

Abu Dhabi Global Market publishes Draft Financial Services Regulations

The Abu Dhabi Global Market (ADGM) has published its Draft Financial Services Regulations which are open for consultation until 11 August 2015. This briefing sets out a summary of the key highlights.

Introduction

The Draft Financial Services and Markets Regulations are supplemented by the Draft Financial Services and Markets Rulebook, which consists of various modules (including in relation to conduct of business, general matters, anti-money laundering, market infrastructure, markets, funds and Islamic finance).

It is expected that the Regulations and the Rulebook (referred to in this briefing as the Draft Regulations) will be followed by underlying guidance and policies in due course.

Based on the UK regime

The Draft Regulations are broadly based on the financial services framework in the UK.

We would expect this to have synergies with the ADGM's general approach to the adoption of English common law. The General Prohibition applies to Regulated Activities carried out in the ADGM (following FSMA and not "in or from" as in the DIFC).

Licensing

Firms which wish to carry on financial services business in ADGM will be subject to licensing by both the ADGM (in terms of the obligation to hold a commercial license) and the

ADGM Financial Services Regulatory Authority (in respect of the financial services licensing) (the FSRA).

Individuals performing controlled functions within an ADGM authorised firm must also be licensed by the FSRA. The framework broadly mirrors the position in the UK but does not extend to senior managers in the same way as the new FCA certification regime.

The two key prohibitions in the Draft Regulations are on:

- providing financial services without a license or exemption; and
- making a financial promotion unless authorised or unless the content has been approved by an authorised person. Notably there is no exemption for financial promotions to high net worth individuals as in the UK and the DIFC.

The list of prescribed financial services broadly mirrors the UK regime.

The press release accompanying the Regulations states that the ADGM expects to start accepting licensing applications from financial services firms in the fourth quarter of 2015.

Analysis: Financial Services Regulations

- Sophisticated regime of licensing and regulation for financial services, principally based on the UK model and broadly similar to the existing regime in the DIFC.
- Two key prohibitions are (i) on providing financial services without a license or exemption; (ii) making a financial promotion unless authorised or unless the content has been approved by an authorised person. There is no exemption for financial promotions to high net worth individuals.
- Firms in the ADGM are prohibited from accepting deposits from the UAE market and dealing in the UAE dirham.
- The ADGM has also published draft rules in relation to conduct of business, general matters, anti-money laundering, market infrastructure, markets, funds and Islamic finance.
- Consultation is open until 11 August 2015.
- The ADGM expects to start accepting applications for financial services licenses in the fourth quarter of 2015.

Dealing in UAE dirham

The prohibition in respect of dealing in UAE dirham is more clearly framed than the position in the DIFC in that ADGM authorised firms may not accept deposits from the UAE markets or in the UAE dirham or undertake foreign exchange transactions involving the UAE dirham.

Transfers of business

The regime for transfers of financial services businesses is wider in scope than the UK and applies to all kinds of business. Detailed rules as to when court approval is needed for a transfer and when it is not would be welcomed by businesses that propose to set up in the ADGM.

AML

The AML rules are drafted with a view to compliance with the Financial Action Task Force's recommendations and guidance from the Basel Committee on Banking Supervision.

Conduct of business

The conduct of business rules relate to the usual issues we would expect to be covered, including: client money, conflicts of interests, client classification (similar to the new DFSA framework), confidentiality, client agreement, personal account transactions, record keeping, research etc.

Funds

The Draft Regulations contemplate the establishment of three types of domestic fund

- public funds
- exempt funds (private placement to Professional Clients with a minimum subscription of US\$50,000
- qualified investor funds (as with exempt funds, but with a minimum subscription of US\$500,000.

There are specific disclosure requirements for the marketing of foreign funds into the ADGM.

Securities

The Draft Regulations cover the listing of securities. The minimum free float requirement is expected to be between 10-12%. There is also a "Rules of Market Conduct", largely based on the FCA's Code of Market Conduct as well as requirements in relation to the marketing of securities into the ADGM.

Market infrastructure

There is a detailed regime for the recognition of exchanges and clearing houses located in the ADGM.

Regulatory capital

Rules for financial services and insurance firms are contained in one set of rules which is based on the

Basel III framework. Branches of non-ADGM financial institutions are exempt from much of the prudential requirements.

Islamic finance

The Islamic finance regime prescribes detailed requirements and guidance in relation to Islamic Financial Institutions (i.e. firms carrying out their entire business in compliance with Shari'a) and those firms operating an Islamic window.

Contraventions

Anyone who acts in contravention of the Draft Regulations or is "knowingly concerned" in such a contravention becomes liable to various disciplinary measures, including public censure, financial penalties, prohibition orders and enforceable undertakings. Anyone who suffers loss from such a contravention may bring a claim in damages.

Decision making and appeals

Any decision made by the ADGM is appealable to the Regulatory Committee. Any decision of the Regulatory Committee is open to appeal to the Appeals Panel, which is made up of independent persons.

We are actively engaging with our clients in the banking, financial services and investment management sectors about the opportunities presented by the Global Market and gathering feedback on the Draft Regulations.

If you would like to discuss further please contact Tim Plews or Rupert Harper.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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