



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

*CONSULTATION PAPER  
NO. 4 OF 2020*

**PROPOSED AMENDMENTS TO  
THE APPLICATION OF ENGLISH  
LAW REGULATIONS 2015**

**18 October 2020**

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## Introduction

### **Why are we issuing this paper?**

1. Abu Dhabi Global Market (**ADGM**) has issued this Consultation Paper to invite public comment on ADGM's proposals to update the Application of English Law Regulations 2015 (**AELRs**). These proposals are intended to enhance the current AELRs by reflecting and incorporating amendments made in England to certain English civil and commercial statutes incorporated in 2015 into ADGM regulations, as well as introducing further English statutes where appropriate.

### **Who should read this paper?**

2. The proposals in this Consultation Paper will be of interest to all individuals and organisations operating within the ADGM and those with an interest in establishing a presence in the ADGM, as well as their legal advisors.

### **How to provide comments**

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. ADGM 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 ADGM.

### **What happens next?**

4. The deadline for providing comments on this proposal is **Sunday, 15 November 2020**. Once we receive your comments, we will consider whether any modifications are required to this proposal. We will then proceed to enact the proposed amendments. You should not act on these proposals until the relevant regulations are issued. We will issue a notice on our website when this happens.

**Comments to be addressed to:**

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## Background

1. The AELRs are the cornerstone of ADGM's legislative framework, and give effect to the direct application of English common law within ADGM, together with the 47 English civil and commercial statutes listed in the Schedule to the AELRs (**Schedule**) applicable in ADGM (**English Statutes**).
2. Since the introduction of the AELRs in ADGM in 2015, some of the English Statutes have been amended in England. Currently, those amendments made in England have no legal effect in ADGM, unless they are incorporated by the Board of ADGM into AELRs.
3. The ADGM considers that, where appropriate, amendments made in England to certain English Statutes in the Schedule should be incorporated into ADGM, so as to provide ADGM with a comprehensive and up to date legal framework as well as to minimize differences between the two legislative frameworks. Accordingly, ADGM has analysed and considered the various amendments made since 2015 according to the following general criteria:
  - the relevance of the amendment to ADGM and its activities;
  - the advantage of making such an amendment to ADGM and its establishments; and
  - in order for the AELRs to continue to meet international standards and expectations, in light of global developments.
4. In addition to the amendments to current statutes in the Schedule, new civil and commercial legislation has been enacted in England since 2015, and ADGM has taken the opportunity to consider whether this legislation, not presently adopted, should be introduced into ADGM.
5. Having considered the above matters, it is proposed to amend the following:
  - Bills of Exchange Act 1882 as it applies in ADGM, by incorporating section 13 of the Small Business, Enterprise and Employment Act 2015 (UK);
  - Trustee Act 1925 as it applies in ADGM, by incorporating certain sections of the Inheritance and Trustees Powers Act 2014 (UK); and
  - Marine Insurance Act 1906 as it applies in ADGM, through the introduction of the Insurance Act 2015 (UK), in so far as it relates to marine insurance.

6. Further, we have taken the opportunity to amend the Limited Partnership Act 1907 by introducing a requirement that partners of a limited partnership must notify the Registrar of the Registration Authority when the partnership is dissolved.

### ***Bills of Exchange Act 1882***

7. The Small Business, Enterprise and Employment Act 2015 (UK) amended, amongst other legislation, the Bills of Exchange Act 1882, which is one of the English Statutes.
8. Section 13 of the Small Business, Enterprise and Employment Act (UK) amends the Bills of Exchange Act 2015 so as to allow:
- cheques, and other similar instruments, to be presented by providing an electronic image, in place of presentment of the cheque itself; and
  - regulations to be made enabling compensation to be claimed from the bank which receives payment of the instrument for any specified kind of loss suffered in connection with the electronic presentment.

### ***Insurance Act 2015***

9. The Insurance Act 2015 (UK) updated the law in the UK in relation to insurance contracts so as to be in line with best practice in the modern insurance market. It introduces provisions in relation to the duty of fair presentation, breaches of warranties in insurance contracts, insurers' remedies for fraudulent claims, good faith and contracting out. It also amended the Marine Insurance Act 1906 (UK), which is another of the English Statutes in the Schedule.
10. Having considered the purposes and effects of the Insurance Act and the amendments it makes to the Marine Insurance Act, ADGM proposes to introduce the application of the Insurance Act and apply such amendments across into the ADGM, with some necessary changes. ADGM also proposes to introduce the Insurance Act into ADGM in respect of marine insurance contracts only.
11. The proposed amendments include:
- introduce new requirements on the insured regarding disclosure, including that they must (i) make a fair presentation of the risk before an insurance contract is entered into (ii) disclose to the insurer every material circumstance which it knows or ought to know and (iii) not to make misrepresentations;
  - provide that a breach of warranty by the insured suspends the insurer's liability from the time of the breach until the breach is remedied;
  - provide that it is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time; and

- abolish the rule of law permitting a party to a contract of insurance to avoid a contract on the ground that the utmost good faith has not been observed by the other party.

**ISSUES FOR CONSIDERATION**

Q1: DO YOU AGREE THAT THE INSURANCE ACT 2015, INCLUDING ITS AMENDMENTS TO THE MARINE INSURANCE ACT 1906, SHOULD BE ADOPTED IN ADGM IN RESPECT OF MARINE INSURANCE CONTRACTS?

**Trustee Act 1925**

12. The Inheritance and Trustees Powers Act 2014 (UK) amended the Trustee Act 1925 (UK), another of the English Statutes in the Schedule. The amendments included:
- amending section 31 of the Trustee Act to (i) provide that the trustees' ability to pay amounts to a minor's parent or guardian for the minor's maintenance, education or benefit is as the trustees think fit, rather than (as before) as was reasonable, and (ii) to remove the list of considerations to which the trustees must have regard when making such a determination, including where income is available for more than one fund;
  - amending section 32 of the Trustee Act to make two changes in relation to trustees' statutory powers of advancement. The first amendment removes the limitation on the trustee's power to advance of a maximum of one-half of the beneficiary's prospective share. The second amendment clarifies that the trustees are able not only to pay out cash in the exercise of the statutory power of advancement but also to transfer or apply property.
13. In addition, a new section 32(1A) to the Trustee Act clarifies that if trustees have exercised their power of advancement, the money or other property advanced to a beneficiary may be treated as a percentage of the overall value of the trust.

**ISSUES FOR CONSIDERATION**

Q2: DO YOU AGREE THAT THE TRUSTEE ACT SHOULD BE AMENDED IN ACCORDANCE WITH THE INHERITANCE AND TRUSTEES POWERS ACT 2014 (UK)?

## Other Matters

### *Partners of a limited partnership to notify the Registrar when the partnership is dissolved*

14. We propose to amend the Limited Partnership Act 1907 by introducing a requirement that partners of a limited partnership notify the Registrar of the Registration Authority when the partnership is dissolved. The Registrar will then amend the Register accordingly.
15. Partners may agree amongst themselves that the partnership may be dissolved. However, in the absence of a published notice, former partners may remain liable for subsequent transactions with third parties who understand themselves to be contracting with the partnership, unless they have actual notice of its dissolution. Thus, the ability to remove a limited partnership from the list of registered limited partnerships maintained by the Registrar, in a manner which enables the Registrar to publish the date of dissolution, is of material benefit to all former limited partners and other users of the Register. Such publication will also be considered as notice to potential creditors that the partners are no longer acting in partnership with one another as of the date of dissolution. Accordingly, the legal effect of (i) filing of the proposed notice of dissolution form and (ii) the publication of its substance will have the effect of terminating the partnership.

### *Increase in fine, Limited Partnership Act 1907*

16. We have also taken the opportunity to consider the current contraventions and fines relevant to the Limited Partnership Act 1907 (as it applies in ADGM pursuant to the provisions of the AELRs). It is proposed that these provisions be amended to reflect the seriousness of the breaches and the need for compliance with them.
17. For example, section 9 provides that if during the continuance of a limited partnership a change is made or occurs in for example (i) the firm name, (ii) the principal place of business, and (iii) the general partners or the name of any general partner, a statement, signed by the firm, specifying the nature of the change shall within seven business days be sent to the Registrar. We propose that it further provide that if there is a breach of this notification requirement, the Registrar may impose a fine not exceeding level 3 on the standard fines scale (that is, USD 5,000).

### *Further amendment to AELRs*

18. As noted above, the English Statutes came into effect upon publication of the AELRs. The amendments to those Statutes, and the proposed Insurance Act, will come into effect as of the date of the publication of the amending Regulations. To accommodate this difference, we propose to amend section 2(1) of the AELRs.

**ANNEXURE AND ATTACHMENTS**

- **Annex A: Proposed Application of English Law Regulations (Amendment No. 1) 2020**
- **Attachment A: Proposed Amendments to Trustee Act 1925**
- **Attachment B: Proposed Amendments to Bills of Exchange Act 1882**
- **Attachment C: Proposed Amendments to Marine Insurance Act 1906**
- **Attachment D: Proposed Amendments to Limited Partnership Act 1907**
- **Attachment E: Proposed Insurance Act 2015**
- **Attachment F: Proposed Application of English Law Regulations 2015 showing effect of proposed amendments**