



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

# CONSULTATION PAPER NO. 6 OF 2019

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5 DECEMBER 2019

**PROPOSED AMENDMENTS TO ADGM  
COMMERCIAL LEGISLATION**

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## INTRODUCTION

### WHY ARE WE ISSUING THIS PAPER?

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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 a number of the ADGM commercial legislation.
2. We have summarised the key proposed amendments 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 amendment draft themselves.

### WHO SHOULD READ THIS PAPER?

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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 entities already established in ADGM as well as their legal advisors.

### HOW TO PROVIDE COMMENTS

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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?

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5. The deadline for providing comments on this proposal is **18 January 2020**. Once we receive your comments, we will consider whether any modifications are required to this proposal. The amendments 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:**

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Consultation Paper No. 6 of 2019  
Financial Services Regulatory Authority  
Abu Dhabi Global Market Square  
Al Maryah Island  
PO Box 111999  
Abu Dhabi, UAE  
Email: [consultation@adgm.com](mailto:consultation@adgm.com)

## SCOPE AND APPROACH TO THE PROPOSED AMENDMENTS

6. This Consultation Paper aims to explain the proposed amendments to the existing ADGM Companies Regulations 2015 (“**Companies Regulations**”), Foundations Regulations 2017 (“**Foundations Regulations**”), Limited Liability Partnership Regulations 2015 (“**LLP Regulations**”), Limited Liability Partnership Rules 2015 (“**LLP Rules**”) and Beneficial Ownership Regulations 2018 (“**BOC Regulations**”).
7. The proposed changes include the following:
  - a. Abolishing the requirement to issue paper certificates & licenses;
  - b. Amending the definition of ‘members of the same family’ in Section 3(4)(c) of the Companies Regulations for the purpose of allowing more flexibility to family offices utilizing restricted scope companies;
  - c. Amending Section 1048 of the Companies Regulations in relation to cell and non-cell members in order to clarify that only a resolution of non-cellular members are required to establish a new cell;
  - d. Changing the name of “Annual Returns” to be “Confirmation Statements”;
  - e. Amending Section 1068B of the Companies Regulations in relation to formation of Investment Company in order to clarify that cell of a cell company may qualify as an Investment Company, while a company limited by guarantee may not; and
  - f. Amending BOC Regulations to align certain provisions with articles 34(3) and 9(1) of the recently issued Cabinet Resolution No. 10 of 2019 Concerning the Implementing Regulations of Federal Decree by Law No. (20) of 2018 Concerning Anti-Money Laundering and Counter Terrorism Financing and Financing of Illegal Organizations (“**AML Cabinet Resolution**”).
8. Drafts of the amended regulations incorporating the required amendments can be found in **Annexures A to D**.

## ABOLISHING THE REQUIREMENT TO ISSUE PAPER CERTIFICATES & LICENSES

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9. The Companies Regulations sets out circumstances where the Registrar must issue 'hard copy' certificates as evidence of completion of certain regulatory action or requirement. Such circumstances include, but are not limited to, incorporation of a new entity, change of name or reregistration of a legal entity from one type to another as well as upon continuance from a foreign jurisdiction into ADGM.
10. Issuing paper certificates and coordination with license holders for collection has become a very time consuming administrative burden on the ADGM Registration Authority. Further, the supply of pre-printed certificates on a special paper and placing gold/wax seals requires high resolution printing facilities that is time-consuming and expensive too.
11. A benchmarking analysis was conducted with other registries such as the DIFC, the DMCC and the Abu Dhabi Department of Economic Development, and it was found that they have moved on from paper certificates to electronically issued ones.
12. It is proposed to amend a number of sections in the Companies Regulations in order to abolish the need to issue paper certificates and in their place replace issue soft copies of such documents with electronic stamps and signatures. Persons seeking paper certificates will retain the option to request them in exchange for an additional fee. Such fee is to be determined by rules issued by the ADGM Board. It is intended that the switch to soft copies will improve efficiency by discouraging demand for paper certificates.
13. Based on the review of all of all ADGM commercial legislation, it is suggested to also amend certain provisions in the Foundations Regulations, LLP Regulations and LLP Rules in order to effect this change.
14. Please refer to **Annexures A to D** to review the drafts incorporating these amendments.

## AMENDING THE DEFINITION OF ‘MEMBERS OF THE SAME FAMILY’ IN SECTION 3(4)(C) OF THE COMPANIES REGULATIONS FOR THE PURPOSE OF REGISTERING A PRIVATE COMPANY AS A RESTRICTED SCOPE COMPANY

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15. The ADGM Registration Authority has received comments and feedback from a number of ADGM stakeholders in relation to the current definition of ‘members of the same family’.
16. The existing provisions appear to have led some stakeholders to having a restrictive interpretation as to what constitutes members of the same family. For example, the inclusion of adopted children is not expressly provided for in the Companies Regulations
17. The proposal is to expand the definition of ‘same family’ by expanding its scope to include, for example, adopted children.
18. In addition, we have taken the opportunity to amend and clarify certain terms such as “descendants of a person” that may include children and grandchildren to ensure that the restricted scope company can provide for multiple generations of a family.
19. Please refer to **Annex A** to review the draft incorporating this amendment.

### ISSUE FOR CONSIDERATION

Q1: DO YOU AGREE WITH THE PROPOSED AMENDMENTS IN RELATION TO ‘MEMBERS OF THE SAME FAMILY’ AS DESCRIBED ABOVE?

## AMENDING SECTION 1048 OF THE COMPANIES REGULATIONS IN RELATION TO CELL AND NON-CELL MEMBERS

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20. Feedback received from a number of ADGM clients revealed that the current wording of Section 1048(1) could be interpreted incorrectly, by implying that a new cell of a cell company may only be established by a special resolution of both its cellular and non-cellular members. This is not the intent of the Companies Regulations, as cellular members’ rights would not be affected by the creation of an additional cell.

21. The proposal is to amend the above-mentioned section to include the word “non-cell” before the term “members” to specify that only non-cell members should pass a special resolution creating new cells.
22. Please refer to **Annex A** to review the draft incorporating this amendment.

#### ISSUE FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE PROPOSED AMENDMENTS IN RELATION TO CELL AND NON-CELL MEMBERS AS DESCRIBED ABOVE?

### CHANGING THE NAME OF “ANNUAL RETURNS” TO BE “CONFIRMATION STATEMENTS”

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23. Ongoing observation and feedback received from ADGM entities revealed that the term ‘annual return’ is being confused with the requirement to file annual accounts, causing late filings.
24. A benchmarking analysis shows that the term ‘annual return’ has been amended in the UK Companies Act 2006 to be ‘Confirmation Statement’.
25. The proposal is to amend a number of provisions in the Companies Regulations (including but not limited to Part 23, Sections 92, 394, 952, 1024, 1052, Part 1 of Schedule 2 and Schedule 3) so that references to ‘annual return’ are replaced with the term ‘confirmation statement’.
26. Please refer to **Annex A** to review the draft incorporating these amendments.

#### ISSUE FOR CONSIDERATION

Q3: DO YOU AGREE WITH CHANGING THE NAME OF ‘ANNUAL RETURNS’ TO BE ‘CONFIRMATION STATEMENT’?

### AMENDING SECTION 1068B OF THE COMPANIES REGULATIONS IN RELATION TO FORMATION OF INVESTMENT COMPANY

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27. Section 1068B has recently come into question by some ADGM fund managers seeking clarification whether a company limited by guarantee



may be an investment company, to be used as a fund vehicle. The ability of creditors of a company limited by guarantee to seek contribution from members would be inconsistent with the mandatory limitation of recourse against unitholders, which is compulsory under FSRA Fund Rules.

28. Further, it was noticed that the current wording of Section 1068B confuses the *type* of company (i.e. limited or cell) with its *status* (public or private); a public investment company is not an alternative to being a public limited company.
29. The proposal is to amend the section above by removing the option to incorporate an investment company as a company limited by guarantee. The removal of this option will not impair the flexibility of the ADGM funds model, as no rational fund structure exposing unitholders to additional liability beyond their investment would be permitted. In addition, it is proposed to slightly amend the wording of this section to avoid perceiving the public investment company as an alternative to being a public limited company.
30. Please refer to **Annex A** to review the draft incorporating these amendments.

#### ISSUE FOR CONSIDERATION

Q4: DO YOU AGREE WITH AMENDING SECTION 1068B OF THE COMPANIES REGULATIONS IN RELATION TO FORMATION OF INVESTMENT COMPANY?

#### AMENDING BOC REGULATIONS TO BE ALIGNED WITH THE AML CABINET RESOLUTION

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31. After comparing the provisions in the BOC Regulations that are related to the requirement of identifying natural persons as the beneficial owners of the corporate persons and legal arrangements with these of the AML Cabinet Resolution, a discrepancy was found.
32. The AML Cabinet Resolution sets out the threshold for natural persons controlling ownership interest in corporate persons and legal

arrangements at '25% or more'. Conversely, the BOC Regulations sets out this threshold at 'more than 25%' in a number of its sections.

33. The risk of having such wording in the BOC Regulations would result in leaving persons holding 25% of the controlling shares/voting rights in an ADGM company or a foundation outside the scope of the Regulations.
34. To ensure consistency with the AML Cabinet Resolution, it is proposed to align the wording of the threshold in the BOC Regulations with that of the AML Resolution by amending a number of its provisions.
35. Please refer to **Annex C** to review the draft incorporating these amendments.