

Introduction

In 2013 the Government of the Emirate of Abu Dhabi enacted a law (Abu Dhabi Law No (4) of 2013) to create a further free zone in the UAE, the Abu Dhabi Global Market (ADGM), intended to be a new international financial centre, operated and regulated in accordance with international best practices that are recognised by major global financial centres. The ADGM will have its own civil and commercial legal regime, based on and incorporating aspects of English law, overseen by a regulator, the Financial Services Regulations Authority. The ADGM will also have its own internal court system, the Global Market Courts, consisting of a Court of First Instance and a Court of Appeal.

Status

The ADGM is scheduled to begin full operation in the second half of 2015. It has been announced that, in its first phase, ADGM will focus on asset management, private banking and wealth management businesses, but will have the flexibility to expand its service offerings over time to accommodate market demand.

The implementation of the ADGM's framework is moving along at a brisk pace. As of mid-August 2015, ADGM had enacted 24 comprehensive laws and regulations and issued the draft commercial regulations for the market. It simultaneously began accepting licence applications from existing non-financial services tenants of its dedicated premises on Al Maryah Island. Financial services and licensing for non-Al Maryah Island companies is scheduled to be available later in 2015.

The ADGM's comprehensive financial services regulations were issued in draft on 29 June 2015, made available for public comment until 11 August 2015 and published on 21 October 2015. ADGM will shortly be publishing further consultation papers supplementary to the draft financial services regulations and rules currently published, which will include rules regarding insurance.

Legal Framework

The New Laws

A summary of a number of the ADGM's principal new laws regulations follows. All of these were enacted on 3 March 2015 and published on 14 June 2015.

Application of English Law Regulations 2015

Principles of English common law and equity will be recognised in and form the basis for the law of the ADGM. These principles will prevail in the ADGM save to the extent to which they conflict with the provisions of any "Abu Dhabi Laws" – defined as including the UAE 1971 Constitution, any federal law of general application in Abu Dhabi, or any law or decree issued by His Highness the Ruler of the Emirate of Abu Dhabi – in which case the latter will prevail. This does not extend to the creation of criminal offences, the free zone lacking the constitutional power to enact such laws.

The English law regulations also adopt a long list of English statutes directly into the ADGM law including the Statute of Frauds 1677 (Chapter 3), Life Assurance Act 1774 (Chapter 48), Apportionment Act 1870 (Chapter 35), Bills of Exchange Act 1882 (Chapter 61), Partnership Act 1890 (Chapter 39), Limited Partnerships Act 1907 (Chapter 24), Trustee Act 1925 (Chapter 19), Law Reform (Frustrated Contracts) Act 1943 (Chapter 40), Powers of Attorney Act 1971 (Chapter 27), Unfair Contract Terms Act 1977 (Chapter 50) and Contracts (Rights of Third Parties) Act 1999 (Chapter 31), among many others. Often the English laws cited are modified to account for the fact that they are intended for use in a different jurisdiction, for example, requiring that the words "United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them, being part of the dominions of Her Majesty" to be substituted by the words "United Arab Emirates".

Companies Regulations 2015

The Companies Regulations represent a modern company law, largely based on the UK Companies Act 2006 and replicating many of its provisions. These Regulations are extensive and consist of more than 1,000 provisions. Among the notable provisions are the following:

- Unlike UK companies, shares of ADGM companies will have no nominal/par value, doing away with the rather archaic notion of "par value" shares.
- ADGM companies are to be managed by boards of directors, not managers as provided for in the UAE Companies law for UAE limited liability companies.
- Directors are subject to directors' liabilities and contemporary fiduciary duties, set out in the Regulations with great specificity.
- Company secretaries in public companies have an expanded role under the law and their duties are spelled out in detail.
- Companies are encouraged to enter into Directors Services Contracts with their directors and must register the same with the Companies Registrar. These contracts are also to be made available for inspection by members.
- The Regulations give broad powers to members to bring an action before the ADGM Courts where an act or omission of the company, board or majority has created a result unfairly prejudicial to the interests of members generally or of some of its members. The ADGM Courts are similarly granted broad powers to rectify any harm brought to members.

Financial Services Regulations

As noted above, the financial services regulations and rule books were published on 21 October 2015. The regulations create the Financial Services Regulatory Authority (FSRA) with supervisory powers similar to those of the UK Financial Conduct Authority. Also included are:

- A comprehensive description of those financial services which will be “Regulated Activities.”
- A complete licensing regime, under which firms approved by the FSRA to carry on regulated activities will be “Authorised Persons”, together with a general prohibition on carrying on such activities without approval or exemption.
- A Financial Promotion regime which prohibits making certain financial promotions unless authorised or unless the content has been approved by an Authorised Person.
- A market abuse regime, mirroring the UK implementation of the EU Market Abuse Directive.
- Regulations governing collective investment funds.
- A framework for the regulation of FSRA recognised investment exchanges and clearing houses.
- Rules prohibiting the making of misleading statements and practices.
- Provisions governing the listing of securities admitted to trading, with the requirement to issue a prospectus when making a public offer of securities.

Equally important, particularly from a practical standpoint, are the published series of appendices which contain the text of the core modules of the FSRA Rulebook. These include:

- the General Module (GEN)
- Conduct of Business Rulebook (COBS)
- Fund Rules (FUNDS)
- Market Infrastructure Rulebook (MIR)
- Market Rules (MKT)
- Rules of Market Conduct (RMC)
- Anti-Money Laundering and Sanctions Rules and Guidance (AML)
- Islamic Finance Rules (IFR)
- Prudential Investment, Insurance Intermediation and Banking Rules (PRU)
- Fees Rules (FEES)
- Glossary (GLO)

Employment Regulations 2015

The ADGM has its own employment law regime which mirrors in many respects the UAE Labour Law and employment law applicable in other free zones. There are several unique features of the legal framework however:

- As with the UAE Labour Law, provisions of any written agreement between employee and employer which purport to waive or exclude the requirements set out in the Employment Regulations are void. This does not however preclude the right of the parties to enter into “settlement agreements” waiving any claims they may have against the other party.
- General duties of employees are spelled out in the Employment Regulation. Employees are expected to be diligent and careful in the exercise of their duties, obey lawful and reasonable orders and instructions from their employer (in particular those relating to health and safety), take reasonable care of their employer’s property, not accept any gifts or other advantage in return for the performance of their duties, not compete with the employer and not disclose any confidential information. The law states that these principles, as with those governing the employment relationship generally, are to be construed and interpreted in accordance with English law principles.
- Employers’ general duties are also specially stipulated, including a duty to ensure the health and safety of their employees which includes protection against harassment. Employers must also ensure enclosed workplaces are well ventilated, of a reasonable temperature, well lit, clean, sufficiently large, and properly equipped and that employees have access to bathroom facilities and clean drinking water.
- The Employment Regulations themselves contain comprehensive data protection provisions, rather than a stand-alone law.
- The Employment Regulations provide that discrimination on the basis of sex, marital status, race, nationality, religion, age, or disability is prohibited. The Employment Regulations do not, however, provide sanctions or a right of recourse to persons whose employment is denied or terminated on such bases.
- In a first for the UAE, the Employment Regulation provides for paternity leave pursuant to which male employees are entitled to five days’ paid paternity leave.

Insolvency Regulations 2015

The restructuring and insolvency regime to be applied to ADGM companies is heavily based on UK law, being an amalgamation of the UK Insolvency Act 1986 and the Insolvency Rules 1986, with some modifications. Uniquely for the UAE, the ADGM regulations include an administration procedure for the purpose of effecting the financial rescue of a company. The insolvency regime incorporates best practice from the UK and other common law jurisdictions drawing upon the best aspects of various regimes.

Real Property Regulations 2015

The ADGM has its own real estate law with a registration system for all real property interests. The ADGM's Registration Authority will facilitate official searches of the Real Property Register in an open and public way.

MOU with ESCA

On 3 August 2015, the ADGM, the FSRA and the Securities and Commodities Authority of the UAE (SCA) entered into a Memorandum of Understanding (MOU) to exchange information and enhance mutual cooperation in areas including market supervision, investor protection, oversight of financial markets and management of entities such as listed companies and brokerages and others. The MOU establishes a framework for the exchange of information and mutual cooperation between SCA and FSRA. Both authorities will coordinate and cooperate in efforts to provide information that mutually support each other in their regulatory obligations. The authorities will also work closely together to ensure the qualification and competence of licensed persons and improve their professional capabilities.

Conclusion

The creation of the ADGM truly marks the opening of a new global market. The new laws and regulations are beginning to gel and there is a tremendous amount of curiosity and excitement concerning where it may all lead. The ADGM has received early praise for the clear legal structure it has established, crucial to business confidence. All that remains is to wait and see what happens next.

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