

MERGERS & ACQUISITIONS | 1 December 2015

Abu Dhabi Global Market: Obtaining a Commercial Licence

This memorandum provides a brief overview of certain key areas of the Commercial Licensing Regulations 2015 published by Abu Dhabi Global Market on 14 June 2015. The Commercial Licensing Regulations establish the framework licensing regime for those seeking to conduct business in Abu Dhabi Global Market.

Introduction

A licence must be obtained prior to conducting business in Abu Dhabi Global Market (“ADGM”) except in limited circumstances. Entities incorporated inside or outside of the free zone may apply for a licence. Those incorporated outside of ADGM that obtain a licence will operate through a branch. Entities may also choose to establish a wholly owned subsidiary incorporated outside of ADGM.

There are certain transitional measures available for entities that were already active in ADGM. Until 14 June 2016, those that were approved to carry out economic, commercial or professional activities under a licence issued by the Abu Dhabi Department of Economic Development before 19 February 2013 will be exempt from the requirement to obtain a licence.

Key features of the Commercial Licensing Regulations include:

- the general prohibition on the conduct of “controlled activities” by any person in ADGM unless they are exempt or have obtained a licence;
- the exemption of certain bodies or persons from the licensing regime;
- the requirements for trading disclosures and business names in ADGM;
- the vesting of authority in ADGM’s registrar (the “Registrar”) to issue licenses for such periods and subject to such conditions as it may specify, and to vary and cancel licences.

What Are Controlled Activities?

The conduct of “controlled activities” within ADGM is prohibited unless the person or body conducting the activities is either licensed or exempt. The Commercial Licensing Regulations (Controlled Activities) Rules 2015 (the “Controlled Activities Rules”), set out what constitutes a “controlled activity” and the broad position is that any economic activity carried on by way of business in ADGM will be a “controlled activity.”

This rule is subject to exclusions for persons:

- I. carrying on controlled activities solely as an employee employed or appointed under a contract of service;
- II. discharging duties of a public nature or (broadly) in connection with public administration;

- III. providing professional services in ADGM without a permanent establishment in ADGM (e.g., the provision of legal advice by law firms based onshore to ADGM-resident bodies); and
- IV. conducting economic activity (other than professional services) in ADGM without a permanent establishment in ADGM at the invitation of someone either ordinarily resident in ADGM or with a permanent establishment in ADGM (e.g., the provision of cleaning services by an onshore business to ADGM-resident bodies).

An entity or person that conducts business in ADGM without the requisite licence or who is not an exempt person is subject to a fine unless they can show they took all reasonable precautions to avoid contravening the requirements. Any contract entered into by that entity or person will not necessarily be void or unenforceable.

Licences

An application for a licence can be made by an individual, a body corporate or a partnership whether incorporated in ADGM or otherwise.¹ If the applicant is incorporating a company in ADGM, the application for a licence should be made at the same time as the incorporation documents are filed with the registrar.

Among other things, an application must set out the applicant's details and the type of controlled activities that the applicant intends to carry on. The registrar has one month to consider a properly completed application for licence.

The Registrar may grant a licence if it is satisfied that the applicant meets the conditions of licence for that particular controlled activity. These conditions will depend upon the nature of the controlled activity conducted; for example, applicants intending to provide legal services are required to be licensed and authorised by an approved legal regulatory body outside of ADGM. Financial institutions that will be subject to financial regulation by the Financial Services Regulatory Authority will need to apply for an additional licence under a separate process which we discuss in a separate memorandum.

Licences are granted for such period of time and subject to such conditions as the Registrar may specify. Applications for renewal can be submitted if desired. Licences must be renewed on an annual basis.

Fines and Powers of Investigation

Below is a short summary of the powers of the Registrar to ensure compliance with ADGM's commercial licensing regime.

The Registrar may vary the terms of a licence to add, remove or vary the description of the activities it permits. The Registrar may also cancel a licence if a licensee has failed to satisfy the conditions of that licence, failed to carry on the relevant controlled activity or if the cancellation is otherwise in the interests of ADGM. The Registrar's power to cancel and vary licences is subject to various safeguards, including a right of appeal to ADGM's court.

In addition, if the Registrar is satisfied that a licensee has contravened a rule enacted under the Commercial Licensing Regulations, it has the power to impose a fine or suspend all or part of a licence.

¹ Information on applying for a licence, including the applicable forms, is available [here](#).

The Registrar may require a licensed person to provide specified information by serving written notice to that effect. It may also arrange an investigation into the business of licensed persons where it appears to the Registrar that there is a good reason for doing so. Investigators have broad powers to require those subject to investigation to attend interviews or otherwise provide information.

Prohibited Names and Trading Disclosures

The Commercial Licensing Regulations restrict the use of certain business names in ADGM. Restrictions apply to the use of names which suggest a connection with a government or public authority or which contain sensitive words or expressions.

The Regulations also set out the disclosure requirements for persons carrying on a business in ADGM (i.e., the need to display the person's or body's name on business communications and at their place of business).

Companies incorporated or continued into ADGM under ADGM's Companies Regulations 2015 (the "Companies Regulations") are subject to separate but mostly parallel rules in this regard.

Establishing a Company in ADGM

Those conducting business in ADGM may also wish to consider incorporating a company in the free zone under the Companies Regulations. The Companies Regulations (which are substantially based on the UK Companies Act 2006) provide for the incorporation of private companies, public companies and "restricted scope" companies (being companies subject to less onerous disclosure requirements). They also make provision for cell companies and investment companies.

We have prepared a separate summary on the Companies Regulations which is available on our website.

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.

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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