



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

# CONSULTATION PAPER NO. 1 OF 2018

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31 JANUARY 2018

**ADGM BENEFICIAL OWNERSHIP AND  
CONTROL REGULATIONS**

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## INTRODUCTION

### 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 codify existing corporate beneficial ownership and control practices in ADGM, while simultaneously improving the same in line with international best practice. A proposed draft of the Beneficial Ownership and Control Regulations is set out at Annex A to this Paper.

### WHO SHOULD READ THIS PAPER?

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2. The proposal in this Consultation Paper would be of interest to individuals, organisations and their professional advisors with an interest in establishing legal entities in ADGM.

### 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 28 February 2018. Once we receive your comments, we will consider whether any modifications are required to this proposal. We will then proceed to publish the Beneficial Ownership and Control 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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## BACKGROUND

5. In recent years, there has been an increased focus by national authorities and global regulatory groups, on the importance of combatting money-laundering, terrorist financing, bribery and corruption. A key component in detecting and preventing financial crime is the accessibility of information relating to corporate beneficial ownership and control ("**BOC**") and other steps designed to enhance transparency and accountability both at a national level and in conjunction with other regulatory bodies globally.
6. The global trend towards transparency and accountability is demonstrated through the recent development of international initiatives in this regard. The Financial Action Task Force ("**FATF**") has also established globally recognised standards through various recommendations, designed to promote transparency through the application of information disclosure and record keeping obligations. These include a series of 40 recommendations on "international standards on combating money laundering and the financing of terrorism and proliferation" published by the FATF in 2012 (as amended from time to time, including the most recent updates in June 2017 , the "**FATF Recommendations**") and other measures. In particular, FATF recommendations 24 and 25 deal with transparency and identifying the beneficial ownership of legal persons and legal arrangements.
7. In the European Union, new standards designed to implement and enforce these measures came into force by way of the Fourth Anti-Money Laundering Directive in June 2017 (the "**AML Directive**"), prompting Member States to implement initiatives to comply with, amongst other standards, the obligation to maintain accurate and current information on the BOC of corporate entities.
8. Regulations requiring persons to identify their beneficial owners and controllers currently exist in some financial centres, including common law jurisdictions, such as Jersey, Guernsey and the UK.
9. The Board of ADGM, after careful consideration of the international standards, the movement by various international jurisdictions and the

various legislative and regulatory regimes in those jurisdictions, has decided to introduce the Beneficial Ownership and Control Regulations in ADGM.

10. The proposed Beneficial Ownership and Control Regulations codify the legislative and regulatory framework for collecting and retaining adequate, accurate and up-to-date BOC information on ADGM entities on a BOC register.

## **BACKGROUND – BENEFICIAL OWNERSHIP AND CONTROL REGULATIONS**

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11. The ADGM Registration Authority, established by Abu Dhabi Law No. 4 of 2013 (the "**Registration Authority**"), has taken various steps to comply with international BOC standards for the purposes of combating financial crime. These steps include collecting and retaining adequate, accurate and up-to-date BOC information on ADGM entities on a BOC register. The Registration Authority may also under an obligation disclose certain confidential information to other regulatory and tax authorities for the purpose of complying with the UAE international treaties, or pursuant to lawful requests from law enforcement officials, or regulatory or tax authorities.
12. The ADGM Financial Services Regulatory Authority ("**FSRA**") has jurisdiction for the detection, prevention and avoidance of financial crime within the ADGM. Pursuant to section 7(6) of the Financial Services and Markets Regulations 2015 ("**FSMR**"), the Anti-Money Laundering and Sanctions (AML) Rulebook (the "**AML Rulebook**") sets out the requirements that are imposed by the FSRA. In developing the AML Rulebook, the FSRA had explicit regard to, and implemented as appropriate, the FATF Recommendations.
13. ADGM has determined that it would be appropriate to entrench its existing BOC procedures into new regulations. The new regulations would have the effect of safeguarding and promoting ADGM's reputation as a stable and responsible financial center, and reinforce its commitment to adhere to the highest global standards.

14. The codification of the BOC procedures in ADGM would be effected by standalone commercial regulations enacted by the Board of Directors, harmonising the approach across all ADGM entities (the "**ADGM Regime**"), with the exception of branches of foreign companies, branches of foreign partnerships and listed companies.

## **REGULATORY FRAMEWORK**

### **KEY FEATURES OF THE PROPOSED ADGM BENEFICIAL OWNERSHIP AND CONTROL REGULATIONS**

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15. The proposed features of the ADGM Beneficial Ownership and Control Regulations include the following:
  - a) creating a new type of registry for collecting and retaining adequate, accurate and up-to-date BOC information on ADGM entities;
  - b) placing positive obligations on ADGM entities to obtain and maintain up-to-date information on their BOC;
  - c) imposing a duty on ADGM entities to deliver a record of BOC to the Registrar and notify the Registrar of changes throughout its lifecycle;
  - d) incorporating appropriate privacy protection mechanisms for an ADGM BOC register; and
  - e) imposing appropriate sanctions for non-compliance.

### **KEY POLICY CONSIDERATIONS OF THE FRAMEWORK**

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#### **Applicability of Beneficial Ownership and Control Regulations in ADGM**

16. To facilitate transparency across the ADGM, the regulations require that the ADGM Regime should apply to all legal entities incorporated in the ADGM, except for branches of foreign companies, branches of foreign partnerships and listed companies, including:
  - Companies governed by the Companies Regulations 2015;

- Limited Liability Partnerships governed by the Limited Liability Partnerships Regulations 2015;
- Legal entities governed by the Commercial Licensing Regulations 2015, except for branches of foreign companies and branches of foreign partnerships;
- Foundations governed by the Foundations Regulations 2017; and
- Trusts established under the laws of the ADGM.

## ISSUES FOR CONSIDERATION

Q1: DO YOU AGREE WITH THE PROPOSED APPROACH ON APPLICABILITY OF BENEFICIAL OWNERSHIP AND CONTROL REGULATIONS IN ADGM?

### **Definition of Beneficial Ownership of Legal Persons**

17. ADGM has developed the definition of beneficial owner based on, (i) the FATF definition of beneficial owner, (ii) the EU 4th Money Laundering Directive (4th MLD) definition, and (iii) the UK legislation (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017).

### **Identification Criteria**

18. Definition of the beneficial owner in these new regulations is provided for companies, partnerships (including LLPs), trusts and foundations. In each case the definition of the beneficial owner presents mechanisms for identifying the BOC using certain criteria. For example, in respect of a company or LLP, the definition contains three elements as follows:

- any person who owns or controls more than 10% of the shares or voting rights in the company or LLP;
- any person who controls the company or LLP; or

- any person who exercises control over the management of the company or LLP.

Similar identification criteria for beneficial owners are contained elsewhere in the draft regulations in respect of trusts and foundations.

## ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE SCOPE OF THE PROPOSED DEFINITION OF THE BENEFICIAL OWNERS OF LEGAL PERSONS IN ADGM? DO YOU AGREE WITH THE PROPOSED 10 PER CENT OF THE OWNERSHIP FOR IDENTIFYING THE BOC?

### **Obtaining and filing information**

19. The filing obligations of legal persons are set out in several sections of the regulations, namely:-

a) Completion of the register

The Regulations contain the prescribed particulars for completion of the BOC register for individuals and corporate entities.

b) Obligation to obtain and disclose information

A legal entity within the scope of the ADGM Regime shall be required to keep a register of beneficial owners and has a positive duty to investigate and obtain information on registrable beneficial owners. Further, regulations prescribe an obligation on the part of a legal entity to update such information within a certain timeframe when it becomes aware of a change of any of the particulars of a beneficial owner.

c) Filing obligations

It is proposed that existing legal entities must update their internal beneficial ownership records and share this information through an appropriate filing with the ADGM Registration Authority. Entities that are incorporated after the implementation of ADGM Beneficial Owners

and Control Regulations must file a statement of initial beneficial owners of legal persons which would capture all required particulars prescribed by regulations.

#### ISSUES FOR CONSIDERATION

Q3: DO YOU AGREE WITH THE PROPOSED OBLIGATIONS TO OBTAIN AND DISCLOSE INFORMATION TO THE REGISTRAR AND THE EXTENT OF THE PROPOSED FILING OBLIGATIONS?

#### Accessibility and Privacy

20. It is proposed that a central BOC register is established by the Registration Authority (the "**BOC Register**"), which will not be publicly accessible and would only be accessed by a small number of designated persons at the Registration Authority. Accessibility guidelines implement the most stringent standards of privacy. Private information on the BOC Register would be held in electronic format only, on a secure system.
21. The information retained on the BOC Register may only be disclosed for a permitted purpose (i.e. for the prevention of illegal activities) to local and foreign law enforcement agencies, financial services regulators and tax authorities.
22. ADGM considers that this approach strikes the most appropriate balance between transparency and privacy. Between providing for timely and straightforward access to information by appropriate authorities both in ADGM and globally on the one hand, and protecting the personal data and other confidential information of the legal entities and beneficial owners from data breaches, hacking and other improper or disproportionate disclosure on the other.

#### ISSUES FOR CONSIDERATION

Q4: DO YOU AGREE WITH THE APPROACH ON ACCESSIBILITY TO THE BOC REGISTER?

#### Sanctions for non-compliance

23. Regulations prescribe sanctions in the form of financial penalties in case of non-compliance. The proposed sanctions are imposed on the legal entity, its directors and officers that fail to comply with these Regulations. Defenses are available if the legal entity, or any relevant persons, can show that all reasonable steps were taken in the discharge of their obligations under the Regulations.
24. Fines not exceeding a level 7 fine is proposed for contraventions under Regulations or any rules made under the Regulations.

#### ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE WITH THE PROPOSED SANCTIONS?

#### **Enactment of regulations and powers of the Registrar**

25. Existing entities will have up to 90 days after the enactment of the Beneficial Ownership and Control Regulations to update their internal records and register the relevant information with ADGM Registration Authority.
26. The Registrar's powers prescribed in ADGM Companies Regulations 2015 remain unchanged.

#### **Amendments to other enactments**

27. As a result of enactment of Beneficial Ownership and Control Regulations, the following regulations would be amended by insertion of the new sections as follows:
  - a) Companies Regulations – new section 9A will be added (Statement of initial beneficial ownership and control);
  - b) Limited Liability Partnership Regulations – new sub-section to be inserted 2(2)(ca) in relation to a statement of initial beneficial ownership. Further, after section 2(4) new provisions in relation to requirement of initial beneficial ownership and control must be added;

- c) Foundations Regulations – new section 9A (Statement of initial beneficial ownership and control) will be added; and
- d) Commercial Licensing Regulations – new section 16(3A) will be added.

## ANNEX A: PROPOSED BENEFICIAL OWNERSHIP AND CONTROL REGULATIONS

ANNEX B: PROPOSED COMPANIES REGULATIONS (AMENDMENT No. 3)  
REGULATIONS 2018

ANNEX C: PROPOSED LIMITED LIABILITY PARTNERSHIPS (AMENDMENT NO. 1)  
REGULATIONS 2018

ANNEX D: PROPOSED FOUNDATIONS (AMENDMENT NO. 1) REGULATIONS 2018

ANNEX E: PROPOSED COMMERCIAL LICENSING (AMENDMENT NO. 2)  
REGULATIONS 2018