

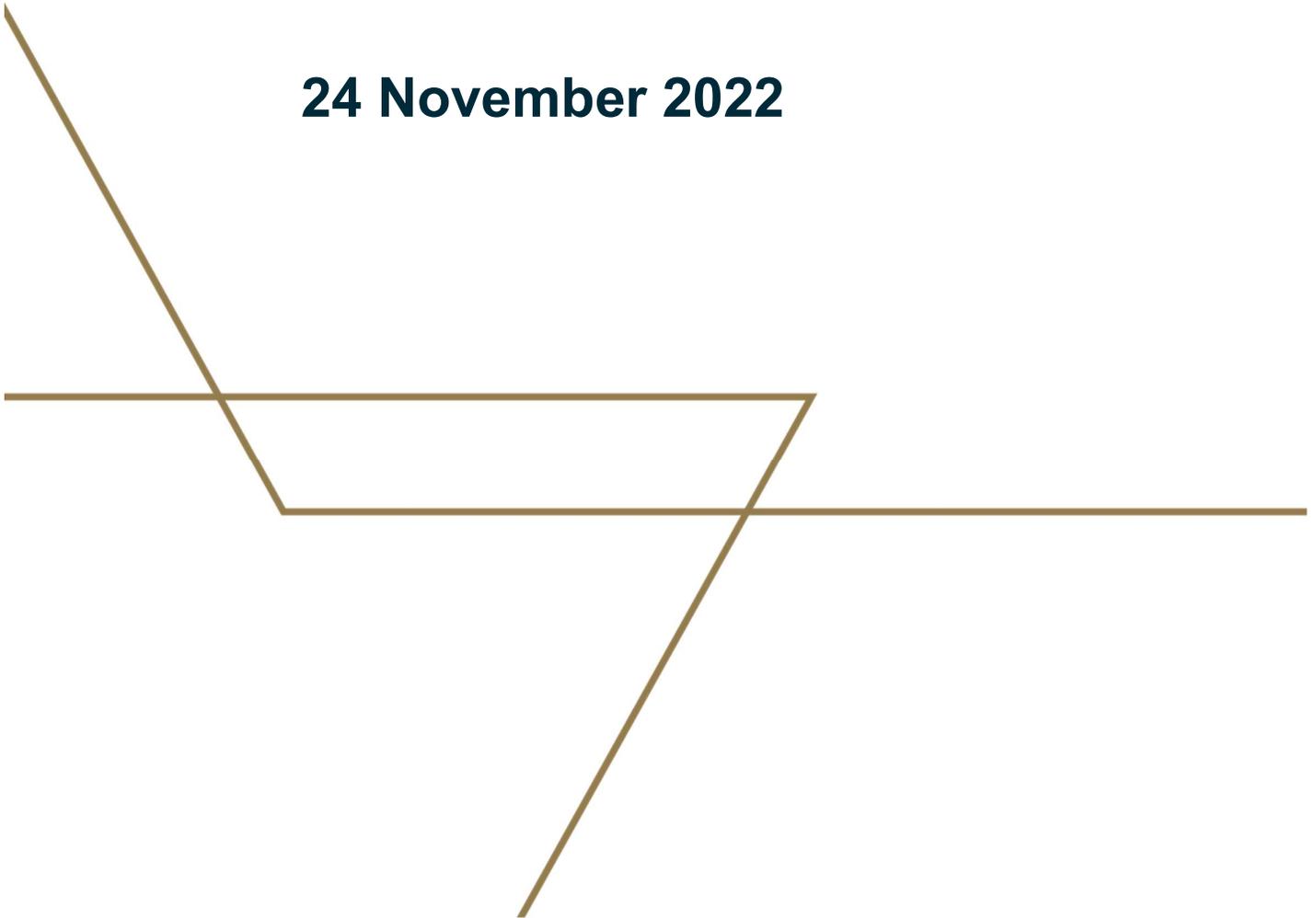


ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

*CONSULTATION PAPER  
NO. 7 OF 2022*

**Amendments to the ADGM's  
company service provider  
regulatory framework**

**24 November 2022**



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## Introduction

### Why are we issuing this paper?

The Abu Dhabi Global Market (“**ADGM**”) Registration Authority (“**RA**”) has issued this Consultation Paper to invite public feedback and comments on proposed amendments to a number of ADGM commercial regulations and rules relating to corporate service providers (“**CSPs**”) licensed in the ADGM.

ADGM’s CSP framework was introduced on 12 April 2021 and contains two key features: (i) strengthening the regulatory requirements for the provision of company services in ADGM; and (ii) requiring all non-exempt SPVs and foundations to appoint and maintain a licensed CSP to provide formation and filing services, as well as a point of contact for the RA.

The existing regulatory and licensing framework in the ADGM applicable to ADGM registered CSPs and CSP applicants is currently set out in the:

- (a) Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2022 (“**Conditions of Licence Rules**”);
- (b) Limited Liability Partnerships Rules 2022 (“**LLPR**”);
- (c) Companies Regulations 2022 (“**CR**”);
- (d) Foundations Regulations 2017;
- (e) Companies Regulations (Fees) Rules 2022 (“**Fees Rules**”); and
- (f) Commercial Licensing Regulations (Fees) Rules 2022,

(together, the “**Relevant Regulations**”). References are made in this Paper to proposed amendments to the Relevant Regulations, as they are currently in the process of being amended—before the anticipated date of implementation of this project.

To date, over 50 firms, existing and new, have been granted a CSP licence and approximately 74% of SPVs have appointed a licensed CSP (approximately 9% of SPVs are exempt). However, following ongoing review of the framework, since its introduction 18 months ago, the RA concluded that the intended benefits of the CSP regime have not been fully realised. Therefore, a project was commenced to consider and propose enhancements to the CSP framework in the ADGM in view of: (i) feedback received from stakeholders; and (ii) benchmarking against the frameworks governing CSPs in other notable jurisdictions.

This Paper sets out the current position and the proposed amendments to certain regulations and rules. In addition, drafts of the proposed amendments to the regulations and rules are set out in the Annexures and Appendices (see below) to this Paper.

The proposed amendments to:

- (a) the Companies Regulations (Amendment No.1) 2023, amending the Companies Regulations

2022, is set out in Annex A to this Paper;

- (b) the Foundations Regulations (Amendment No. 1) 2023, amending the Foundations Regulations 2017, is set out in Annex B to this Paper;
- (c) the Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2023 are set out in Appendix 1 to this Paper; and
- (d) the Limited Liability Partnerships Rules 2023 are set out in Appendix 2 to this Paper.

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

The proposals in this Consultation Paper would be of interest to all individuals and organisations operating or proposing to operate in the ADGM and their professional advisors, and entities which are licensed or intend to be licensed as a corporate service provider in the ADGM.

### **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 **20 December 2022**.

After receiving your comments, we shall consider whether any modifications are required to the proposals and the ADGM 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 any related guidance are issued by the ADGM Board and the RA. We shall issue a notice on our website when this happens.

### **Comments to be addressed to:**

Consultation Paper No. 7 of 2022

Registration 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***

1. This Consultation Paper aims to explain the proposed:
  - a. amendments to the following regulations:
    - i. Companies Regulations 2022;
    - ii. Foundations Regulations 2017, and
  - b. amendments to the following rules:
    - i. Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2022; and
    - ii. Limited Liability Partnerships Rules 2021.
  
2. In summary, the proposed changes include:
  - a. the introduction of mandatory training certification for CSP staff;
  - b. the introduction of a requirement that at least one CSP staff member involved in processing applications or otherwise dealing with clients must be generally physically present in the CSP's registered office in ADGM during ordinary business hours;
  - c. the introduction of a requirement that the CSP's office must be open during ordinary business hours (9am to 5pm Monday to Friday (excluding public holidays in the UAE)), or as otherwise announced by the RA (subject to certain specified exclusions);
  - d. the introduction of a requirement that CSPs pay an annual CSP business activity fee in the amount of USD 2,500 (in addition to the usual licence fees);
  - e. the introduction of a requirement that CSPs file annual audited accounts with the RA;
  - f. the introduction of a requirement that CSPs must have an MRLO and a compliance officer (i) as a full-time employee; or (ii) outsource such functions to a recognised service provider on a full-time basis;
  - g. the introduction of a requirement that the MRLO and a compliance officer of a CSP must be independent from any other statutory role of the company;
  - h. the introduction of a minimum regulatory capital requirement of USD50,000 to be maintained by CSPs at all times;
  - i. the amendment of the existing professional indemnity insurance rules for CSPs to require for certain minimum professional indemnity insurance cover which takes into account the revenue of each CSP;

- j. clarifying and expanding on the contents of a CSP's annual return;
- k. the introduction of principles to be followed and adhered to by CSPs, including principles such as integrity, due skill, care and diligence, confidentiality, transparency and conflict of interest;
- l. permitting an SPV or Foundation to file a strike off application with the RA directly, without the need for its CSP to do so; and
- m. amending the criteria which exempts an SPV from the requirement to appoint a CSP.

## Proposed Changes

### A Mandatory Certification for CSP Staff

We propose the introduction of a requirement for all CSP staff that deal with the RA, with clients and/or who work on client files, to complete an RA prescribed CSP certification annually. This amendment would ensure that only CSP staff that have completed annual training may carry out company services, thereby making dealings with the RA more efficient and effective for the RA, CSPs and the clients of CSPs. We anticipate that this will reduce the number of returns, thereby reducing the licensing timeframe.

To implement this proposal, we propose the following amendments to Condition 4 of Schedule 1 (conditions of licence - company service providers) of the Conditions of Licence Rules:

#### Proposed Amendment 1:

We propose a mandatory annual certification requirement as prescribed by the RA for CSP staff who are RA facing, client facing and/or who work on client files.

The certification will include the completion of annual training courses (either online or in-person) by an approved service provider, relating to:

1. use of the RA's Online Registry Solution;
2. preparation of all relevant supporting documents required for submission during the application process and completion of applications;
3. ethics and compliance;
4. applicable laws and regulations; and
5. AML/KYC training,

with confirmation provided annually to the RA that all relevant staff members have completed the applicable training.

For new applicants, the mandatory certification must be completed prior to the grant of the licence. Existing CSPs must ensure that the relevant staff have completed the mandatory certification within three months of the publication of the amended rules.

Q1: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON THE PROPOSED MANDATORY CERTIFICATION FOR CSP STAFF?

### B Staffing in ADGM

We propose the introduction of a requirement that a least one CSP staff member shall be located and present in the licensed CSP's registered office in ADGM during ordinary business hours. We propose defining 'ordinary business hours' for the purpose of the CSP framework to be 9.00am to

5.00pm Monday to Friday (excluding public holidays in the UAE). This amendment would ensure that the CSP has at least one resident point of contact in Abu Dhabi to liaise with clients, the RA and other relevant third parties.

To implement this proposal, we propose the following amendments to Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules:

Proposed Amendment 2:

We propose a requirement that at least one CSP staff member involved in processing applications for clients (or otherwise involved in dealing with clients in respect of CSP services), be generally physically present in the CSP's registered office (allowing for reasonable temporary absence from the office during ordinary business hours for meetings or other engagements) in ADGM during ordinary business hours (9.00am to 5.00pm Monday to Friday (excluding public holidays in the UAE)) or be remotely available when the physical attendance at the CSP's registered address is not permissible by (i) the laws of the Emirate of Abu Dhabi to the extent and as applicable in ADGM; (ii) the rules and regulations of ADGM; (iii) an order of a court of competent jurisdiction; or (iv) the direction of the Registrar.

Proposed Amendment 3:

The introduction of a requirement that the CSP's office must be open during ordinary business hours (9.00am to 5.00pm Monday to Friday (excluding public holidays in the UAE)), or as otherwise may be announced by the RA from time to time (with the exclusion of (i) routine maintenance; or (ii) health and safety requirements) and the requirement to notify the Registrar of a closure exceeding, in aggregate, 10 business days in any three month period, This will allow third party and court documents to be served at the registered office of the CSP, and would also allow the RA to serve notices on a CSP in its registered address. Notices may include enforcement notices, warning notices, decision notices, and other written correspondence which requires acknowledgement of safe receipt.

Q2: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED STAFFING REQUIREMENT FOR CSPS IN THE ADGM?

## **C Audited Accounts**

ADGM's commercial legislation requires audited accounts for (non-financial) limited companies and limited liability partnerships, only if they do not qualify as 'small'. Currently, almost all licensed CSPs would fall within the small companies definition, and hence they are only required to file an unaudited balance sheet annually.

Some licensed CSPs have multiple clients and also hold client money. An unaudited balance sheet provides little meaningful insight into the financial health and performance of a licensed CSP, which is necessary to effectively monitor and manage potential risks to clients from insolvency and/or misappropriation of assets.

We propose that licensed CSPs that are in the legal form of limited companies or limited liability partnerships, must file audited accounts with the RA annually, to ensure that the RA has reliable information on the financial position of CSPs operating in the ADGM.

To implement this proposal, we propose the following amendments to section 447 of the CR and the LLPR:

Proposed Amendment 4:

That CSPs file annual audited accounts with the RA by amending both the CR and LLPR stating that such entities licensed to conduct the controlled activity of providing company services shall not be exempt from the requirement to file audited accounts, irrespective of whether they qualify as a small company or LLP.

Q3: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REQUIREMENT THAT CSPS FILE ANNUAL AUDITED ACCOUNTS WITH THE RA?

## **D Anti-Money Laundering Officer**

There is currently no specific requirement under the Relevant Regulations for a CSP to have a Money Laundering Reporting Officer (MLRO) as a full-time employee of the CSP (rather than this function being undertaken by an outsourced person or entity).

Pursuant to the Anti-Money Laundering and Sanctions Rules and Guidance (AML) published by the FSRA, a CSP is required to appoint a Money Laundering Reporting Officer (MLRO). Under Section 12.1.7 of the AML, the CSP may outsource the role of the MLRO, provided that the individual under the outsourcing agreement is and remains suitable to perform the MLRO role.

We understand that many CSPs outsource the MLRO function. The RA has found that concerns regarding capacity, as well as less familiarity by the CSP with AML Rules occurring when it uses outsourced MLROs.

In conjunction with the staffing issues noted in Section B above, the requirement to have a dedicated MLRO employee, will encourage higher staffing and internal professional standards by CSPs, as well as enhancing regulatory and anti-money laundering compliance requirements.

We propose the following amendments to Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules:

Proposed Amendment 5:

The introduction of a requirement that CSPs must have an MRLO (with the general qualifications required for an MLRO): (i) as a full-time employee; or (ii) on an outsourced basis, provided that such outsourced function is provided by a recognised MLRO service provider on a full-time basis.

The MLRO must at all times be independent from any other statutory role of the company (i.e., it cannot be a member of management or the ultimate beneficial owner of the CSP).

Q4: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REQUIREMENT THAT A CSP MUST HAVE A FULL-TIME MRLO OR OUTSOURCE THAT FUNCTION ON A FULL-TIME BASIS?

## **E Compliance Officer**

There is currently no specific requirement under the Relevant Regulations for a CSP to have a compliance officer.

The absence of a compliance officer at a CSP creates a risk of not having sufficient ongoing internal compliance in place. Not having a compliance officer creates a risk that a CSP may create internal policies without having sufficient knowledge, experience or accountability. Having such a role ensures that the CSP has sufficient internal checks and balances systems and a dedicated individual to monitor legal and regulatory compliance.

We propose the following amendments to Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules:

### Proposed Amendment 6:

The introduction of a requirement that CSPs must have a compliance officer (with the general qualifications required for a compliance officer): (i) as a full-time employee; or (ii) on an outsourced basis, provided that such outsourced function is provided by a recognised compliance service provider on a full-time basis.

The same individual or entity may serve as both the MLRO and compliance officer of an entity, provided that such individual or entity has the knowledge, experience and capability to effectively fulfil the responsibilities of an MLRO and a compliance officer in accordance with the Conditions of Licence Rules and other applicable laws in the ADGM.

Q5: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REQUIREMENT FOR CSPS TO HAVE A FULL-TIME MRLO OR OUTSOURCE THAT FUNCTION ON A FULL-TIME BASIS?

## **F Minimum Regulatory Capital**

The CSP activity is a critical controlled function intended (among other things) to assist with managing and mitigating the risks posed by ADGM SPVs and Foundations. It is critical therefore, that CSPs are sufficiently resourced to carry out the activity effectively. The current CSP framework requires licensees to maintain and demonstrate adequate financial resources (Condition 4 of Schedule 1 of the Conditions of Licensing Rules). However, the lack of a prescribed minimum capital amount has made this condition unworkable to administer and enforce in practice.

We propose that CSP licensees in the legal form of limited companies and limited liability partnerships must maintain minimum regulatory capital of USD 50,000.

This amendment will ensure that each CSP has a minimum reserve of funds to meet any liability arising out of its operations (such as payment of fines/fees to the ADGM or claims by its clients, in each case to the extent that the relevant CSP does not have other funds to meet such fines/fees or claims).

We considered the introduction of a minimum share capital, but a minimum regulatory capital requirement was considered more appropriate as the minimum regulatory capital will be required

to be maintained during the licence period (and will, therefore, be available to meet the CSPs obligations). While a minimum share capital would impose a requirement for the relevant funds to be deposited at the time of incorporation, such amounts would not be required to be maintained and a CSP would be permitted to apply such funds at its discretion towards expenses and operational costs.

We propose the following amendments to Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules:

Proposed Amendment 7:

Introducing a minimum regulatory capital requirement of USD 50,000 on CSPs which shall be maintained by CSPs at all times to meet any liability arising out of its operations (such as payment of fines/fees to the ADGM or claims by its clients, in each case to the extent that the relevant CSP does not have other funds to meet such fines/fees or claims). If any funds are so applied and the available minimum regulatory capital is reduced, the CSP shall be under an obligation to immediately contribute funds to restore the amount of the minimum regulatory capital.

Q6: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REQUIREMENT FOR CSPs TO HAVE A MINIMUM REGULATORY CAPITAL OF USD50,000?

## **G Professional Indemnity Insurance**

Condition 3 of Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules, provides that a CSP will maintain professional indemnity insurance (“**PII**”) cover appropriate to the size and nature of its business but does not provide for a prescribed minimum amount of cover.

Similar to point F above, it is critical that CSPs are sufficiently insured to mitigate any losses relating to their activities and provide comfort to the RA, clients and third parties, in a manner similar to other professional service providers.

As such, we propose that CSP licensees must maintain a minimum PII cover of an amount quantified by reference to its annual revenue in the ADGM, or if greater, a fixed minimum amount.

We, therefore, propose the following amendments to Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules:

Proposed Amendment 8:

Introducing a requirement for CSPs to maintain an appropriate professional indemnity insurance cover and stipulating that the minimum professional indemnity insurance maintained by any CSP must be:

- (a) in respect of any single claim, the higher of:
  - i. three times the CSP’s turnover for the last accounting year; and

- ii. USD 1,500,000,
- (b) in aggregate in any one year, the higher of
- a. three times the CSP's turnover for the last accounting year; and
  - b. USD 2,000,000, and
- (c) in respect of any legal or other professional services costs incurred by the CSP in connection with any single claim or in aggregate in any one year, not less than 20% of the amounts referred to in (a) and (b) above.

Q7: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED REQUIREMENT for CSPs TO MAINTAIN THE PROFESSIONAL INDEMNITY INSURANCE COVER SPECIFIED ABOVE?

## H Annual CSP Returns

There is currently a lack of visibility and information on the operations of licensed CSPs, which adversely impacts the effective and efficient supervision and risk management. Currently, the only way for the Registrar to capture information in relation to the CSP is to request such information from firms individually on a case-by-case basis.

### Proposed Amendment 9:

Introduction of a requirement for each CSP licensee to provide to the Registrar, in such form as the Registrar may require, an annual CSP Return ("**Annual CSP Return**") no later than the end of April each year. This requirement will provide the Registrar with valuable information on the operations of all licensed CSPs and will assist with focusing a CSPs attention on its CSP obligations by requiring an annual confirmation of its compliance.

The Annual CSP Return must cover the period from 1 January to 31 December (inclusive) of the preceding year and must include:

- (a) details of all current licensed persons for whom the CSP has been appointed as a company service provider as at 31 December;
- (b) details of the services offered by the CSP, including a copy of its fee schedule;
- (c) details of current directors, partners and management, and any changes in management during the 12 months period covered by the Annual CSP Return;
- (d) details of the individuals employed or engaged by the CSP and the location of such individuals;
- (e) a copy of the CSP's complaints register for the 12 months period covered by the Annual CSP Return;
- (f) a confirmation that all relevant staff members have completed with all training required by Condition 4 of the Conditions of Licence Rules;
- (g) confirmation that, to the best of its information, knowledge and belief and save as may be

disclosed in such Annual CSP Return, the CSP and each of its members of staff have complied with all applicable requirements of these Rules; and

- (h) any other information as the Registrar specifies in any guidance issued to CSPs or otherwise notified to CSPs as required to be included in the Annual CSP Return.

Q8: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED ANNUAL CSP RETURNS?

## I Clarifying the Applied Principles

The absence of defined professional principles may cause a lack of clarity and direction on the expectations of the standards required by CSPs.

We propose the following amendments to Schedule 1 (Conditions of Licence - Company service providers) of the Conditions of Licence Rules:

### Proposed Amendment 10:

Introducing a new condition on CSPs setting out the principles to be followed and adhered to (principles such as integrity, due skill, care and diligence, confidentiality, transparency and conflict of interest, similar to those contained in the ADGM Insolvency Practitioner Rules).

Q9: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED PRINCIPLES TO BE FOLLOWED BY CSPS?

## J Applications for Voluntary Strike Off

Introducing an obligation on CSPs to submit all notifications/filings to the Registrar but when it relates to voluntary strike off applications, allowing the SPV itself or the CSP to file. To implement this proposal, we propose the following amendments to section 296B(2)(c) of the CR:

### Proposed Amendment 11:

Introducing a provision giving the ability to an SPV to file a strike off application directly with the Registrar without the need for its CSP to do so.

Q10: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED ABILITY TO AN SPV TO FILE A STRIKE OFF APPLICATION WITH THE REGISTRAR WITHOUT THE NEED FOR THEIR CSP TO DO IT ON THEIR BEHALF?

## K Exempt SPVs

Currently, an SPV that is a subsidiary undertaking of any of the following are exempt from the requirement to appoint a CSP –

- (a) persons exempt under the Commercial Licensing Regulations 2015 (Exemptions) Order 2022;
- (b) an authorised person within the meaning given to it in the Financial Services and Markets Regulations 2015;
- (c) persons licensed or regulated by the Central Bank of the UAE;
- (d) a company whose shares are admitted into trading on a regulated market in the UAE, including ADGM; or
- (e) companies that can demonstrate that they have adequate presence in the UAE, having regard to the companies' assets, turnover and employees, as well as the established governance policies and procedures.

The current exemption criteria precludes SPVs that are being set up as holding companies (i.e. parent undertakings) from relying on the exemption. Hence an SPV that is the holding company for an onshore business, must appoint a CSP irrespective of whether it can demonstrate to the Registrar that its group has adequate presence in the UAE, as the SPV is a parent undertaking rather than a subsidiary undertaking.

Proposed Amendment 12:

To address this issue, we propose amending section 296A(3) of the Companies Regulations 2022 to expand the exemptions to the requirement to appoint a CSP so that it applies to both parent undertakings and subsidiary undertakings.

Q11: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED EXPANSION OF THE EXEMPTION FROM THE REQUIREMENT TO APPOINT A CSP?

## **L Transition Period**

The amendments to the ADGM's CSP framework as outlined in this Paper will entail a transition period of 3 months (commencing on the date of publication of the Relevant Regulations) and will take effect:

- (a) in the case of all new CSP applicants, on publication of the Relevant Regulations; and
- (b) in the case of existing company services providers, on the date falling 3 months after the date of adoption of these amendments other than the business activity fee (detailed below) which will be payable at the time of renewal of the CSP's commercial licence.

## **M CSP Business Activity Fee**

As part of the CSP framework enhancement, the Registrar will introduce an annual CSP business activity fee of USD 2,500 payable at the time of incorporation and at every licence renewal.

## *Proposed Amendments and Enactments*

### **Regulations**

**Annex A**      *Proposed Companies Regulations (Amendment No.1) 2023*

**Annex B**      *Proposed Foundations Regulations (Amendment No. 1) 2023*

### **Rules**

**Appendix 1**    *Proposed Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2023*

**Appendix 2**    *Proposed Limited Liability Partnerships Rules 2023*