

# CONSULTATION PAPER NO 5 OF 2015

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6 JANUARY 2015

## EMPLOYMENT 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 Consultation Paper to invite public comment on the Board's proposals to adopt new employment regulations for ADGM to be called the Employment 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 the proposed Regulations. 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. 5 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 PROPOSED GOVERNANCE OF EMPLOYMENT LAW IN ADGM

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6. The Board considers that it would be appropriate to establish an employment law framework within ADGM to provide for a fair balance of rights and obligations as between employers and employees.
7. The proposed approach is based on two basic principles:
  - (a) The Board proposes to introduce a statutory framework of employment law, as set out in the attached draft Regulations.
  - (b) Otherwise, as is the case more generally in relation to the proposed legal system for ADGM, the Board proposes that English common law would apply (and, in addition, certain additional English statutes that modify certain aspects of English common law (such as the Contracts (Rights of Third Parties) Act 1999) would also apply). Accordingly, to the extent that employment-related issues are a matter of contract, tort, damages, equitable remedies etc, such issues would be determined in accordance with such common law and applicable English law. So, for example, the draft Regulations do not address issues such as the enforceability of post-termination restrictive covenants in employment contracts as such matters are, under English law, a matter determined in accordance with common law.

### ISSUES FOR CONSIDERATION

Q1: THE BOARD WOULD LIKE YOUR VIEW AS TO WHETHER THE PROPOSED APPROACH OF HAVING A COMBINATION OF THE PROPOSED REGULATIONS AND RELIANCE ON EVOLVING ENGLISH COMMON LAW IS APPROPRIATE WITHIN THE CONTEXT OF RULES GOVERNING EMPLOYMENT RELATIONSHIPS WITHIN ADGM.

## THE REGULATIONS: ENFORCEMENT OF RIGHTS

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8. The Regulations do not have any specific provisions which provide for enforcement of rights under the Regulations. It is proposed that in due course an employment tribunal system would be considered, which would be a court/tribunal effectively dedicated solely to the resolution of employment-related claims. It would have its own set of procedural rules separate from normal civil court rules. The proposed employment tribunal system would provide a venue for employees and employers to enforce their employment-related rights under the Regulations (e.g. failure to pay salary, unlawful deductions from wages, failure to pay end-of-service gratuity, failure to comply with anti-discrimination requirements).
9. We propose to draft the procedural rules applicable to the employment tribunal. Once these have been drafted, they will be submitted for public consultation in a similar manner to the proposed Regulations.

10. Until such employment tribunal is established, however, the Board proposes that rights and obligations under the proposed Regulations would be enforced directly through the court.

## ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE ENVISAGED STRUCTURE OF THE EMPLOYMENT REGIME IN THE ADGM AND, IN PARTICULAR, THE PROPOSAL TO HAVE AN EMPLOYMENT TRIBUNAL SYSTEM EFFECTIVELY DEDICATED TO THE RESOLUTION OF EMPLOYMENT-RELATED CLAIMS?

### THE REGULATIONS: POSSIBLE FINES FOR NON-COMPLIANCE/CAPS ON COMPENSATION

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11. The Regulations impose various obligations on employers in ADGM. They do not, however, impose specific fines, penalties or compensation awards on employers for non-compliance (save in relation to work-related injuries and death, as to which see further below at paragraphs 15 and 16). We consider that there are various options here:
  - (a) Leave the Regulations as drafted, with no specific fines/penalties being imposed on employers for non-compliance effectively therefore leaving it open to employees to seek remedies through the court system against an employer who fails to comply. Such remedies would principally allow the employee to seek damages for any losses suffered by him/her as a result of the employer's failure to comply with its statutory duties.
  - (b) Introduce a series of fixed (or maximum) awards that would be payable by employers to employees in the event of breach.
  - (c) Introduce a system of fines payable by employers to the government in the event of breach.
12. We consider that option (a) above may not be appropriate, as it may be difficult for employees to demonstrate that they have suffered loss as a result of the failure by an employer to comply with a particular obligation under the Regulations (e.g. if an employer failed to comply with obligations on maximum working hours, it may be difficult for an employee to show what loss or harm has been suffered as a result) in which case the obligation may be at risk of being ignored in practice. ADGM also considers that option (c) may also not be appropriate as it may be perceived by employees as not compensating them for loss or harm suffered by the employer's breach and would, in addition, require a system of inspection and policing by relevant authorities to be effective.
13. ADGM considers that it may be most appropriate to implement option (b).
14. Option (b) also gives rise to the question as to whether all or only some of the obligations under the Regulations should have fixed and/or maximum compensation awards associated with them. There are some obligations under the Regulations where it may be considered that employees should be compensated in full for the loss or harm suffered and in relation to which fixed or maximum awards would not be appropriate (e.g. anti-discrimination obligations). On the other hand, some employers may consider that obligations which have no fixed or maximum compensation awards associated with them could give rise to potentially unlimited liability and be seen to discourage them from establishing businesses in ADGM.

## ISSUES FOR CONSIDERATION

Q3: DO YOU AGREE THAT OPTION (B) (INTRODUCING A SERIES OF FIXED OR MAXIMUM COMPENSATION AWARDS FOR BREACH OF OBLIGATIONS UNDER THE REGULATIONS) WOULD BE MOST APPROPRIATE?

Q4: IF YOU DO AGREE THAT OPTION (B) WOULD BE APPROPRIATE, SHOULD ALL OBLIGATIONS UNDER THE REGULATIONS HAVE FIXED OR MAXIMUM COMPENSATION AWARDS ASSOCIATED WITH THEM OR ARE THERE SOME OBLIGATIONS WHERE COMPENSATION SHOULD NOT BE FIXED OR HAVE ANY FORM OF MAXIMUM (E.G. SHOULD DISCRIMINATION-RELATED OBLIGATIONS NOT HAVE MAXIMUM COMPENSATION)?

### THE REGULATIONS: COMPENSATION FOR WORK-RELATED INJURIES/DEATH

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15. Section 49 of and schedule 2 to the Regulations oblige an employer to pay certain compensation to an employee in the event of work-related injuries or death.
16. Schedule 2 sets out a table of maximum compensation awards payable for various work-related injuries that may be suffered by an employee. 100% in the table is the monetary equivalent of 24 months' wages. It should be noted that, if an employee suffers various injuries that fall into different categories, the percentages are aggregated and may come to more than 100%.

## ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE WITH HAVING FIXED MAXIMUM SUMS PAYABLE FOR SPECIFIC WORK-RELATED INJURIES AND DEATH?

Q6: DO YOU AGREE THAT THERE SHOULD BE NO AGGREGATE MAXIMUM IF AN EMPLOYEE SUFFERS MULTIPLE DIFFERENT WORK-RELATED INJURIES?

### THE REGULATIONS: WORKING TIME/HOLIDAY/SICK LEAVE

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17. The Regulations (see sections 16 to 31 inclusive) set out certain proposed restrictions and rights relating to working time, vacation and sick leave which, in summary, are as follows:
  - (a) An employee's working time shall not exceed an average of 48 hours for each 7-day period, unless the employee has first consented in writing.
  - (b) Muslim employees who are fasting during Ramadan shall not be required to work more than 6 hours per day during Ramadan, with no reduction in pay.
  - (c) Employees are entitled to rest periods of 11 consecutive hours in each 24-hour period.
  - (d) Employees are entitled to an uninterrupted rest period of at least 24 hours in each 7-day period.

- (e) Where an employee works more than 6 hours, he/she is entitled to rest and prayer breaks of at least one hour, away from the employee's workstation.
- (f) Employees are entitled to a minimum 20 working days' holiday per year, in addition to national holidays.
- (g) Employees wishing to take holiday must give the employer at least 7 days' prior written notice. The employer may require the employee to take holiday on specified days by giving at least 7 days' prior written notice to the employee.
- (h) On termination of employment the employer shall pay the employee in respect of accrued but untaken holiday or, if the employee has taken more holiday than has accrued as at the termination date, the employee shall repay to the employer a corresponding sum.
- (i) An employee is entitled to sick leave up to a maximum of 60 working days in aggregate in any 12-months period. Provided that the employee complies with certain notification requirements, he/she will continue to be paid his/her daily wage during the sick leave (not applicable if the employee has been employed for one month or less).

## ISSUES FOR CONSIDERATION

Q7: DO YOU AGREE WITH THE LEVEL OF WORKING TIME, HOLIDAY AND SICK LEAVE ENTITLEMENTS AND RIGHTS PROPOSED?

### THE REGULATIONS: MATERNITY/PATERNITY RIGHTS

18. The Regulations (see sections 32 to 35 and 52 to 53) set out certain proposed rights relating to maternity and paternity leave which, in summary, are as follows:
- (a) Pregnant employees are entitled to take (paid) time off work to attend ante-natal appointments.
  - (b) A female employee shall be entitled to a minimum maternity leave entitlement of 65 working days.
  - (c) Provided that the employee has been employed for at least 12 months preceding the expected or actual week of childbirth (and subject to completing certain notification procedures), she will be paid her normal daily wage for the first 33 working days of the maternity leave followed by 50% of her normal daily wage for the remaining 32 working days.
  - (d) An employee becoming a father to a newly-born child shall be entitled to a minimum paternity leave entitlement of 5 working days, to be taken within 2 months of the child's birth. During the paternity leave, the employee will be entitled to be paid his normal daily wage.

- (e) An employee on maternity leave has the right to return to the same role (or a suitable alternative) on the same employment terms and conditions and with the same seniority rights as if she had not taken the leave. An employee on paternity leave has the right to return to the same role and with the same seniority rights as if he had not taken the leave.

#### ISSUES FOR CONSIDERATION

Q8: DO YOU AGREE WITH THE PROPOSED LEVELS OF MATERNITY AND PATERNITY LEAVE AND PAY PROPOSED?

#### THE REGULATIONS: DATA PROTECTION

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19. We have considered whether to introduce general legislation that would regulate the handling and processing of personal data (similar to legislation adopted in all European Union member states to implement EC Directive 95/46/EC (the Data Protection Directive)). For a number of reasons, it has been decided not to introduce such legislation. However, we consider that it may nonetheless be appropriate to impose limited obligations on employers in ADGM about how personal data relating to their employees is handled and processed. We propose that employers would be subject to certain broad principles that would require personal data to be:
- (a) processed fairly, lawfully and securely;
  - (b) obtained and processed only for one or more specified and lawful purposes, and not to be further processed in any manner incompatible with such purpose(s);
  - (c) adequate, relevant and not excessive in relation to the relevant purpose(s);
  - (d) accurate and kept up to date;
  - (e) not be kept for longer than is necessary; and
  - (f) erased or rectified where inaccurate or incomplete.

#### ISSUES FOR CONSIDERATION

Q9: DO YOU AGREE WITH THE DATA PROTECTION OBLIGATIONS THAT ARE PROPOSED TO BE PLACED ON EMPLOYERS?

#### THE REGULATIONS: RIGHTS ON TERMINATION OF EMPLOYMENT

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20. The Board proposes (see sections 56 to 60 inclusive) that employees should have certain rights on termination of employment which, in summary, are as follows:

- (a) Notice periods: the periods of notice of termination of employment to be given by either the employer or employee (other than where the employer terminates for cause) are:
  - (i) 7 days' notice if the employee has been employed for less than 3 months;
  - (ii) 30 days' notice if the employee has been employed for 3 months or more but less than 5 years; or
  - (iii) 90 days' notice if the employee has been employed for 5 years or more.
- (b) The employer may terminate the employee's employment without notice for cause. Cause would mean termination by the employer due to the employee's conduct in circumstances where a reasonable employer would consider immediate termination to be warranted.
- (c) Any employee with one year's service or more is, on termination of employment (whether by the employer or employee, but not on termination by the employer for cause) entitled to an end-of service gratuity equal to:
  - (i) 21 days' basic wages for the first 5 years of service; and
  - (ii) 30 days' basic wages for each additional year of service.
- (d) If an employee is a UAE or GCC National, the employer shall be obliged to enroll him/her in the employee's UAE pension scheme and he/she shall not be entitled to any end-of-service gratuity unless the employee has the written approval of the applicable national pension authority not to participate in the pension scheme and has provided a copy of that written approval to the employer prior to the termination of employment.

21. The Board regards the above proposals as straightforward and easy-to-understand provisions that will allow employers to assess easily their potential liability on termination of employment whilst at the same time providing a fair level of compensation for employees who are faced with termination of employment. The Board does not propose to introduce any system which would require employers to have particular reasons for dismissal and/or follow certain procedures for dismissal as it regards such systems as too burdensome for employers and may potential discourage potential businesses from establishing themselves in ADGM.

#### ISSUES FOR CONSIDERATION

Q10: DO YOU AGREE WITH THE PROPOSED LEVELS OF PAYMENTS ON TERMINATION OF EMPLOYMENT?

Q11: DO YOU AGREE WITH THE BOARD'S PROPOSAL NOT TO INTRODUCE ANY SYSTEM WHICH WOULD REQUIRE EMPLOYERS TO HAVE SPECIFIED REASONS FOR DISMISSAL AND FOLLOW ESTABLISHED PROCEDURES FOR IMPLEMENTING SUCH DISMISSALS?

#### THE REGULATIONS: NON-DISCRIMINATION

22. The Board proposes that the Regulations (see section 55) should prohibit discrimination on various specified grounds namely: sex, marital status, race, nationality, religion and mental/physical disability. Some other countries also include other characteristics as protected categories such as age, military

veteran status, political affiliations/beliefs etc. The Board does not propose to extend the non-discrimination obligations to such categories.

23. The Board proposes that, in terms of the types of discrimination that would be prohibited, this would be loosely modelled on the current system in place in the United Kingdom which encompasses:

- (a) Direct discrimination i.e. an employee is treated less favourably than others would be in the same circumstances on one of the prohibited grounds;
- (b) Indirect discrimination i.e. a provision, criteria or practice is applied by an employer which places an employee at a disadvantage which disadvantage is not faced by others who are not of that sex, marital status, race, nationality or religion or suffering from a mental or physical disability; and
- (c) Harassment i.e. an employee is subjected to unwanted treatment or conduct on one of the prohibited grounds which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace.

#### ISSUES FOR CONSIDERATION

Q12: DO YOU AGREE WITH THE PROPOSED CATEGORIES OF PROHIBITED DISCRIMINATION?

Q13: DO YOU AGREE WITH THE PROPOSED TYPES OF DISCRIMINATION THAT WOULD BE PROHIBITED?

#### THE REGULATIONS: OTHER COMMENTS

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24. This Consultation Paper does not summarise all rights and obligations that are covered by the proposed Regulations. If you have any other comments on any other rights and obligations set out in the proposed Regulations, please let us have those comments.

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**ANNEX A: PROPOSED EMPLOYMENT REGULATIONS**