

Abu Dhabi Global Market

**Abu Dhabi Global Market emerging as a new international financial centre**

Abu Dhabi, the largest emirate in the United Arab Emirates (the 'UAE'), has established the Abu Dhabi Global Market ('ADGM') as a new international financial free trade zone to connect the economies of the Middle East, Africa and South Asia with world markets. On 7 January 2015, ADGM released six consultation papers on the proposed legal regime to apply within the free zone, following consultation with a panel of leading international financial institutions. Ranging from Company Regulations to Insolvency Regulations, the consultations are the first step in what will be an extensive and ongoing consultation process with the aim of ensuring that all activities in the free zone are regulated to the highest international standards.

The development of the financial services sector in Abu Dhabi is a key element of the Abu Dhabi Government's Economic Vision 2030. Created in 2013 and expected to be formally launched in 2015, ADGM is designed to be a broad-based financial services hub for local, regional and international institutions, initially in the sectors of private banking, wealth management and asset management. The designated area for the free zone is Al Maryah Island, which is already home to a number of international companies, financial institutions and professional service firms, including Linklaters. It will become the city's financial and central business district.

The establishment of ADGM forms part of a UAE and Middle Eastern trend to phased liberalisation and an industry clustering strategy based on sectors. An increasingly open market, diversified economy and political stability have all contributed to making the UAE an attractive proposition for foreign investors. ADGM will bolster the UAE's position as a leading financial centre if it can offer a favourable business environment for international institutions.

This alert examines some of the key features of the proposed legal and regulatory environment in ADGM and compares these with the Dubai International Financial Centre ('DIFC') in Dubai.

The proposed legal and regulatory environment in ADGM**The creation of a new jurisdiction**

ADGM will have its own civil and commercial legal regime, based on and incorporating aspects of English law, which will apply within the defined geographical area of the free zone. The newly designed regime will be broadly independent of the existing legal regime in Abu Dhabi; Abu Dhabi civil and commercial laws (comprising both emirate laws and Federal laws of the UAE) will not apply in ADGM, but Federal criminal laws will apply. ADGM will have its own independent registrar, financial services regulator and court system. Essentially, ADGM will be a small common law jurisdiction within, but independent from, the civil law jurisdiction of the UAE.

Aims

ADGM aims to offer a business-friendly environment with rules and regulations aligned with international best practice standards. The principal advantage for international financial institutions and foreign investors will be the ability to operate within a transparent legal regime offering greater certainty and familiarity, and less risk, than other jurisdictions in the Middle East region.

Consultation papers

Consultation papers No.1 to 6, issued by the ADGM Board of Directors on 7 January 2015, set out ADGM's vision for the free zone's legal system. The following draft regulations and related consultation papers were published: Application of English Law Regulations, Companies Regulations, Operating Regulations, Insolvency Regulations, Employment Regulations and Real property and Strata Title Regulations. ADGM proposes to adopt specified (and, in some cases, modified) English legislation, related jurisprudence and English common law, with a stand-alone codified regime for real estate. This alert does not address the detail of the Employment Regulations and Real property and Strata Title Regulations.

The consultation closes on 5 February 2015. The proposed regimes set out in the consultation papers may be subject to change in light of market responses to the consultations. The final form of the regulations remains to be seen.

How does ADGM compare to the DIFC?

Self-legislating international financial centre

ADGM is the second financial free zone in the UAE and shares many of the same attributes as the DIFC, its counterpart in Dubai established in 2004 under the same Federal framework legislation. ADGM and DIFC are different from other free zones within the UAE, which do not have the ability to self-legislate and are subject to Federal law and the laws of the relevant emirate, in the absence of specific derogation or regulation. Both ADGM and DIFC are common law, English language jurisdictions, separate from the UAE civil law regime. DIFC is often described as 'offshore', and ADGM is expected to be treated similarly.

Both ADGM and DIFC have their own independent management, reporting to Ruler/Executive Council of the relevant emirate. Each has three main bodies: an independent financial services regulator, a registrar and courts. While DIFC bodies are maturing and increasingly internationally recognised, ten years on from their establishment, the first steps to develop the nascent equivalent bodies in ADGM are being taken.

Both DIFC and ADGM aim to be leading international financial centres offering world-class legal and regulatory frameworks and a hub from which to transact business in the region and around the world.

English-based common law regimes

DIFC's suite of laws and regulations are largely based on English law, and there is a growing body of DIFC Courts' case law. ADGM's approach is slightly different from DIFC in that it proposes to adopt specified English laws, related jurisprudence and common law by way of regulation.

Attractive to foreign investors

The free zones' English law-based legal systems and regulatory environments operating in line with international best practices are attractive to foreign businesses and investors doing business in the Middle East. Enforcing contracts is a key issue in international transactions involving UAE entities, and the ability to resolve disputes, should they arise, in regional English language, precedent-based court systems with familiar procedures and language facilitates the ease of doing business in the free zones.

Non-UAE nationals may establish operations without a local partner and wholly own their businesses in each free zone. 'onshore' in the UAE, ownership restrictions under Federal law effectively prevent foreign investors from owning more than 49% of a UAE company.

Free zone companies benefit from a zero tax rate and will be able to repatriate profits and capital. It is also generally easier and quicker to establish a presence in a free zone, such as DIFC, than in 'onshore' UAE. This is also expected to be the case for ADGM.

Independent courts

The courts are similar in that both have established a two-tier, English language court system comprising a Court of First Instance and a Court of Appeal (DIFC Courts also have a separate court for small claims). The courts operate independently of the local emirate Courts and Federal courts.

Both courts have jurisdiction to hear and determine civil and commercial disputes. The DIFC Courts have significantly wider jurisdiction to hear disputes than the Global Market Courts. The DIFC Courts will accept jurisdiction in proceedings where the parties have agreed in writing for the courts to determine their disputes, as well as in proceedings connected to the DIFC (for example, involving a DIFC company). The ability for regional and international parties to opt-in to the jurisdiction of the DIFC Courts took effect in 2011, following a change in law. The DIFC Courts are now actively promoting their services nationally and internationally, and in 2014 won the Law Society of England and Wales award for Excellence in International Legal Services.

Parties are increasingly interested in exploring the DIFC Courts as an alternative dispute resolution forum for UAE deals, and potentially also regional deals. Choosing the DIFC Courts can offer tangible practical and procedural advantages in the context of cross-border transactions, particularly those with a Dubai or regional nexus due to the existence of agreements on the straightforward enforcement of court judgments. From a practical perspective, the procedures of the DIFC Courts and the remedies, range of interim relief and ability to recover costs in DIFC Court proceedings are similar to those of the English courts. One of the main advantages for international parties doing business in Dubai, in particular, is the ease of enforcement of DIFC Court judgments in the Dubai Courts under tried and tested reciprocal enforcement arrangements existing between the two courts.

The jurisdiction of Global Market Courts is limited to proceedings connected to ADGM, in a similar way to the limitation on the scope of DIFC Courts' jurisdiction prior to the extension of its jurisdiction in 2011. Many details of the Global Market Courts are yet to be determined. Draft regulations and court rules are expected to be published for consultation in the coming months. The Board of Directors is expected to appoint a Chief Justice and judiciary. It will be interesting to see if the Global Market Courts will enter into any memoranda of understanding or enforcement arrangements with emirate, Federal or international courts. Regional agreements on the enforcement of court judgments entered into by the UAE will also apply in ADGM (as they do in DIFC).

In determining matters before it, the Global Market Courts will be bound by English Supreme Court decisions. In contrast, DIFC Court judges have discretion to consider decisions made in other jurisdictions but are not bound by the decisions of a foreign court.

DIFC also has an arbitration institution, the DIFC-LCIA Arbitration Centre. There is currently no arbitration institution in ADGM.

Financial services focus and regulation

Federal law permits financial and supporting activities to be carried on in ADGM and DIFC, if licensed. The Financial Services Regulations Bureau will be responsible for the licensing and registration of entities seeking to conduct financial services or activities through ADGM, performing a similar role to that of the DFSA in DIFC.

There are some distinctions in the scope of financial activity proposed to be conducted through ADGM, as opposed to those activities that may be conducted through the DIFC. While both financial free zones permit a range of services including financial and banking services, investment business, insurance and so on, ADGM also permits commodities-related activities to be conducted.

ADGM has stated that it intends to establish a commodities trading centre that will begin with oil and gas, and then expand into trading in other commodities. It will aim to specialise in the handling of physical commodities and all the related financial transactions. ADGM entities may be authorised to conduct a range of activities related to commodities, including storage, processing and delivery, trading and dealing, market-making through providing sale and purchase offers of all types of commodities, selling buying commodities (including derivatives, futures and options), transportation and shipping, operating an exchange and financial market for commodities (and derivative contracts).

However, ADGM will limit licensed activities to private banking, wealth management and asset management for the initial phase of its development. The first licenses are expected to be issued during 2015. ADGM has appointed Richard Teng as Chief Executive Officer of the Financial Services Regulations Bureau

(formerly Chief Regulatory Officer of the Singapore Exchange). A draft financial services regulation is expected, but no timeframe for consultation on it has been announced.

Companies

Company law in ADGM is expected to be very similar to that in the UK. An adapted form of the UK Companies Act 2006 forms the basis of the proposed ADGM Companies Regulations. ADGM proposes that the same types of company may be formed under the ADGM Companies Regulations as may be formed under UK Companies Act 2006, with limited exceptions (including a new type of Restricted Scope Company). ADGM is expected to issue listing rules which will consolidate requirements for companies listed on an exchange (yet to be created) in ADGM.

At a glance: comparison of the key features of:

ADGM

Legal framework

Federal financial free zone established in 2013 by:

- > Federal Law No.8 of 2004 regarding financial free zones and implementing regulations (Cabinet Resolution No.28 of 2007)
- > Federal Decree No.15 of 2013 establishing ADGM
- > Cabinet Resolution No.4 of 2013 on size and geographical area of ADGM
- > Abu Dhabi Law No.4 of 2013 concerning ADGM

ADGM regulations expected in 2015

Authorities

- > Global Market's Registration Bureau
 - > Global Market Courts
 - > Financial Services Regulation Bureau
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Companies

Broadly the same types of company may be formed as in the UK. ADGM also proposes to introduce a new type of de-regulated company (Restricted Scope Company).

A party may transfer the incorporation of an existing company to ADGM from another jurisdiction (Continued Company).

Companies must be registered with and licensed by the Global Market's Registration Bureau. Companies need a separate license from the Financial Services Regulations Bureau to undertake financial services.

Regulated activities

Financial services, as defined in Abu Dhabi Law No.4 of 2013 concerning ADGM.

The range of financial services activities includes financial and banking services and activities, investment business, banking, Islamic banking, accepting deposits, trading (commodities, currencies, metals etc.), storage, treatment and delivery of commodities and metals, brokerage activities, custody, settlement, clearing and depositary activities and ancillary services.

Licensed activities will initially be restricted to three sectors: private banking, wealth and asset management.

DIFC companies' law differs more from UK law than that proposed for ADGM, though there is some common ground as the DIFC Companies Law 2009 is based loosely on the UK Companies Act 1985.

Similarly, the UK insolvency regime forms the basis of the insolvency regime for companies in both ADGM and DIFC. The restructuring and insolvency regime to be applied to ADGM companies is heavily based on UK law, being an amalgamation of the UK Insolvency Act 1986 and the Insolvency Rules 1986, with some modifications (notably the exclusion of the Company Voluntary Arrangement and import of the Australian law-inspired Deed of Company Arrangement). The DIFC insolvency regime is largely based on the UK insolvency regime, but lacks an administration (or other formal restructuring or rescue) procedure whose primary objective is to rescue a company in the DIFC.

DIFC

Federal financial free zone established in 2004 by:

- > Federal Law No.8 of 2004 regarding financial free zones and implementing regulations (Cabinet Resolution No.28 of 2007)
 - > Federal Decree No.35 of 2004 establishing the DIFC
 - > Dubai Law No.9 of 2004 establishing the DIFC
- DIFC laws and regulations apply
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- > DIFC Authority (comprising the registrars)
 - > Dispute Resolution Authority (comprising DIFC Courts and Arbitration Institution)
 - > Dubai Financial Services Authority
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The following types of company may be formed in the DIFC:

- > Company Limited by Shares (LTD)
- > Limited Liability Company (LLC)
- > Branch office of a pre-existing foreign company (Recognised Company)

A party may transfer the incorporation of an existing company to the DIFC from another jurisdiction (Continued Company).

Companies must be registered with and licensed by the DIFC Registrar of Companies. Companies need a separate license from the DFSA to undertake financial services.

Financial services, as defined in the Regulatory Law (DIFC Law No.1 of 2004) and the DFSA Rulebook.

The range of financial services includes accepting deposits, providing credit, dealing in investments, arranging credit or deals in investments, managing assets, advising on financial products or credit, managing a collective investment fund, providing or arranging custody, insurance activities, operating an exchange, clearing house, alternative trading system or credit rating agency, insurance activities.

Ancillary services are also subject to licensing and regulation.

ADGM

Financial services licensing and supervisory framework

The Financial Services Regulations Bureau is responsible for the licensing, registration and supervision of entities conducting financial services through ADGM. A draft financial services regulation is anticipated.

Insolvency and rescue regime

Insolvency law in ADGM will be governed by the Insolvency Regulations, based on the UK insolvency regime

Three main procedures are proposed for ADGM companies:

- > Administration (which may lead into a creditor compromise arrangement called a Deed of Company Arrangement)
- > Receivership (including administrative receivership)
- > Winding up

There is no UK-style Company Voluntary Arrangement. Instead, there is an Australian law-based creditor compromise arrangement, known as a Deed of Company Arrangement, which is a possible exit mechanism for administration. Schemes of arrangement under the Companies Regulations may also be used to reach a compromise with creditors.

Courts

Global Market Courts will consist of a Court of First Instance and a Court of Appeal.

The Global Market Courts will have jurisdiction to hear and determine civil and commercial contractual disputes which are connected to ADGM.

In determining matters before it, the Global Market Court will be bound by English Supreme Court decisions. All other English court decisions are persuasive.

The Board of Directors will appoint a Chief Justice. Judges will be nominated by the Chief Justice and appointed by the Board of Directors. No appointments have yet been made.

ADGM Courts will operate independently of the Abu Dhabi Courts and Federal courts. It remains to be seen if the Global Market Courts will enter into any memoranda of understanding or other arrangement with national and international courts. International enforcement treaties to which the UAE is a party apply.

ADGM has not yet consulted on regulations or procedures of the courts.

Other key features

- > 100% foreign ownership of companies permitted
- > Zero tax rate

DIFC

The DFSA is responsible for the licensing, authorisation and supervision of entities conducting financial services through the DIFC.

The DFSA administers the core financial services laws for the DIFC. The DFSA Rulebook sets out subsidiary legislation made under the Regulatory Law 2004 made up of topic-area modules.

Insolvency law in DIFC is governed by the Insolvency Law No.3 of 2009, the Insolvency Regulations and DIFC Preferential Creditor Regulations. These are largely based on the UK insolvency regime.

There are three main procedures for DIFC companies:

- > Company Voluntary Arrangements
- > Receivership
- > Liquidation

DIFC Courts consist of a Court of First Instance, Court of Appeal and a Small Claims Court.

The DIFC Courts have jurisdiction to hear and determine civil and commercial contractual disputes the written consent of all parties to a contract and/or which are connected to the DIFC.

In determining matters before it, the DIFC Court may consider decisions made in other jurisdictions.

The DIFC Courts procedures are modelled on those of the English Commercial Court. The judiciary comprise eight judges appointed from jurisdictions around the world, including the UK. Lawyers from other jurisdictions may plead cases if registered in the DIFC's Register of Practitioners.

DIFC Courts operate independently of the Dubai Courts and Federal courts. Reciprocal enforcement arrangements exist between the DIFC Courts and the Dubai Courts. The DIFC Courts have entered into a number of Memoranda of Understanding with other national and international courts. International enforcement treaties to which the UAE is a party apply.

- > 100% foreign ownership of companies permitted
- > Zero tax rate