



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

CONSULTATION PAPER NO.2 OF 2019

March 2019

**PROPOSED AMENDMENTS TO THE
EMPLOYMENT RULES AND REGULATIONS**

INTRODUCTION

WHY ARE WE ISSUING THIS PAPER?

1. The Abu Dhabi Global Market ("ADGM") and the Registration Authority ("ADGM Registration Authority") have issued this consultation paper to invite public comment on proposed amendments to the Employment Regulations 2015 (the "Regulations") and the Employment Regulations 2015 (Compensation Awards and Limits) Rules 2016 (the "Compensation Rules"). The consultation paper also seeks public comment on the proposed introduction of a temporary work permit regime by way of ADGM Employment Regulations 2019 (Engaging Non-Employees) Rules 2019 ("Non-Employees' Rules").
2. We have summarised the key proposed amendments to the Rules and Regulations 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 themselves. Where terms are capitalised in this paper, they (unless the context requires otherwise) should be taken to have the definitions ascribed to them in the Regulations.

WHO SHOULD READ THIS PAPER?

3. The proposals in this Consultation Paper would be of interest to individuals and organisations with an interest in establishing a presence in the ADGM; ADGM entities¹ already established in ADGM; individuals employed or engaged by ADGM entities or seeking to be employed or engaged by ADGM entities as well as legal advisors and human resource departments of the abovementioned entities.

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 ADGM Registration Authority 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 ADGM Registration Authority.

WHAT HAPPENS NEXT?

5. The deadline for providing comments on this proposal is **28 April 2019**. Once we receive your comments, we will consider whether any modifications are required to this proposal. The amendments to the Regulations will then be considered by the ADGM Board of Directors (the "Board") for enactment. You should not act on these proposals until the amended Regulations are issued. We shall issue a notice on our website telling you when this happens.

COMMENTS TO BE ADDRESSED TO:

Consultation Paper No. 2 of 2019
Registration Authority
Abu Dhabi Global Market Square- Al Maryah Island
PO Box 111999, Abu Dhabi, UAE
Email: eao@adgm.com

¹ Means a licensed person (as defined in the Commercial Licensing Regulations 2015, as amended) or the Abu Dhabi Global Market as governed by the Abu Dhabi Law no. 4 of 2013.

AMENDMENT TO EMPLOYMENT RULES AND REGULATIONS

SCOPE AND APPROACH TO THE PROPOSED AMENDMENTS OF THE EMPLOYMENT RULES AND REGULATIONS

6. This Consultation Paper aims to explain the proposed amendments to the existing Compensation Rules and Regulations and the introduction of the Non-Employees' Rules. The proposed changes include the following:
- a. introduction of a **temporary work permit regime**, by way of the Non-Employees' Rules, for engaging the following list of non-employees:
 - i. individuals seconded to ADGM entities;
 - ii. outsourced individuals who wish to work with ADGM entities;
 - iii. interns; and
 - iv. temporary freelancers.
 - b. adding provisions for '**overtime**' and '**overtime compensation**' for employees, excluding those in managerial or supervisory positions;
 - c. amendments to the provision relating to the **month of Ramadan working hours**;
 - d. amendments to the provision relating to **sick leave pay**;
 - e. introducing a one-way **repatriation flight ticket** entitlement to employees;
 - f. adding protective provisions related to the employment of **youth** between 15 and 18 years of age;
 - g. adding a provision confirming the applicability of the Federal Law Concerning the **National and Reserve Service** in ADGM;
 - h. amendments to the '**Protection of Wages**' and '**Hiring Employees**' sections of the Compensation Rules;
 - i. introduction of **new defined terms**; and
 - j. other **miscellaneous** amendments to the Regulations.

TEMPORARY WORK PERMITS

7. Currently, the Regulations do not specifically provide for individuals seeking to temporarily work in the ADGM. With this proposed amendment, ADGM entities (which are defined as "*licensed persons*", including the Abu Dhabi Global Market as governed by the Abu Dhabi Law no. 4 of 2013) will be entitled to engage individuals falling under the following categories:
- a. **Secondees²**;

² means an individual temporarily working in Abu Dhabi Global Market for an ADGM entity, on a secondments basis, and who has the right to work in the UAE but does not hold a visa facilitated by the Registrar.

- b. Outsourced individuals who wish to work with ADGM entities³;
 - c. Interns⁴; and
 - d. Temporary freelancers⁵.
8. While secondments currently occur within ADGM, it has been identified that providing clarity on the requirements for engaging secondees from a non-ADGM entity would assist. The proposed amendments provide that if an ADGM entity wishes to engage a secondee(s) who maintains a non-ADGM employment visa, it will be responsible for obtaining, maintaining and paying the cost of the required temporary work permit from the ADGM Registration Authority.
 9. Interns who are on their parents' visas, their own student visa or are visa-exempt will not be required to obtain an employment visa from the ADGM Registration Authority. However, the ADGM entity must apply for a temporary work permit to enable the Intern to work in ADGM. Furthermore, the relationship between the ADGM entity and the Intern will not constitute an employment relationship, as there is no obligation of having a contract of employment, nor is there an obligation of remuneration.
 10. Individuals who already have a UAE residency visa onshore (sponsored by spouses/parents visa, self-employed or visa-exempt) and wish to temporarily work in the ADGM may be able to provide a service in the ADGM, while maintaining their onshore visas. In accordance with the new amendments, they need to obtain and maintain a temporary work permit from the ADGM Registration Authority.
 11. The ADGM entity engaging any of the above individuals has the obligation to obtain, from the ADGM Registration Authority, a temporary work permit for the above-mentioned individuals, and must maintain and pay the costs of the same.
 12. The new amendment grants the ADGM Registration Authority the power to issue, from time to time, rules setting out the extent to which ADGM entities should apply these Regulations to individuals on temporary work permits.
 13. In order to ensure compliance with the requirement to obtain temporary work permits, the ADGM Registration Authority set out applicable fees for delayed applications and fines for non-compliance.

NB. For more information on the categories of individuals that may be employed or engaged by ADGM entities, and whether or not an employment relationship exists, please refer to [Annex A](#).

ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE PROPOSED OBLIGATION ON ADGM ENTITIES TO OBTAIN A TEMPORARY WORK PERMIT FOR SECONDEES, OUTSOURCED INDIVIDUALS, TEMPORARY FREELANCERS AND INTERNS?

³ means an individual temporarily working in Abu Dhabi Global Market for one or more ADGM entities under an outsourcing agreement and who has the right to work in the UAE but does not hold a visa facilitated by the Registrar.

⁴ means a student or trainee who works, with or without pay, in order to gain work experience with an ADGM entity.

⁵ means an individual, not being an Employee, who provides services in or from Abu Dhabi Global Market to an ADGM entity on a temporary basis, who is not under the exclusive direction and control of an ADGM entity and who holds a freelancer license from a UAE free zone.

COMPENSATION RULES

HIRING EMPLOYEES

14. Currently, under section 2(3)(b) of the Compensation Rules, where an employer fails to give an employee a written contract or the contract of employment does not comply with the requirements set out in the section 5 of Regulations, an employee may apply to the Court for a declaration on what matters ought to have been included in the contract of employment so as to comply with the Regulations. However, it has been demonstrated that it is unclear whether the Court has the power to order compliance with the Regulations. Therefore, the proposed amendment eliminates any ambiguity in relation to the powers of the ADGM Courts and expressly grants the authority to order compliance.
15. On a similar note, under section (2)(4)(b) of the Compensation Rules, where an employer fails to provide an employee with a written pay statement, or such written statement does not comply with the requirements set out in the Regulations, an employee may apply to the Court to determine what matters ought to have been included in the written pay statement. The proposed amendment will clarify that the Court shall have the power to order compliance.

PROTECTION OF WAGES

16. Currently, any failure by an employer to pay their employee upon termination all wages and any other amounts owed to them '*within 14 days of such sums becoming due*' entitles the employee to apply to the ADGM Courts for a declaration to that effect. Upon filing such application, the Court shall, under the Compensation Rules, '*order the Employer to pay to the Employee compensation equal to the last daily wage for each day during which the Employer failed to comply*'.
17. The above-mentioned section caused real issues in other jurisdictions as it was considered by a number of litigants as unreasonable and needs amendment in order to avoid potential unfair profit gaining (or unjust enrichment) by opportunistic employees in some cases. The wording of the section might encourage employees to delay claiming alleged unpaid wages or commencing litigation on a disputed employment claim (as such delay would result in the individual profiting from an increased daily penalty).
18. Furthermore, the wording of the section leaves no room for the Court's discretion to decide whether a penalty should be imposed (and if so, how much).
19. Hence, amendments are proposed to the wording of section 3(2) of the Compensation Rules to provide that this penalty will not apply in cases where a labour dispute has been filed with ADGM Courts, and to add a discretionary power to the Court to decide whether to impose a daily penalty and determine what such compensation would be.

The **proposed amendments** are as follows:

'Where an Employer fails to comply with Section 13, the Employee may apply to the Court for a declaration to that effect and the Court ~~shall~~ may, at its discretion, order the Employer to pay to the Employee compensation in respect of such failure, with such compensation to be of such amount as the Court considers just and equitable in all the circumstances up to a maximum sum equal to the last daily wage for each day during which the Employer failed to comply.'

ISSUES FOR CONSIDERATION

Q8: DO YOU AGREE WITH THE PROPOSED AMENDMENT TO SECTION 2(3)(B), 2(4)(B) AND 3(2) OF THE RULES?

OVERTIME EMPLOYMENT

20. Amendments are proposed to introduce an overtime compensation framework to allow for greater practicality and flexibility to the employer, which are in line with the approach followed in a number of European Union countries. The proposed amendments are as follows:

- a. Working hours and overtime are assessed on a more holistic basis. In particular, the concept of 'reference period' has been introduced whereby overtime is assessed in respect of a period of months, rather than a strict day-by-day basis. As such, employees' weekly working hours are averaged out over a maximum of a 4 month reference period.
- b. The average weekly working time has not changed, an Employee's working time must not exceed 48 hours in each 7 day period. However, a 'Threshold' of up to 832 hours over up to a 4 month reference period (or pro rata for shorter reference periods) has been introduced to even out any fluctuations in timesheets that may occur due to changing working hours.
- c. The 'Threshold' is calculated with the restriction on maximum working hours per week in mind, which is 48 hours / week. That being the case, the total hours that would be subject to normal time for the 4 month reference period is: $(52 \text{ weeks}/3=17.33)^6 \times 48 \text{ hours} = 832 \text{ hours}$ ("**Threshold**"). Therefore, employees working in excess of the Threshold would be entitled to overtime compensation.
- d. For example, if an Employee works 60 hours one week then only 45 hours per week for the following 3 weeks, over a certain period, the hours worked over the Threshold (3 hours) will be averaged out throughout the reference period.
- e. If an employee works beyond the Threshold period, they will be entitled to overtime compensation, bearing in mind that any vacation leave falling within a normal working day for the Employee, during the reference period, will not be counted towards the total Threshold. **Note:** the 832 hours Threshold over a reference period of 4 months is the maximum allowable period. Employers may opt to adopt shorter reference periods, and the Threshold hours will then be calculated pro rata.
- f. Overtime compensation rate is calculated in the same manner as the onshore UAE Labour Law calculation which is: 25% the hourly rate. However, if the overtime occurred between 9pm and 5am then it will be 50% of the hourly rate.
- g. An employer is obliged to keep time records of its staff's work shifts (for those staff who are eligible for overtime compensation and are likely to work in excess of the Threshold). This is a very important requirement as the night overtime (occurred between 9pm and 5am) would not be calculated by a simple look at the time worked versus the Threshold and would require an examination of the time records.

⁶ Dividing the total number of weeks by 3 gives the truest calculation for a 4 month period.

- h. Overtime compensation may be paid either in cash or by time in lieu or a combination of both. However, the employer is obliged to pay the monetary overtime compensation to Employees no later than 1 month after the expiration of the reference period in which they accrued.
- i. Employees in managerial and/or supervisory positions, as well as those in positions where it is reasonably expected within that industry internationally that overtime is not payable, are not entitled to benefit from overtime compensation.

ISSUES FOR CONSIDERATION

Q4: DO YOU AGREE WITH THE PROPOSED OVERTIME PROVISIONS? SPECIFICALLY, THE MAXIMUM THRESHOLD PERIOD OF 832 HOURS OVER A MAXIMUM REFERENCE PERIOD OF UP TO 4 MONTHS?

EMPLOYMENT OF YOUTH

- 21. New amendments have been made with the effect that employers and ADGM entities may now employ (for remuneration) or engage (with or without remuneration) individuals between 15 and 18 years of age, subject to rules issued by the ADGM Registration Authority that govern the same.
- 22. Employers and ADGM entities shall take all appropriate measures to ensure that the working conditions for youth's employment/engagement are safe, reasonable and appropriate for their age and wellbeing.

ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE WITH THE PROVISION FOR THE EMPLOYMENT/ENGAGEMENT OF YOUTH BETWEEN THE AGES OF 15-18?

RAMADAN WORKING HOURS

- 23. Currently, the wording of the section related to working hours during the month of Ramadan states that '*Muslim employees who observe the fast shall not be required to work in excess of 6 hours each day...*'. This wording has proven to be impractical especially for ADGM entities that hire employees whose nature of their job requires them to work for more than 6 hours each day (e.g. nurses and doctors).
- 24. Accordingly, it is proposed that the working hours' requirements for the month of Ramadan to be amended to simplify that Muslim employees observing fast shall have their normal working hours "reduced by 2 hours".
- 25. Section 18(2), which entitles fasting employees, who choose to work more than 6 hours a Day, to a rest break, has been removed as it is already covered in the scope of Section 21.

ISSUES FOR CONSIDERATION

Q6: DO YOU AGREE WITH THE MONTH OF RAMADAN WORKING HOURS AMENDMENT?

SICK LEAVE

26. The current Regulations at Section 29 provide that all 60 business days of sick leave that an employee is entitled to within a 12 month period, are to be paid by the employer. This is not in line with international practice nor is it in line with the UAE Federal Labour Law.
27. It has been brought to the ADGM Registration Authority's attention that such provisions have been misused and are detrimental to employers. Therefore, as a minimum standard (employer's may choose to contractually agree with their employees on more favourable entitlements), the following amendments are proposed:
- a. First 10 business days taken in a 12 month period shall be with full pay;
 - b. Next 20 business days taken in the same 12 month period shall be with half pay; and
 - c. Remaining 30 business days taken in the same 12 month period shall be unpaid.
- NB.** For the avoidance of doubt, the days referred to above shall either be consecutive or non-consecutive business days.
28. The current Regulations entitle an employer to terminate the employment of an employee if such employee has taken an aggregate of 60 business days of sick leave in any 12 month period. Section 31(2) has been added to clarify that Section 31(1) does not apply where an employee has taken sick leave on account of a disability⁷. This provision is in line with international practice and humanitarian endeavours.

ISSUE FOR CONSIDERATION

Q7: DO YOU AGREE WITH THE PROPOSED AMENDMENTS TO SICK PAY AND TERMINATION FOR EXCESSIVE SICK LEAVE?

REPATRIATION TICKET

29. A one-way repatriation air ticket to the employee's country of origin is proposed to be introduced as an additional entitlement to employees upon termination of their employment.
30. However, the employee is not entitled to such ticket if they obtain alternative employment or visa sponsorship in the UAE within 30 days of termination or has been dismissed for cause in accordance with the Regulations.
31. Such amendment is proposed to align the Regulations with the onshore Labour Law.

⁷ means a physical or mental impairment that has a substantial and long-term adverse effect on an employee's ability to carry out his duties in accordance with the contract of employment. An impairment has a long-term effect if it has lasted at least 12 months or it is likely to last at least 12 months.

ISSUE FOR CONSIDERATION

Q9: DO YOU AGREE WITH THE PROPOSED INTRODUCTION OF REPATRIATION TICKET ENTITLEMENT?

NOTICE PERIOD FOR TERMINATION

32. The current Regulations state that the notice period required to be given by an employer or employee to terminate the employee's employment (for employees continuously employed for 1 month or more) shall not be less than 7 days if the period of continuous employment is less than 3 months; 30 days if the period of continuous employment is 3 months or more; and 90 days if the period of continuous employment is 5 years or more.
33. To give employers greater discretion and to embrace the fact that these Regulations only set a minimum standard for employers to abide by, the 90 days' notice period is proposed to be removed. This will allow employers the discretion to impose lower notice periods (with a minimum of 1 month) for employees in more junior positions and lengthier notice periods for more senior positions. As such, the employer and employee will have more flexibility in negotiating the terms of the required notice period.
34. The minimum notice period of 1 month will only apply to employees continuously employed for more than 3 months and have successfully completed the probationary period. Further, service of all notices is now proposed to be in writing.

ISSUE FOR CONSIDERATION

Q9: DO YOU AGREE WITH THE AMENDMENTS TO THE NOTICE PERIOD REQUIREMENT?

DEFINED TERMS

35. The following defined terms are proposed to be introduced/amended:
- a. **ADGM Entity** in the Non-Employees' Rules to mean a licensed person (as defined in the Commercial Licensing Regulations 2015, as amended) or Abu Dhabi Global Market as governed by the Abu Dhabi Law no. 4 of 2013. Licensed person is defined in the Commercial Licensing Regulations 2015 as "*a person who has a valid license to carry on one or more controlled activities*".
 - b. **Disability** in the Regulations is defined as "*a physical or mental impairment that has a substantial and long-term adverse effect on an Employee's ability to carry out his duties in accordance with the Contract of Employment. An impairment has a long-term effect if it has lasted at least 12 months or it is likely to last at least 12 months*". It is proposed to be added to enhance the discrimination provision (Section 54) and create a carve out in the provision relating to Termination for Excessive Sick Leave (Section 31).

- c. **Employee** in the Regulations has been amended to mean an individual who:
 - i. works or will work in the service of another person under an express or implied contract of employment under which the employer has the right to control the details of work performance;
 - ii. holds an Abu Dhabi Global Market work permit; and
 - iii. is based within, or ordinarily working within or from the Abu Dhabi Global Market.
- d. **Intern** in the Non-Employees' Rules means a student or trainee who works, with or without pay, in order to gain work experience with an ADGM entity.
- e. **Non-Employee** in the Non-Employee's Rules means a person who is a secondee, an outsourced individual, an intern, or a temporary freelancer.
- f. **Outsourced Individual** in the Non-Employee's Rules means an individual temporarily working in Abu Dhabi Global Market for one or more ADGM entities under an outsourcing agreement and who has the right to work in the UAE but does not hold a visa facilitated by the Registrar.
- g. **Reference Period** in the Regulations means the period of time (up to 4 months) used as the basis for assessing overtime in the new clauses relating to overtime compensation.
- h. **Secondees** in the Non-Employee's Rules means an individual temporarily working in Abu Dhabi Global Market for an ADGM entity on a secondment basis and who has the right to work in the UAE but does not hold a visa facilitated by the Registrar.
- i. **Temporary freelancer** in the Non-Employee's Rules means a an individual, not being an Employee, who provides services in or from Abu Dhabi Global Market to an ADGM entity on a temporary basis, who is not under the exclusive direction and control of an ADGM entity and who holds a freelancer license from a UAE free zone.
- j. **Temporary Work Permit** in the Non-Employee's Rules means an ADGM work permit that is issued for a non-employee. It is proposed to be added to account for work permits provided to outsourced individuals, temporary freelancers, interns and secondees.
- k. **Threshold** in relation to overtime in the Regulations, refers to the total normal working hours in a reference period of up to 4 months (pro-rated for shorter reference periods), after which overtime compensation applies. It is proposed to mean means 832 hours over a reference period of 4 months, pro-rated for shorted reference periods.

ISSUES FOR CONSIDERATION

Q10: DO YOU HAVE ANY COMMENTS IN REGARDS TO THE PROPOSED AMENDMENTS TO EXISTING AND NEWLY DEFINED TERMS?

MISCELLANEOUS

36. The following miscellaneous amendments to the Regulations are proposed:

- a Capitalising all defined terms throughout the Regulations and the Compensation Rules in line with common practice, and for the avoidance of confusion.
- b Removing the obligation to provide the employee when, or before, an employee is paid, any wages with an 'itemised' pay statement under Section 7 of the Regulations. As the term 'itemised' has been proven to be burdensome on employers from an administrative point of view.
- c Providing the ADGM Registration Authority with the right to issue rules setting out the extent of application of the 'Weekly Rest Period' section of the Regulations (Section 20) on certain categories of employees. This will exempt employers of limited industries from the requirement to abide by the mandatory uninterrupted rest period.
- d Removing the term "Federal" from the Pension for UAE and GCC national section, under Section 63, to remove the limitation on which pension fund may be used by employers.
- e Removing the obligation on the employee to take reasonable care of the employer's property for an indefinite period following termination of employment (Section 10(d)).
- f Slight amendment to Section 10(g) in regards to an Employee's obligation of non-disclosure of confidential information. The proposed amendment creates a carve out for Employee's that are compelled by a competent court or applicable law to disclose such information.
- g Removing Section 10(2) which states that the provision of Section 10 shall be construed in accordance with English common law, for the avoidance of doubt and confusion.
- h Adding Disability to Section 54 relating to discrimination, replacing sex with gender for the sake of consistency with Federal laws and adding colour.
- i Adding provisions clarifying the application of Federal Law no. 6 of 2014 concerning National and Reserve Service.

ANNEX A - VARIOUS CATEGORIES OF INDIVIDUALS WORKING WITHIN ADGM

Category	Description	Visa	Employee of ADGM entity	Regulations apply	Comment
A.	Employee on ADGM visa	ADGM	Yes	Yes	Employee
B.	Dependent employee on spouse visa	Onshore (spouse)	Yes	Yes	Employee
C.	UAE national	No visa required	Yes	Yes	Employee
D.	Seconded	Non-ADGM visa (e.g. sister/group company of ADGM entity)	No	No*	No employment relationship
E.	Outsourced Individuals	Non-ADGM visa	No	No*	No employment relationship
F.	Youth employed by Employer	ADGM	Yes	Yes	Employee
G.	Interns	Onshore (parent/college)	No	No*	No employment relationship
H.	Temporary freelancer	Onshore (company/spouse/self)	No	No*	No employment relationship

*NB. The ADGM entity is required under the Non-Employees' Rules to obtain temporary work permit for such individuals.

