

Guidance on Continuance into ADGM **Registration Authority**

November 2020



Part 1 – Introduction

- 1.1 Abu Dhabi Global Market (“**ADGM**”) is a broad based international financial centre, established pursuant to Federal Decree No. 15 of 2013 and Abu Dhabi Law No. 4 of 2013 in the Emirate of Abu Dhabi. With its own civil and commercial laws based on English common law, ADGM offers the local, regional and international business community a world-class legal system and regulatory regime.
- 1.2 This guidance is issued under section 936(2) of the Companies Regulations 2020 (“**Regulations**”) and has been prepared by the Registration Authority to assist entities wishing to apply for continuance into the ADGM from a jurisdiction outside ADGM.
- 1.3 A copy of the Regulations is available on ADGM website by following [this](#) link.

Registration Authority

- 1.4 The Registration Authority (“**Registrar**”) is one of the core pillars of ADGM. The Registrar is an independent body that has the power to licence and register ADGM establishments.

Part 2 – Continuance into the ADGM

- 2.1 Continuance is the legal process whereby a body corporate incorporated in one jurisdiction, migrates to another jurisdiction. The body corporate will cease to exist in the first jurisdiction and become governed by the laws of the second jurisdiction.
- 2.2 The process for a body corporate interested in applying for continuance as a company in ADGM is governed by the continuance provisions in Chapter 2 of Part 7 of the Regulations.

Eligibility for continuance

- 2.3 Subject to the restrictions set out in the Regulations and discussed below, a body corporate which is incorporated outside the ADGM may apply to the Registrar for a certificate of continuance. A certificate of continuance states that the body corporate continues as a company in the ADGM and is registered under the Regulations.
- 2.4 To be eligible for continuance into the ADGM, a body corporate must be authorised under the laws of the jurisdiction in which it is incorporated to apply for continuance outside of its original jurisdiction of incorporation.

Applications for continuance

- 2.5 A body corporate applying for continuance into the ADGM must make an application to the Registrar. The application must include the information specified in section 102 of the Regulations, which includes but not limited to:
 - a) a certified copy of the articles, or of the law or other instrument constituting or defining the constitution, of the body corporate;
 - b) articles of continuance which comply with section 103 of the Regulations;
 - c) a statement of solvency in accordance with section 114 of the Regulations;

- d) the name under which it is proposed to continue the body corporate (the Registrar will determine if the name is any way misleading or otherwise undesirable);
- e) in relation to every person who is a director of the body corporate at the date of application or is to be a director upon its continuance, the particulars specified in section 154 of the Regulations (for any director who is a natural person) and in section 155 of the Regulations (for any corporate director);
- f) in relation to every person who is a secretary of the body corporate at the date of application or is to be a secretary upon its continuance, the particulars specified in section 294 of the Regulations (for any secretary who is a natural person) and in section 295 of the Regulations (for any corporate secretary), and their qualifications; and
- g) any other information/documents that the Registrar requires.

2.6 In addition to the above, section 102(2) of the Regulations requires a body corporate to provide evidence, satisfactory to the Registrar, of the following matters:

- a) the body corporate being authorised under the laws of its jurisdiction to make an application for continuance to the Registrar;
- b) when required under the body corporate's constitution or the laws of its jurisdiction, that authorisation has been given for the application for continuance;
- c) if a certificate of continuance is issued by the Registrar, that the body corporate will cease to be incorporated in the other jurisdiction;
- d) if a certificate of continuance is issued by the Registrar, that the interests of the members and the creditors of the body corporate will not be unfairly prejudiced; and
- e) that the body corporate is not prevented by section 101 of the Regulations from making an application for continuance.

Restrictions on continuance

2.7 A body corporate applying for continuance into the ADGM must consider the restrictions in section 101(3) of the Regulations. These restrictions prevent certain body corporates and companies from applying for continuance in ADGM. These are where the body corporate or company:

- a) is being wound up or is in liquidation;
- b) is insolvent;
- c) has had a receiver, manager or administrator appointed in respect of any property of the company or body corporate;
- d) has entered into a compromise or arrangement with a creditor (not being a compromise or arrangement approved by the Registrar) and such compromise or arrangement is in force; and
- e) has an application pending before a Court for the winding up or liquidation of that body corporate or company, or to have it declared insolvent, or for the

appointment of a receiver, manager or administrator or for the approval of such a compromise or arrangement.

Existing obligations to creditors and ongoing legal proceedings

2.8 To ensure that the continuance by a company into the ADGM does not interfere with its existing rights and obligations to creditors and other third parties, or impact any ongoing legal proceedings or orders which may have been made by or against the body corporate, the Regulations contain certain limitations and conditions on a body corporate's ability for continuance into the ADGM. In particular:

- a) section 102(2)(d) of the Regulations provides that any body corporate applying for continuance into the ADGM must provide evidence, satisfactory to the Registrar, that the interests of the members and creditors of the company will not be unfairly prejudiced.
- b) section 107 of the Regulations outlines the effect of a certificate of continuance on a body corporate:
 - i. the body corporate becomes a company registered under the Regulations (section 107(1)(a));
 - ii. the articles, or the instrument constituting or defining the constitution of the body corporate, as amended in accordance with its articles of continuance, become the articles of the continued company (section 107(1)(b));
 - iii. the body corporate is entitled to all property and rights to which it was entitled to immediately prior to the continuance (section 107(2)(a));
 - iv. the body corporate is subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately prior to the continuance (section 107(2)(b)); and
 - v. all actions and other legal proceedings which were pending by or against the body corporate immediately prior to its continuance may continue by or against the body corporate after it is registered in the ADGM (section 107(2)(c)).

Part 3 – ADGM fees

- 3.1 The following fees are payable in relation to Category B (Non-Financial Services) continuance applications.

Business Application – Continuance	\$300**
Name reservation	\$200*
Application to transfer incorporation into ADGM	\$7,500*
Issuance of Commercial License	\$4,000**
Business Activity Fee	\$4,000**
TOTAL	\$16,000

**As an ADGM COVID-19 support measure, this fee is waived until 31 December 2020*

*** As an ADGM COVID-19 support measure, the RA has imposed a 50% reduction of these fees until 31 December 2020*

- 3.2 The following fees are payable in relation to Category A (Financial) continuance applications.

Business Application – Continuance	Not applicable
Name reservation	\$200*
Application to transfer incorporation into ADGM	\$7,500*
Issuance of Commercial License	\$4,000**
Business Activity Fee	\$9,000**
TOTAL	\$ 20,700

**As an ADGM COVID-19 support measure, this fee is waived until 31 December 2020*

*** As an ADGM COVID-19 support measure, the RA has imposed a 50% reduction of these fees until 31 December 2020*

For more information, you may contact the Registration Authority:

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Opening Hours

The Registration Authority is open to public from Sunday to Thursday, 9:00am to 3:00pm

Disclaimer

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