitable remedies, unjust enrichment, damages, conflicts of laws, security, and personal property. In addition, certain English statutes that modify aspects of the common law (such as the Contracts (Rights of Third Parties) Act 1999) or that create a statutory regime previously governed by common law (such as the Partnership Act 1890) will also be applied in the Global Market. The regulation of real property matters in ADGM would, however, follow a codified approach, embodied in a series of regulations to be adopted by the Board of Directors. This “stand-alone” legal regime would apply to all real property matters other than those governing the freehold ownership of land, as to which the laws of the Emirate of Abu Dhabi would continue to govern.
7. The adoption of the common law as the underlying framework would not be inconsistent with the adoption of legislation in areas such as companies, insolvency and financial services. In common law jurisdictions such as England, Australia, Hong Kong, Singapore and New Zealand, the common law (i.e. the rules and principles formulated in court decisions) is supplemented by legislation (i.e. statutes, statutory instruments, ordinances, orders, regulations and rules). Typically, in the event of any conflict or inconsistency, legislation will override the common law. Accordingly, English common law in ADGM will be subject to, and capable of being superseded by, legislation adopted in ADGM.
8. The approach being taken by ADGM can be contrasted with two other approaches that were open to ADGM:
  - (a) civil law system: adopting a comprehensive code of civil and commercial laws based either on the Napoleonic codes (e.g. the French Code Civil) or the Roman-Germanic codes (e.g. the German Bürgerliches Gesetzbuch), with the code being supplemented by treatises authored by jurists enjoying legal recognition as aids in the interpretation of the code; and
  - (b) hybrid system: attempting to codify the common law by way of legislation on contracts, obligations, remedies, trusts, personal property and other areas.
9. ADGM has decided to follow a similar model to that utilized in other common law jurisdictions, for example, Hong Kong and Singapore, by applying English common law directly, rather than codifying it, with respect to certain areas of the legislation as specified above. The chosen strategy of ADGM in this regard will be implemented by way of the Regulations, which are modelled on the corresponding instruments in Hong Kong (Application of English Law Ordinance) and Singapore (Application of English Law Act).

## ISSUES FOR CONSIDERATION

Q1: IS THERE ANY REASON FOR THE BOARD TO PREFER AN APPROACH THAT CODIFIES THE COMMON LAW IN REGULATIONS DRAFTED FOR THAT PURPOSE, RATHER THAN APPLYING ENGLISH COMMON LAW DIRECTLY?

### THE REGULATIONS: APPLICATION OF ENGLISH COMMON LAW

10. Section 1 of the Regulations makes English common law (including the rules and principles of equity) applicable in the Global Market. Such application is subject to any modifications that may be required by the circumstances of the Global Market (section 1(2)). It would be for the Global Market courts to determine in each case what modifications, if any, are required by such circumstances.

## ISSUES FOR CONSIDERATION

Q2: IS THERE ANY REASON NOT TO MAKE THE APPLICATION OF ENGLISH COMMON LAW OR ENGLISH STATUTES SUBJECT TO MODIFICATIONS REQUIRED DUE TO THE CIRCUMSTANCES OF THE GLOBAL MARKET?

11. Following the principles applicable in England, a statutory law (such as a Global Market Regulation or an Abu Dhabi Law specifically applicable in the Global Market) would prevail over any inconsistent common law rule or principle (section 1(3)).

### THE REGULATIONS: APPLICATION OF ENGLISH STATUTES

12. Section 2 of the Regulations makes certain English statutes (listed in the Schedule to the Regulations) applicable in the Global Market. These statutes concern areas of commercial and civil law, such as contract terms or damages. In addition, English court jurisprudence on such statutes (as well as on the common law) is also made applicable in the Global Market, with only rulings of the UK Supreme Court made binding on the Global Market courts (section 2(2)). There will, however, be no appeal from the ADGM courts to any UK court, nor any formal link between such courts.

## ISSUES FOR CONSIDERATION

Q3: SHOULD THE JURISPRUDENCE OF THE UK SUPREME COURT ON THE APPLICABLE STATUTES AND ON THE COMMON LAW BE MADE BINDING OR MERELY PERSUASIVE ON THE GLOBAL MARKET'S COURTS?

13. The application of English statutes and jurisprudence on those statutes is, like the common law, made subject to modifications required by the Global Market's circumstances, as well as any subsequent abolition or modification by a Global Market Regulation or Abu Dhabi Law (section 2(3) and (4)).
14. The Board has the power under section 2(8) to publish definitive versions of English statutes (i.e. as modified by the Regulations), so that such definitive versions constitute authentic texts of the statutes admissible in the court system, obviating any need to refer to versions of the statutes published in the UK (section 2(9)).

#### ISSUES FOR CONSIDERATION

Q4: DO YOU AGREE WITH THE BOARD HAVING THE POWER UNDER SECTION 2(8) TO PUBLISH DEFINITIVE COPIES OF ENGLISH STATUTES, AS APPLICABLE IN THE GLOBAL MARKET?

#### THE REGULATIONS: LIST OF, AND MODIFICATIONS TO, APPLICABLE ENGLISH STATUTES

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15. The Schedule to the Regulations sets out the various English statutes made applicable in the Global Market, together with any omissions and modifications required to make such statutes fit for application in the Global Market (for e.g. removal of irrelevant provisions).

#### ISSUES FOR CONSIDERATION

Q5: SHOULD ANY OF THE STATUTES LISTED IN THE SCHEDULE TO THE REGULATIONS BE OMITTED FROM THAT LIST?

Q6: ARE THERE ANY OTHER ENGLISH STATUTES NOT LISTED IN THE SCHEDULE THAT OUGHT TO BE INCLUDED IN THAT LIST?

Q7: SHOULD ANY OF THE OMISSIONS OR MODIFICATIONS IN THE SECOND COLUMN OF THE SCHEDULE NOT BE MADE?

Q8: ARE THERE ANY OTHER OMISSIONS OR MODIFICATIONS THAT OUGHT TO BE SET OUT IN THE SECOND COLUMN OF THE SCHEDULE?

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**ANNEX A: PROPOSED APPLICATION OF ENGLISH LAW REGULATIONS**