

UAE CORPORATE AND COMMERCIAL BITESIZE BULLETIN

ISSUE 3 – OCTOBER 2020

HFW



Marhaba and welcome to Issue 3 of the HFW UAE Corporate and Commercial Bitesize Bulletin.

In this issue we will be covering the recent changes to the legislative regime in the Abu Dhabi Global Market.

In this Bulletin:

Updates to the ADGM Legislative Framework

- Amendment to the Founding Law of the ADGM to formalise the dual licensing system and strengthen ADGM's dispute resolution framework
- Changes to commercial regulations in the ADGM

Amendment to the Founding Law of the ADGM to formalise the dual licensing system and strengthen ADGM's dispute resolution framework

The Founding Law of the ADGM (Abu Dhabi Law No. 4 of 2013) has been amended by Abu Dhabi Law No. 12 of 2020 (the Amended Founding Law).

The amendments came into effect on 30 April 2020 and aim to reflect the alignment of the ADGM's framework and operations with international best practice and standards, to formalise the dual licensing system created with the Abu Dhabi Economic Development Department (**ADDED**) and to strengthen the ADGM's dispute resolution framework, in particular the jurisdiction of the ADGM Courts.

Under the Amended Founding Law:

- Entities registered in the ADGM are permitted to establish branches, subsidiaries or representative offices in onshore Abu Dhabi without having to establish premises outside of the ADGM, thereby formalising the dual-licensing system agreed with the ADDED.
- Any natural or legal person authorized by the ADDED to operate in the geographical area of the ADGM prior to the implementation of the Amended Founding Law is required to obtain the necessary licence, permit or authorisation from the Registration Authority unless exempted under the regulations of the ADGM or a resolution of the Board of Directors of the ADGM. Pursuant to the Commercial Licensing Regulations 2015 (Exemptions) Order 2020 which was enacted on 13 July 2020 (and repeals the Commercial Licensing Regulations 2020 (Exemptions) Order 2015 and the Commercial Licensing Regulations 2020 (Exemptions) (Amendment) Order 2018), such entities are exempt from the requirement to obtain a licence under the Commercial Licensing Regulations 2015 until 19 July 2021 provided that any such entity does not operate outside the scope of the licence granted by the ADDED.

- The ADGM Courts are considered as a court of the Abu Dhabi judicial system and the status of the ADGM Courts is reinforced as judgments are to be issued in the name of the Ruler of Abu Dhabi.
- As well as confirming that the ADGM Courts have exclusive jurisdiction over certain matters, the ADGM Courts are granted jurisdiction over any claims or disputes where the parties and/or the contract, transaction or incident which gives rise to the claim or dispute have no connection to the ADGM but the parties have agreed that the ADGM Courts shall determine their claim or dispute. This confirms the ADGM Courts status as an "opt-in" jurisdiction. Parties must agree to the jurisdiction of the ADGM Courts in writing and may do so before or after the claim or dispute has arisen.
- The reciprocal enforcement of judgments and arbitral awards without any review of the merits by the enforcing court between the ADGM Courts and the Abu Dhabi Courts pursuant to the Memorandum of Understanding between the ADGM Courts and the Abu Dhabi Judicial Department dated 11 February 2018 is codified. However, the Amended Founding Law specifically prohibits the ADGM Courts from being used as a conduit for enforcement of foreign judgments or arbitral awards from outside of the ADGM (with the exception of judgments made by other courts of the Emirate of Abu Dhabi) onshore in the UAE and states that the Abu Dhabi Courts will not enforce any such judgment or order by the ADGM Courts.
- The Board of Directors of the ADGM are permitted to delegate any of their competencies and, subject to the approval of the Board of Directors, the Registration Authority and the Financial Services Registration Authority are permitted to delegate any of their duties and powers, to any governmental entity in the Emirate of Abu Dhabi or the UAE.
- The maximum fine for carrying out any commercial, financial or other activity in contravention of the provisions of the Amended

Founding Law or the regulations of the ADGM has been increased from the greater of AED50,000,000 or 10% of the value of the relevant transaction to the greater of AED200,000,000 or 10% of the value of the relevant transaction.

Pursuant to the obligation placed on it under Article 23 of the Amended Founding Law to issue a consolidated schedule of contraventions, penalties and administrative sanctions, the Board of Directors of the ADGM issued a revised Schedule of Contraventions and amendments to the Commercial Licensing Regulations 2015 (Fines) Rules 2020 on 24 June 2020 which reduce the fines for level 1 and 2 fines from USD1,500 and USD2,000 to USD150 and USD300 respectively.

Changes to commercial regulations in the ADGM

There have been a number of changes to the ADGM's commercial legislation since the beginning of 2020.

Firstly, a number of the commercial regulations were updated to allow the ADGM Registrar to reduce, waive or refund all or part of any fees if it considers that, in the "exceptional circumstances" of a particular case, it would be equitable to do so, namely:

- the Data Protection Regulations 2015 pursuant to the Data Protection (Amendment No 1) Regulations 2020;
- the Employment Regulations 2019 (Engaging Non-Employees) Rules 2020 which also repealed the Employment Regulations 2019 (Engaging Non-Employees) Rules 2019;
- the Companies Regulations (Fees) Rules 2020 which also repealed the Companies Regulations (Fees) Rules 2015;
- the Commercial Licensing Regulations 2015 (Fees) Rules 2020 which also repealed the Commercial Licensing Regulations 2015 (Fees) Rules 2018 and the Commercial Licensing 2015 (Fees) Rules 2020 (which had been adopted on 29 March 2020 and had repealed the Commercial Licensing Regulations 2015 (Fees) Rules 2015); and

- the Limited Liability Partnerships Rules 2020 which also repealed the Limited Liability Partnerships Rules 2015.

“Exceptional circumstances” are defined as any unforeseen circumstances in which the public interest outweighs the need for the imposition of fees. These amendments were introduced between March and May 2020 to allow the ADGM Registrar discretion and to underpin the ADGM’s support measures announced in the wake of the COVID-19 pandemic.

Furthermore, the Companies Regulations 2015 were amended by the Companies (Amendment) Regulations 2020 to clarify that any extension to the period for filing accounts granted by the ADGM Registrar under Section 416 must not have the effect of extending the period of filing to more than 12 months after the end of the relevant accounting period. (The Companies Regulations 2015 (as amended) have subsequently been repealed and replaced as explained below, however, this amendment has been retained.) The same amendment, together with transferring the power to grant an extension from the Board of Directors of the ADGM to the Registrar, were added to the Limited Liability Partnerships Rules 2020.

Following a public consultation which concluded in January 2020, the ADGM introduced the following changes to its commercial legislation which came into force on 29 April 2020:

- The Companies Regulations 2015 (as amended) were repealed and replaced by the Companies Regulations 2020. The new Companies Regulations 2020:
 - abolish the requirement for the Registrar to issue paper certificates of incorporation and replaced them with electronic certificates. A paper copy will be issued on request and upon payment of any prescribed fees;
 - expanded the definition of “members of the same family” in Section 3(5) to allow more flexibility for family offices wishing to use restricted scope companies in the ADGM pursuant to Section 3(4)(c);

- changed the name of “Annual Returns” to “Confirmation Statements”;
- amended Sections 1048 to clarify that a resolution of the non-cell members is required to establish a new cell; and
- amended Section 1068B to clarify that a company limited by guarantee cannot qualify as an Investment Company but that a cell of a cell company can.

- The Foundations Regulations 2017 (as amended) were amended by the Foundation (Amendment No. 1) Regulations 2020 which: (i) confirm that the objects of a Foundation may include a charitable purpose; and (ii) abolish the requirement for the Registrar to issue a paper copy of the certificate of registration and replaced it with an electronic certificate. A paper copy will be issued on request and upon payment of any prescribed fees.
- The Limited Liability Partnerships Regulations 2015 and the Limited Liability Partnerships Rules 2020 were amended by the Limited Liability Partnerships (Amendment No. 1) Regulations 2020 and the Limited Liability Partnerships (Amendment No. 1) Rules 2020 which abolish the requirement for the Registrar to issue a paper copy of a certificate of incorporation or change of name and replaced them with electronic certificates. A paper copy will be issued on request and upon payment of any prescribed fees.
- The Beneficial Ownership and Control Regulations 2018 (**BOC Regulations**) were amended by the Beneficial Ownership and Control (Amendment No. 1) Regulations 2020 to ensure that the BOC Regulations are aligned with Articles 34(3) and 9(1) of Cabinet Resolution No. 10 of 2019 concerning the Implementing Regulations of Federal Decree-Law No. 20 of 2018 concerning Anti-Money Laundering, Counter Terrorism Financing and Financing of Illegal Organizations. Specifically the BOC Regulations were amended to change the definition of “beneficial owner” to include any person who owns or controls (directly or indirectly) 25% or more of the shares or voting

rights in the company or LLP. Prior to amendment the definition referred to a person who owned or controlled more than 25% of the shares or voting rights and this definition did not align with that in Article 9(1) of Cabinet Resolution No. 10 of 2019.

- The Real Property Regulations 2015 were amended by the Real Property (Amendment No. 1) Regulations 2020 which remove the prohibition on non-GCC nationals (individuals and corporate entities) owning freehold land within the ADGM.

The objectives of the amendments are to: (i) improve efficiency for ADGM clients; and (ii) to ensure that ADGM commercial legislation is up to date with international best practices and mandatory onshore anti-money laundering legislation.

The Companies Regulations 2020 were further amended on 9 July 2020 by the Companies Regulations (Amendment No. 1) Regulations 2020 under which the Registrar is granted discretion in certain circumstances to direct, by notice in writing, that an entity is exempt from certain provisions of the Companies Regulations 2020 or that certain provisions are applicable subject to modification. The aim is to provide greater flexibility where justified on grounds of public policy.

Finally, the Insolvency Regulations 2015 were amended on 9 July 2020 by the Insolvency Regulations (Amendment No. 4) Regulations 2020. The amendments to the Insolvency Regulations aim to enhance the ADGM’s insolvency framework. Key changes include:

- clarification of the prescribed form and content for procedural matters;
- alignment with the ADGM Courts eCourts platform; and
- granting administrators the ability to apply to the ADGM Courts for approval to seek priority financing.

We hope you have enjoyed reading our update. If you have any questions, please do not hesitate to contact the authors of this article



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