

# CONSULTATION PAPER NO 3 OF 2015

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6 JANUARY 2015

## OPERATING 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 Operating 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. 3 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 COMMERCIAL LICENSING

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6. The Regulations are intended to establish a system of commercial licensing in ADGM that serves two purposes:
  - (a) enabling the issuance of commercial licences to all persons carrying on activities in or from ADGM to enable such persons to have access to various services and facilities within ADGM and the rest of the UAE, such as bank accounts, telephone connections and utilities; and
  - (b) enabling ADGM authorities to establish regulatory regimes for certain economic sectors that are usually regulated in most jurisdictions, such as providers of legal services, accountancy services, medical practitioners, real estate developers, real estate agents and hospitality businesses.
7. The Regulations aim to create a sophisticated regime to govern commercial licensing, incorporating detailed provisions on the activities subject to licensing, procedures for applying for a licence, rule-making powers, investigations by ADGM authorities, enforcement procedures, and restrictions on business names. Given the extensive powers granted to ADGM authorities to cancel or vary licences, we have incorporated detailed provisions securing procedural safeguards, such as requiring the Registrar to give a warning notice of any proposal to take enforcement action and giving aggrieved persons a right to refer an enforcement action to the court

### ISSUES FOR CONSIDERATION

Q1: DO YOU AGREE WITH THE PROPOSED APPROACH TO COMMERCIAL LICENSING, INCLUDING THE ABILITY OF THE REGISTRAR TO VARY, SUSPEND OR CANCEL LICENCES?

## LICENSING OF FINANCIAL SERVICES BUSINESSES

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8. ADGM will in due course publish draft financial services legislation for consultation. These regulations will govern the carrying on of financial services activities, such as accepting deposits, dealing in investments, and providing financial advice. The structure of these regulations will be similar to the Regulations, including a prohibition on performing financial services activities without a licence, procedures for applying for a licence, the regulator's own-initiative power to vary or cancel a licence and impose a requirement, rule-making powers, investigation and information gathering powers and enforcement powers.
9. Firms that wish conduct financial services will have an efficient and effective licencing regime that will work and complement their commercial licence.

## SPECIFICATION OF CONTROLLED ACTIVITIES

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10. Section 1 of the Regulations imposes a prohibition on carrying on controlled activities in or from ADGM without a licence or exemption (referred to as the 'general prohibition'). The controlled activities which are subject to licensing and supervision under the Regulations will be set out in detail in secondary legislation issued by the Board. Although the Board will consult in due course on such legislation, it is envisaged that the following kinds of activities, among others, will fall within the definition of controlled activities:
- (a) financial services;
  - (b) provision of legal services;
  - (c) provision of accountancy services (including audit);
  - (d) operation of hospitality businesses (such as hotels);
  - (e) operation of food service businesses (such as restaurants and coffee shops);
  - (f) operation of a retail business;
  - (g) real estate dealership;
  - (h) real estate development; and
  - (i) provision of medical and allied services (such as hospitals and clinics).
11. Rules made by the Board will also specify the circumstances in which a person is to be regarded as carrying on the relevant activities in or from ADGM. Accordingly, it is envisaged that these rules will set out appropriate exclusions for activities not having a sufficient footprint in ADGM.
12. Contravention of the general prohibition will attract a fine under section 3. It will also be a contravention for a licensed person to exceed the scope of its licence (section 4) or for a non-licensed person or non-exempt person to falsely claim to be licensed or exempt (section 5). It should be noted that we have not provided for agreements made in contravention of the general prohibition to be unenforceable or void by reason of such contravention, unlike the approach that is taken in the UK in relation to the general prohibition on conducting regulated financial services without a licence (section 3(3)). We consider the fine available for breach of the general prohibition a sufficient deterrent to such breach. We do not consider a further sanction by way of rendering agreements void or unenforceable is necessary in the context of general commercial licensing, although it may be appropriate in the purely financial services context.

### ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE PROPOSED APPROACH, WHEREBY THE CONTROLLED ACTIVITIES WILL BE DEFINED IN DETAIL IN SECONDARY LEGISLATION?

Q3: DO YOU AGREE THAT AGREEMENTS IN BREACH OF THE GENERAL PROHIBITION SHOULD NOT BE VOID OR UNENFORCEABLE BY REASON OF SUCH BREACH?

## EXEMPTION ORDERS

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13. Section 8 allows the Board to exempt specified persons or persons falling within a specified class from the general prohibition. It is envisaged that this power will be used principally for entities such as UAE state-owned enterprises, public authorities and international organisations.

### ISSUES FOR CONSIDERATION

Q4: DO YOU AGREE WITH THE PROPOSAL TO GRANT THE BOARD THE POWER TO EXEMPT ENTITIES FROM THE GENERAL PROHIBITION?

## CONDITIONS OF LICENCE

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14. Section 10 on the granting of licences allows the Board to make rules specifying the conditions that applicants for a licence must satisfy before they can be granted licences. It is expected that the conditions will vary for different kinds or descriptions of controlled activity or different kinds of person or legal entity. The conditions could impose formality requirements on organisations such as partnerships, requiring them to register the partnership agreement with the Registrar prior to applying for a licence. In addition, the conditions could require certain applicants (e.g. applicants incorporated overseas) to comply with any licensing or authorization requirements applicable outside ADGM. For example, law firms from outside the UAE intending to provide legal services in ADGM could be required to maintain their authorization or licence in their jurisdiction of establishment or incorporation as a condition for obtaining a commercial licence in ADGM. For some sectors such as retail stores, it is unlikely that there will be any significant conditions of licence.

### ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE WITH OUR PROPOSAL TO REQUIRE APPLICANTS TO SATISFY CONDITIONS OF LICENCE PRIOR TO THE GRANT OF COMMERCIAL LICENCES?

## REGISTRAR'S OWN INITIATIVE POWERS

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15. Sections 13 and 14 allow the Registrar, on its own initiative, to vary or cancel a licence granted under the Regulations, as well as to impose a requirement on a licensed person (or vary or cancel such requirement). The grounds on which such powers can be exercised are: (i) failure or likelihood of failure to satisfy the applicable conditions of licence; (ii) failure to carry on the licensed controlled activities within a 12 month period; or (iii) it being desirable in the interests of ADGM to exercise the power.

16. The Registrar can also impose a requirement on an applicant for a licence (or variation of a licence) taking effect on or after the grant or variation of the licence.

#### ISSUES FOR CONSIDERATION

Q6: IS THERE ANY REASON THE REGISTRAR SHOULD NOT HAVE POWERS TO IMPOSE REQUIREMENTS ON LICENSED PERSONS OR TO VARY OR CANCEL LICENCES?

#### DETERMINATION OF APPLICATIONS

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17. Section 17 will require applications for a licence (or variation of a licence) to be determined by the Registrar within one month of receipt of a completed application. Incomplete applications must be determined within 3 months from the date on which the Registrar received the application.

#### ISSUES FOR CONSIDERATION

Q7: DO YOU AGREE WITH THE PROPOSED TIMEFRAME FOR DETERMINATION OF LICENCE APPLICATIONS?

#### PROCEDURAL SAFEGUARDS

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18. Sections 18, 19 and 20 set out procedural safeguards that must be followed by the Registrar if it wishes to take any action that could be adverse to an applicant for a licence or a licensed person, such as a decision to reject a licence application, a decision to grant a licence but impose a requirement or limitation, a decision to exercise an own-initiative power under sections 13 and 14, or a decision to cancel a licence.
19. The Registrar is required to give the person concerned a warning notice of any proposal to take an adverse action. In the case of own-initiative powers, the Registrar may take action with immediate effect, provided it gives written notice to the person concerned.
20. Where the Registrar decides to take the action proposed in a warning notice, it must give the person concerned a decision notice. That person may then refer the matter to the court for a full review on the facts and the law.

#### ISSUES FOR CONSIDERATION

Q8: ARE THERE ANY OTHER SAFEGUARDS WHICH COULD BE INCORPORATED INTO THE REGULATIONS IN RELATION TO MATTERS SUCH AS DETERMINATIONS OF LICENCE APPLICATIONS, EXERCISE OF AN OWN-INITIATIVE POWER OR CANCELLATION OF A LICENCE?

## RULE-MAKING

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21. Section 22 grants the Board the power to make rules applicable to licensed persons, including rules relating to conduct of business, consumer protection, professional standards, maintenance of adequate financial resources, and provision of information to the Registrar. It is not envisaged that there will be sets of rules promulgated that apply across all economic sectors. Instead, there will be sector-specific rules so that they can be tailored to the circumstances of each economic sector, as it is expected to develop in ADGM. Some sectors may therefore be subject to detailed regulations concerning matters such as conduct of business, whilst other sectors are likely to be subject to a light-touch regime.
22. The Board intends to undertake a public consultation prior to issuing rules.

## INFORMATION GATHERING AND INVESTIGATIONS

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23. Part III of the Regulations enables the Registrar to require the provision of information to it, to appoint investigators to investigate licensed persons, and to appoint investigators to investigate contraventions of the general prohibition or certain other contraventions (section 32). Investigators appointed under Part III are given broad powers to require cooperation from persons, including the provision of documents or attendance at an interview.
24. Section 38 enables the court to issue a warrant authorising persons executing the warrant to enter premises, conduct a search, seize documents and use reasonable force. A warrant may be issued where a person has failed to comply with a requirement imposed pursuant to Part III (such as where an investigator has required provision of a document) or to forestall the possibility of documents being removed, tampered with or destroyed, in the case of a licensed person on whom a requirement to provide the documents could be imposed under Part III. Failure to comply with a requirement imposed under Part III can result in the defaulter being dealt with by the court as if he were in contempt. Finally, Part III creates contraventions relating to failure to comply with requirements imposed under that Part.
25. The Board believes that these powers are necessary to enable the Registrar to discharge its functions under the Regulations. In particular, the powers are necessary to enable the Registrar to ensure licensed persons comply with any conditions of licence and any rules to which they are subject.

### ISSUES FOR CONSIDERATION

Q9: IS THERE ANY REASON WHY THE REGISTRAR SHOULD NOT HAVE THE INVESTIGATIVE AND INFORMATION GATHERING POWERS CONFERRED ON IT BY PART III? ARE THERE ANY ADDITIONAL LIMITATIONS OR RESTRICTIONS THAT OUGHT TO BE IMPOSED ON THE EXERCISE OF SUCH POWERS?

## ENFORCEMENT PROCEDURES

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26. Part IV of the Regulations enables the Registrar to impose fines on licensed persons for violating any rules made pursuant to the Regulations. The Registrar is also designated as the authority which may impose a fine in relation to any contraventions of the Regulations (for example, a breach of the general prohibition). The Registrar has the additional power to suspend a licence or impose restrictions or

limitations on a licensed person's licence if the licensed person concerned has violated any rules made pursuant to the Regulations.

27. Enforcement action is subject to procedural safeguards, including the giving of warning notices and decision notices and the right of the person concerned to refer the matter to the court. The Registrar is required to prepare a statement of its policy in relation to the exercise of its enforcement powers and to follow such policy when exercising those powers. The Registrar must consult on the statement prior to issuing it.
28. Warning notices issued under sections 18(1), 18(2), 20(1) or 44(1) must specify a reasonable period not less than 14 days within which the person given the notice may make representations to the Registrar.
29. Part IV also contains provisions on the publication of notices, safeguards for third parties in relation to whom an adverse opinion may have been expressed in a notice (enabling them to challenge such opinion), rights of access to material on which a decision notice is based, and protection for items covered by legal professional privilege.
30. Finally, the Registrar is required to adopt procedures to be followed when undertaking enforcement action so that enforcement decisions are taken by persons not directly involved in establishing the evidence on which the decisions are based or by 2 or more persons who include a person not directly involved in establishing that evidence.

## ISSUES FOR CONSIDERATION

Q10: ARE THERE ANY ADDITIONAL SAFEGUARDS THAT OUGHT TO BE INCLUDED IN PART IV IN RELATION TO THE TAKING OF ENFORCEMENT ACTION? ARE THERE ANY OTHER LIMITATIONS, CONDITIONS OR RESTRICTIONS THAT OUGHT TO APPLY TO ENFORCEMENT ACTION BY THE REGISTRAR?

## BUSINESS NAMES

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31. Part V of the Regulations imposes various restrictions on the use of business names in ADGM, including names suggesting a connection with a government or public authority, names incorporating sensitive words or expressions, names containing an inappropriate indication of company type or legal form, and names giving a misleading indication of the activities carried on.
32. In addition, Part V imposes disclosure requirements on businesses in relation to individuals and partnerships to enable the public to identify the name of the individual behind a business or the partners of a partnership and the address for service of documents.

## ISSUES FOR CONSIDERATION

Q11: DO YOU AGREE WITH THE RESTRICTIONS ON BUSINESS NAMES AND DISCLOSURE REQUIREMENTS SET OUT IN PART V? ARE THERE ANY ADDITIONAL RESTRICTIONS OR REQUIREMENTS THAT OUGHT TO BE INCLUDED IN PART V?

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**ANNEX A: PROPOSED OPERATING REGULATIONS**