

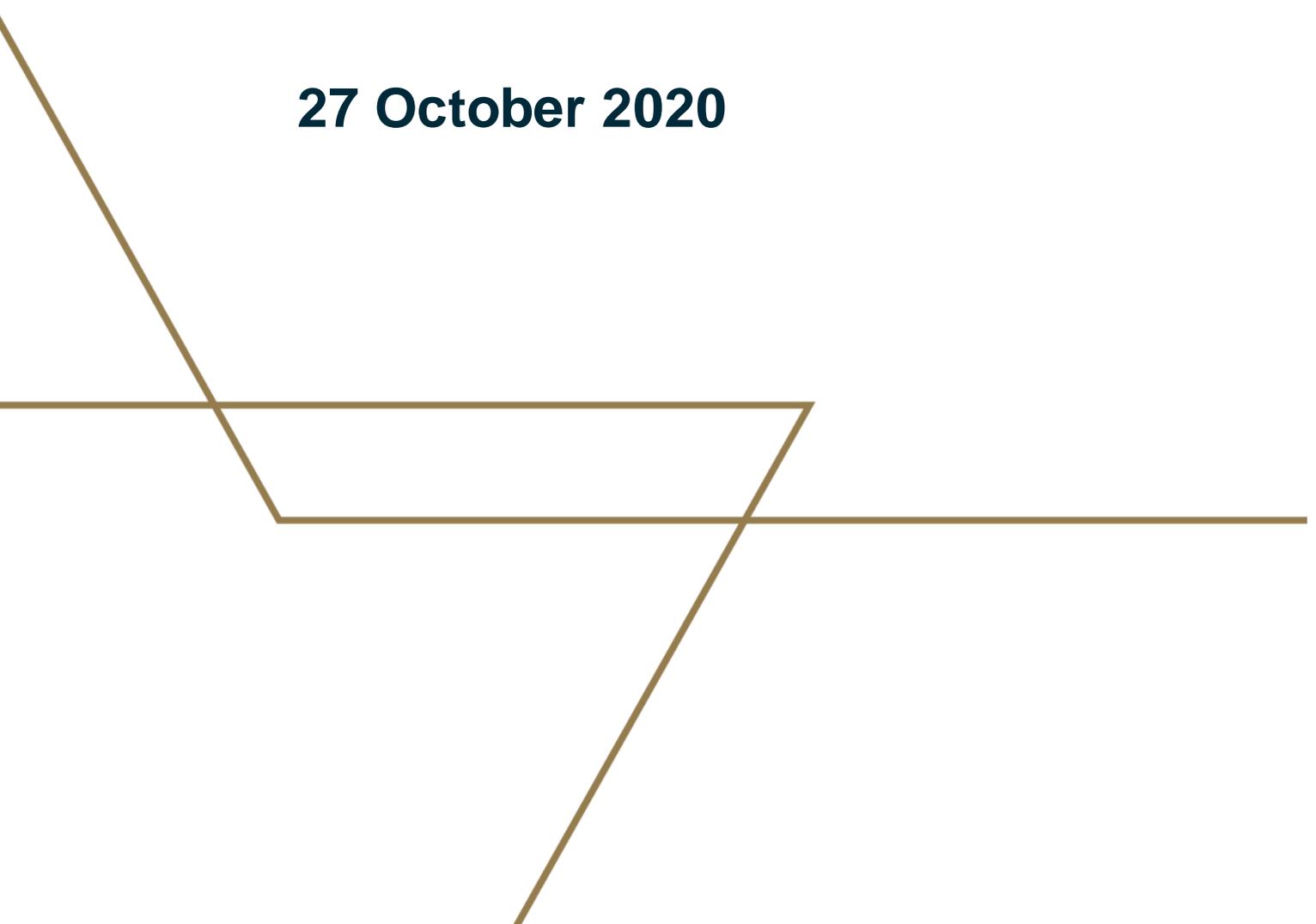


ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

*CONSULTATION PAPER
NO. 5 OF 2020*

**PROPOSED INTRODUCTION OF
THE COMPANY SERVICE
PROVIDERS FRAMEWORK**

27 October 2020



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Introduction

Why are we issuing this paper?

The Abu Dhabi Global Market (**ADGM**) Registration Authority (**RA**) have issued this Consultation Paper to invite public feedback and comments on the proposal to introduce a framework for the regulation of Company Service Providers in ADGM (**CSP Framework**).

The proposed regulatory amendments to the Commercial Regulations and Rules incorporating the CSP Framework provisions and other miscellaneous and consequential amendments are set out in **Annexures A – C** and **Appendices I – 6** to this Consultation Paper.

Who should read this paper?

The proposals in this Consultation Paper would be of interest to individuals, organisations and investors that have a presence in, or an interest in establishing a presence in, ADGM or otherwise doing business in ADGM, and their professional advisors. In particular, current and prospective ADGM-based special purpose vehicles / companies and foundations, licensed persons engaged in the business activity of being a 'corporate services provider', 'registered agents' and those persons wishing to conduct company service activities in or from ADGM may benefit from the proposed CSP Framework set out in this Consultation Paper.

How to provide comments

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. If relevant, please identify the organisation you represent when providing your comments.

The RA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making any comments. Comments supported by reasoning and evidence will be given more weight.

What happens next?

The deadline for providing comments on this proposal is **Tuesday, 24 November 2020**.

After receiving your comments, we shall consider whether any modifications are required to the proposals and the Board and the RA will then proceed to enact the proposals in their final form.

You should not act on these proposals until these proposals are finalised and the final Regulations, Rules and guidance are issued by the Board and the RA. We shall issue a notice on our website when this happens.

Comments to be addressed to:

Consultation Paper No. 5 of 2020
Registration Authority
Abu Dhabi Global Market Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com

Background

1. Registered agents are used in many jurisdictions around the world for certain company types. The purpose of registered agents varies across jurisdictions, from providing formation services to ongoing support such as registered address, record keeping, filing and service of documents services.
2. The success and increasing demand for ADGM's Special Purpose Vehicles (“**SPVs**”) and foundations, not only from within the UAE but globally, has brought with it several challenges and risks, particularly for those entities that do not have in all circumstances a direct connection to the UAE or to the ADGM. To address these challenges and mitigate any risks they may pose to ADGM, the RA, after careful consideration of the various legislative and regulatory regimes worldwide, is proposing to introduce a proportionate and balanced CSP Framework in ADGM.
3. To determine the approach best suited to ADGM, the RA conducted a substantive benchmarking exercise across a variety of jurisdictions, including the United Kingdom, Singapore, Bermuda, Guernsey, Jersey and the British Virgin Islands (**BVI**).
4. The proposed CSP Framework follows international best practice and aims to establish a robust regulatory framework for CSPs within ADGM. To this end, the CSP Framework would introduce a requirement for certain SPVs and foundations to appoint an ADGM-based CSP, and a set of regulatory obligations on CSPs. The CSP Framework would supplement ADGM's existing regulatory framework, while the Registrar's powers relating to the SPVs and foundations will remain unchanged.

Key Features of the Proposed CSP Framework

5. One of the objectives of the proposed CSP Framework is to ensure that the Registrar has a locally-based contact or interface in respect of certain 'non-exempt' SPVs and foundations. Under the CSP Framework, the appointment of a CSP will be mandatory for these SPVs and foundations, both for incorporation, and throughout the lifecycle of the entity. To do so, the proposed CSP Framework will impose certain obligations on both the applicable 'non-exempt' SPVs and foundations.
6. The other objective of the proposed CSP Framework is to impose certain obligations on ADGM-based CSPs.

REQUIREMENTS ON SPVS AND FOUNDATIONS:

7. Subject to certain exemptions summarised below, the CSP Framework will, among other things:
 - a. require 'non-exempt' SPVs and foundations to appoint an ADGM-based CSP;
 - b. facilitate the Registrar's access to corporate registers and simplify the process of serving documents by empowering CSPs to accept service on behalf of the 'non-exempt' SPVs and foundations; and
 - c. impose appropriate penalties and enhance the Registrar's striking off powers under the Companies Regulations.

Exempt SPVs and Foundations

8. ADGM SPVs that form part of a corporate group with a well-established presence in the UAE or are wholly owned subsidiaries of any of the following are proposed to be exempt from the CSP Framework:
 - a. entities that are exempt from obtaining a commercial licence under the Commercial Licensing Regulations 2015;
 - b. ADGM-incorporated operational parent entities with a physical presence in ADGM;
 - c. persons authorised to provide financial services in the UAE; and
 - d. companies that can demonstrate that they have substantial assets, turnover and employees in the UAE, as well as adequate governance policies and procedures.
9. Similarly, foundations that can demonstrate that they have sufficient resources, expertise and staff in the UAE are not required to appoint a CSP.

Q1: DO YOU AGREE WITH THE PROPOSED EXEMPTION CATEGORIES? IF NOT PLEASE EXPLAIN WHY?

REQUIREMENTS ON CSPs:

10. In respect of ADGM-based CSPs, the CSP Framework will, among other things, introduce:
 - a. a new controlled activity of 'Providing Company Services';
 - b. a set of new regulatory requirements on CSPs; and
 - c. a requirement for CSPs that hold or control client money to comply with the client money rules.

New controlled activity of Providing Company Services

11. 'Providing Company Services' is proposed to be a new controlled activity if it is carried on by way of business and includes acting as an incorporation agent in connection with the incorporation or registration of bodies corporate in the ADGM, providing directors, company secretaries, councillors or nominee shareholders of companies to any body corporate in the ADGM.

New regulatory requirements on CSPs

12. The CSP Framework proposes to introduce a number of regulatory requirements on CSPs, including:
 - a. a requirement to satisfy the Registrar that an applicant for a licence to provide company services meets, or upon grant of a licence will meet, the specific licence conditions applicable to this controlled activity, namely -
 - i. it is a fit and proper person to hold such a licence, having regard to, among other things, the nature, scale and complexity of the CSP activities in ADGM,
 - ii. it maintains and adheres to all compliance arrangements, including policies, controls, processes and procedures,

- iii. it conducts, or will conduct, its business in a prudent manner, including the requirement to maintain a capital base of at least USD 25,000 and insurance cover of an amount that is adequate to manage the CSP business effectively and responsibly,
 - iv. it has adequate resources to conduct and manage its affairs, including a dequate financial and system resources as well as adequate and competent human resources; and
- b. an obligation on a departing CSP to cooperate with any successor CSP in a transition (in the event of a change in CSP).
13. In addition to the requirements imposed by the CSP Framework summarised above, where a licensed CSP is conducting, or proposing to conduct, activities outsourced to it under the UAE Economic Substance regime, the CSP may also be required to have in place additional policies, controls and procedures as a consequence of providing its services in accordance with that regime.

Client Money Rules

14. CSPs that hold or control ‘client money’ will be subject to additional obligations under the proposed Commercial Licensing Regulations 2015 (Client Money) Rules 2020 (“**Client Money Rules**”), at **Appendix 4**. The Client Money Rules have been benchmarked on similar requirements in other common law jurisdictions, including Guernsey, and are proposed be introduced in a risk-based, balanced and proportionate manner, taking into account the nature, scale and complexity of CSPs’ operations.
15. The Client Money Rules are designed to safeguard money belonging to clients against potential misuse, misappropriation or fraud. This is consistent with RA and ADGM objectives, and aims to ensure the quality and calibre of ADGM-based CSPs and align the CSP Framework with international good practice.
16. CSPs that hold or control client money must comply with the client money provisions and have in place the necessary policies, systems and controls in relation to, for example, the handling, identifying, segregating and depositing of client money, to prevent the inappropriate use of client money. The Registrar proposes to publish a Guidance Note to assist with the interpretation of the Client Money Rules.

Q2: DO YOU AGREE WITH THE BREADTH OF THE NEW CONTROLLED ACTIVITY OF ‘PROVIDING COMPANY SERVICES’?

Q3: DO YOU AGREE WITH THE SCOPE OF THE CSPS’ OBLIGATIONS?

Q4: DO YOU AGREE WITH THE PROPOSED SCOPE OF THE CLIENT MONEY RULES? DO YOU HAVE ANY CONCERNS ABOUT HOW ADGM-BASED CSPs WILL COMPLY WITH THE PROPOSED CLIENT MONEY PROVISIONS?

Proposed Implementation

Changes to the current 'Corporate Services Provider' business activity

17. It is proposed that the current Corporate Services Provider business activity (i.e. Business Activity No. 7021, as described in the 'Category B – Non Financial Permitted Business Activities List' at <https://www.adgm.com/documents/faqs/adgm-category-b-non-financial-permitted-business-activities.pdf>) will be phased out by the end of the transition period for CSPs.
18. Persons currently licensed to conduct Corporate Services Provider activity can choose to either:
 - a. transition to the new CSP Framework and apply to conduct one or more CSP activities - on the expiration of the 6 months' transition period, the existing business activity of being a Corporate Service Provider will be removed from their licence; or
 - b. limit their activities to being a 'Registered Office Provider' only, and remain outside the CSP Framework¹. To facilitate this, a new business activity, 'Registered Office Provider', is proposed to be introduced.
19. Persons who currently –
 - a. conduct the business activity of acting as a Registered Office Provider, or
 - b. advise on the incorporation and registration of bodies corporate within ADGM as an incidental part of conducting the business activities of management consultancy, compliance consultancy, legal consultancy or accountancy,will not be subject to, nor eligible for appointment as a CSP under, the proposed CSP Framework, unless they transition to the new CSP Framework.

Q5: DO YOU HAVE ANY CONCERNS WITH THE PROPOSED APPROACH? ARE THE PROPOSED CARVE-OUTS) APPROPRIATE?

Impact on Registered Agents of Foundations

20. Under the current Foundations Regulations 2017 ("**Foundations Regulations**"), the appointment of a registered agent is optional. It is proposed that the Foundations Regulations be amended so as to oblige 'non-exempt' foundations to appoint a CSP at the end of a transition period, unless the foundation has sufficient resources, expertise and staff in the UAE to satisfy the Registrar that such an appointment is not necessary.
21. It is not proposed that CSPs be obliged to maintain any registers of foundations, nor have access to the financial records of foundations.

¹ Note: Registered Office Providers will still fall within the definition of a DNFBP and be subject to the FSRA's AML and Sanctions Rules and Guidance.

22. ADGM expects that the majority of the current registered agents of 'non-exempt' foundations will apply for a commercial licence to provide Company Services and will therefore continue their operations without interruption.

Q6: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED APPROACH?

Transition Periods

23. To promote orderly integration of, and compliance with, the proposed CSP Framework, we propose two transition periods:
- a. for current 'Corporate Service Providers' wishing to engage in CSP activities under the CSP Framework - 6 months' transition period; and
 - b. for 'non-exempt' SPVs and foundations:
 - i. 12 months for *existing* SPVs and foundations to comply with the CSP Framework; and
 - ii. 8 months for *new* SPVs and foundations to comply with the CSP Framework.

Summary of Proposed Legislative Amendments

24. The proposed regulatory framework for the CSP Framework comprises –
- a. amendments to ADGM Regulations to introduce a requirement for non-exempt SPVs and foundations to appoint a CSP - see proposed:
 - i. new Chapter 2 of Part 12 of the Companies Regulations 2020 (at **Annex A**);
 - ii. amendment to section 18 of the Foundations Regulations 2017 (at **Annex B**); and
 - iii. amendment to section 1 of the Commercial Licensing Regulations 2015 (at **Annex C**);
 - b. amendments to, including repeal and re-enactment of, the following Rules –
 - i. Commercial Licensing Regulations 2015 (Controlled Activities) Rules to create a new controlled activity of 'providing company services' and effect other miscellaneous and consequential amendments (at **Appendix 1**);
 - ii. Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules to introduce conditions for ADGM CSPs (at **Appendix 2**); and
 - iii. Business and Companies Names Rules to effect consequential amendments (at **Appendix 3**);
 - iv. Commercial Licensing Regulations 2015 (Fees) Rules to clarify the fees payable in regard to the appointment/cessation and changes in particulars of authorised signatories (at **Appendix 5**); and

- v. Companies Regulations (Fees) Rules to clarify the fees payable in respect of changes in particulars and to effect other consequential amendments (at **Appendix 6**); and
 - vi. enactment of new Commercial Licensing Regulations (Client Money) Rules 2020 (at **Appendix 4**) to introduce control mechanisms on the CSPs' handling of client money.
25. In addition to the revisions comprising the regulatory framework for the CSP Framework summarised above, we have also taken this opportunity to introduce a number of miscellaneous amendments to the Commercial Regulations and Rules, including –
- a. defining the concept of 'business activities', which is a classification based on the International Standard Industrial Classification of All Economic Activities published by the Department of Economic and Social Affairs of the United Nations Secretariat;
 - b. simplifying the existing provisions in relation to application for licence and available cross-border exemptions from the commercial licensing requirements in ADGM;
 - c. clarifying of the scope of the general prohibition under the Commercial Licensing Regulations; and
 - d. removing fees that would otherwise be payable to the Registrar for change in address or other particulars, where the change is attributable solely to the CSP changing its address.

PROPOSED AMENDMENTS AND ENACTMENTS

- **Annex A** **Companies Regulations 2020 (Amendment No. 2) 2020**
- **Annex B** **Foundations Regulations 2017 (Amendment No. 2) 2020**
- **Annex C** **Commercial Licensing Regulations 2015 (Amendment No. 1) 2020**
- **Appendix 1** **Commercial Licensing Regulations 2015 (Controlled Activities) Rules 2020**
- **Appendix 2** **Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2020**
- **Appendix 3** **Business and Companies Names Rules 2020**
- **Appendix 4** **Commercial Licensing Regulations 2015 (Client Money) Rules 2020**
- **Appendix 5** **Commercial Licensing Regulations 2015 (Fees) Rules 2020**
- **Appendix 6** **Companies Regulations (Fees) Rules 2020**