

MERGERS & ACQUISITIONS | 30 November, 2015

## Abu Dhabi Global Market: Establishing a Company

This memorandum provides a brief overview of the Companies Regulations 2015 published by Abu Dhabi Global Market on 14 June 2015. The Companies Regulations set out the framework for companies to establish themselves in ADGM. They are based on the United Kingdom's Companies Act 2006, which are widely known and used in international business. However, there are some variations to account for the particularities of ADGM as well as improvements in line with global best practices.

### Overview

The Companies Regulations apply to all companies incorporated in ADGM and companies incorporated in other jurisdictions following a successful application for continuance in ADGM. The Companies Regulations are based on the UK Companies Act 2006 with selected revisions to reflect the specific requirements of ADGM and to update areas of historic peculiarity that have either been removed or abandoned by the best practice of other jurisdictions. Any entity seeking to conduct business in ADGM (whether incorporated under the Companies Regulations or not) will require a licence under the Commercial Licensing Regulations.

Key features of the Companies Regulations include:

- the provision for the registration of "restricted scope companies" with a lighter disclosure and compliance regime;
- the provision for the establishment of protected cell companies and incorporated cell companies;
- the provision for the continuance of companies into ADGM, or of ADGM companies into other jurisdictions; and
- the removal of the concept of 'par value' from share capital.

### Types of Company

The Companies Regulations make provision for the following types of entities:

- Public Companies;
- Private Companies;
- Restricted Scope Companies ("RSC"); and
- Cell Companies.

Except for certain ownership restrictions which are applicable to RSCs (see below) and the need to comply with the anti-money laundering requirements of ADGM's Registration Authority (the "**Registrar**"), there are no restrictions on the identity, nationality or number of shareholders of a company registered under the Companies Regulations.

Companies registered under the Companies Regulations may either be limited by shares, limited by guarantee or

they may be unlimited. Companies may also re-register from limited to unlimited, public to private and vice versa, and a RSC may re-register as a non-RSC (however, a non-RSC may not re-register as a RSC).

Partnerships may also establish themselves in the free zone. The Limited Liability Partnerships Regulations 2015<sup>1</sup> provide for the establishment and operation of limited liability partnerships as a corporate structure. This note does not discuss the features of the framework for partnerships in ADGM.

## Features of RSCs

The key distinguishing feature of RSCs is the 'light touch' disclosure regime to which they are subject. Key differences between the disclosure obligations of an RSC and those of a normal private company include the following:

- i. *Accounts*: Although RSCs are obliged to keep accounting records on the basis of a simplified "small companies" regime, they are not required to publish their accounts or provide them to the Registrar except in limited circumstances (although they must provide them to shareholders and debenture holders);
- ii. *Other filings*: RSCs are required to file their articles and details of their registered office, officers and an annual return with the Registrar, but only an RSC's constitution and details of its registered office will be made publicly available; and
- iii. *Shareholder approvals*: RSCs are not subject to the same requirement to seek members' approval for certain transactions with directors, including directors' service contracts.

To account for the fact that this less stringent approach to disclosure could prejudice shareholders and creditors, RSCs may only be incorporated as a subsidiary of a group which publicly files consolidated accounts, as a subsidiary of a company formed by Emiri decree or by an individual or members of the same family. If shares in an RSC are subsequently transferred so that the RSC no longer satisfies this ownership requirement, the RSC must be re-registered as a private company, at which point it will become subject to the usual disclosure regime.

It is envisaged that RSCs will principally be used as investment holding vehicles for government investors or the various family offices in the region.

## Cell Companies

Cell companies (typically used in the investment funds industry) operate by means of creating "cells" of distinct allocated assets and liabilities within the company. Cell companies are not provided for in the Companies Act 2006.

To accommodate and encourage the investment funds industry in ADGM, the Companies Regulations provide for both "protected cell companies" (where each cell does not have distinct legal personality but rather regulatory provisions preventing cellular creditors claiming non-cellular assets provide protection) and 'incorporated cell companies' (where each cell is a separate legal entity). Open-ended investment companies (OEICs) are also expressly provided for under the Companies Regulations.

<sup>1</sup> The Limited Liability Partnerships Regulations are available [here](#) and the Limited Liability Partnership Rules 2015 are available [here](#).

## **Continuance**

Continuance is the process through which companies move between jurisdictions while retaining their legal personality. It is not a process which is provided for in the UK Companies Act 2006.

To maximise flexibility and to reflect practice from other jurisdictions, the Companies Regulations provide for the continuance of foreign companies into ADGM, and for the continuance of ADGM companies into other jurisdictions where laws in the relevant jurisdiction allow and, in each case, on application to the Registrar.

## **Administration of the Companies Regulations**

The Registrar is responsible for overseeing the incorporation and registration of entities incorporated or registered under the Companies Regulations. As well as dealing with incorporations and the ongoing filing requirements of ADGM companies, the Registrar is also responsible for administering any fines due from companies or their officers as a result of contraventions of the Companies Regulations. The Registrar's website permits applications for incorporation and company filings to be made electronically. Access to that site is available [here](#). Further information on registration and incorporation as well as the forms, is available [here](#). The Registrar has published guidance on its powers and duties which is [here](#).

## **Application Process**

Any application for registration under the Companies Regulations must be preceded or accompanied by an application for the reservation of the proposed name of the company. In addition to confirming various details of the proposed company (e.g., its officers, registered office), an application for incorporation must also include a statement of compliance certifying that the incorporation requirements of the Companies Regulations have been met.

## **Licensing Requirements and Branches**

The Commercial Licensing Regulations establish the framework for ADGM's licensing regime. Except in limited circumstances, those seeking to conduct business in ADGM are required to obtain a licence prior to commencing operations in the free zone.

In addition to its role administering the Companies Regulations, the Registrar is responsible for administering the licensing regime and, among other powers, has the ability to request information from licensed entities and applicants. Licences are renewable periodically. An application for a licence should be made to the Registrar at the same time as an application for the incorporation of a company. Entities incorporated outside the free zone may apply for a licence thereby opening a branch in ADGM.

A summary of ADGM's commercial licensing regime will be available on our website shortly.

## **Our Role**

Shearman & Sterling advised ADGM on its establishment as an international financial centre. Working closely with the leadership team at ADGM, Shearman & Sterling helped develop ADGM's world-class legal and regulatory regime to be in line with international standards to provide the sophistication and certainty found in the world's top financial centres. Shearman & Sterling has played a key role in ADGM's adoption of English common law by applying it in its jurisdiction for civil and commercial law. The application of English common law will govern matters

such as contracts, tort, trusts, equitable remedies, unjust enrichment, damages, conflicts of laws, security and personal property. Additionally, Shearman & Sterling drafted all legislation governing matters such as companies, insolvency, interpretation, commercial licensing, arbitration, courts, employment, limited liability partnerships, real property, financial regulation and strata title.

Shearman & Sterling advises its clients on ADGM laws, out of its Abu Dhabi, Dubai, London and US offices, and has unique insights as a result of its role in developing the legislation.

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Please speak to your Shearman & Sterling contact for further information.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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