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Abu Dhabi Global Market: Financial Services Regulations and Rules

This note provides a brief overview of Abu Dhabi Global Market's new financial regulatory framework. This framework was established in 2015, following the publication of the ADGM's Financial Services and Markets Regulations 2015 and the making of a series of rules.

Introduction

The financial services regulatory framework for the Abu Dhabi Global Market ("ADGM") aims to reflect current international best practice by incorporating the best aspects of regulatory regimes in Europe, the US, Singapore, Australia and Hong Kong. The framework is derived primarily from the UK's financial regulatory framework, with influences from other jurisdictions, and has been tailored to local needs. ADGM will build on Abu Dhabi's inherent strengths in asset management, wealth management, private banking and family offices to establish an internationally-aligned financial centre that is based on Common law practice, providing businesses with the means to grow and succeed.¹

Regulatory Framework

The Financial Services and Markets Regulations 2015 ("FSMR")² comprises a piece of legislation adopted by the Board of ADGM. It is supplemented by various rulebooks as well as indicative, non-binding guidance issued by the ADGM Financial Services Regulatory Authority (the "Regulator" or "FSRA").

Regulatory Supervision

FSMR contains two general restrictions which broadly set out the range of financial services that would trigger a licensing requirement for activities undertaken within and from the ADGM.³ The first prohibits persons from carrying on a regulated activity⁴ without either authorisation or the benefit of an exemption: the "General Prohibition." The second requires that all financial promotions⁵ either be made by a firm that is licensed by the Regulator (a

¹ You may like to see our client notes on other aspects of the ADGM framework: "Abu Dhabi Global Market: The Application of English Common Law," available [here](#); "Abu Dhabi Global Market: Establishing a Company," available [here](#); and "Abu Dhabi Global Market: Obtaining a Commercial Licence," available [here](#).

² Available [here](#).

³ Regulated activities are activities carried on by way of business which relate to a "specified investment." See Table A for a list of regulated activities and "specified investments."

⁴ As specified in Schedule 1 of FSMR, available [here](#).

⁵ As defined in Schedule 2 of FSMR, available [here](#).

“Regulated Firm”) or have their content approved by a Regulated Firm:⁶ the “Financial Promotion Restriction.” Unlike the UK regime, there is no exemption for making financial promotions to high net worth individuals. Regulated Firms are also prohibited from accepting deposits from the UAE markets and may not undertake foreign exchange transactions involving UAE dirhams.⁷ The Regulator may take disciplinary action, such as imposing a public censure or financial penalty, against any corporate or individual which breaches either restriction. There may also be further commercial consequences following breach of either restriction, such as agreements being rendered unenforceable.

There are two levels of regulatory supervision within the ADGM: one for Regulated Firms (known in FSMR and the Rules as “Authorised Persons” although referred to in this note as Regulated Firms) and one for individuals employed by those firms. The first level comprises the assessment and authorisation by the Regulator of firms seeking to perform regulated activities in ADGM and the ongoing supervision of such firms. Once a firm is authorised, it will have permission to carry out its relevant regulated activities. The second regime relates to the individuals working within an authorised firm and comprises two further layers. Individuals who perform certain “Controlled Functions” (i.e. chief executive officer and all directors) in the businesses of Regulated Firms must be assessed and approved by the Regulator. Once approved, such individuals are known as Approved Persons. However, rather than having the Regulator police and approve other senior managerial appointments, the Regulated Firms themselves are responsible for assessing and approving customer-facing and senior managerial staff who perform “Recognised Functions” (e.g. senior managers, customer-facing staff, the compliance officers, money laundering reporting officers). These individuals are known as Recognised Persons. This approach places the responsibility on firms to initially assess the individuals that they employ in these roles and to continually assess their competence, fitness and propriety. It will also reduce the Regulator’s administrative burden in comparison to some other regimes.

⁶ A Regulated Firm is a legal person, other than a Recognised Clearing House or Recognised Investment Exchange, who is authorised under FSMR to carry out certain regulated activities in or from the ADGM.

⁷ Chapters 4.2-3 of COBS, available [here](#).

Table A: Regulated activities and specified investments

Regulated activities	Specified investments
■ Accepting deposits ■ Administering or providing information in relation to a specified benchmark ■ Advising on investments or credit ■ Agreeing to carrying on regulated activities ■ Arranging deals or dealing in investment as principal ■ Dealing in investments as agent ■ Effecting contracts of insurance ■ Insurance management ■ Money services, managing assets or collective investment funds ■ Operating a Multilateral Trading Facility, Organised Trading Facility, Credit Rating Agency or Representative office ■ Providing custody ■ Providing or arranging credit ■ Shari-a compliant regulated activities	● Certificates representing certain financial instruments ● Contracts of insurance ● Credit agreements ● Deposits ● Government securities ● Instruments giving entitlements to investments ● Options, futures and CFDs ● Rights to or interests in investments ● Shares ● Shari-a compliant specified investments ● Sukuk ● Units in a collective investment fund

Investigations and Enforcement

The Regulator's supervisory oversight is supplemented with suitably comprehensive information gathering and investigatory powers which are balanced by appropriate procedural protections. The Regulator has a range of enforcement and remedial powers, which it may choose to exercise if any of the regulatory requirements are breached.⁸ Although the Regulator may take enforcement action at various stages in the regulatory process, the general structure of any formal enforcement action is to provide written notices: a warning notice⁹ followed by a decision notice¹⁰, and where necessary, a final notice.¹¹ Administrative measures the Regulator may take if a breach has occurred include issuing a private warning, public censure, imposing financial penalties, suspension or disqualification of auditors, prohibiting individuals from undertaking certain types of activities and enforceable undertakings. Various remedies are also available to the Regulator by way of civil action in the courts (as

⁸ Parts 19-21 of FSMR, available [here](#).

⁹ This is provided when the Regulator intends to take action that may be adverse to applicants for Regulated Firm status or regulated firms. The affected person has a right to respond, but this right must be exercised within a specified period.

¹⁰ This is provided when the Regulator decides to take action that may be adverse to applicants for Regulated Firm status or Regulated Firms. Following receipt of a decision notice, the affected person has the right to refer the matter to the Court. Further decision notices (in relation to different actions to be taken in respect of the same matter) may be provided.

¹¹ This is given following a decision notice by the Regulator on taking action to which the decision notice relates.

applicable) for contravention of the FSMR, including injunctions, restitution, compulsory winding up and actions for damages.

To ensure due process and procedural fairness, two independent decision-making bodies have been created: the Regulatory Committee and the Appeals Panel. Any decision made by the Regulator under FSMR may be referred to the Regulatory Committee for a full merits review. The Appeals Panel can then review any decision of the Regulatory Committee. A decision of the Appeals Panel may then be only judicially reviewed by the courts on a point of law.

Specific Rules

General Rules Applicable to All Authorised Firms

The General Rulebook (“GEN”)¹² applies to all persons to whom FSMR applies - Regulated Firms, Approved Persons, Recognised Persons and Recognised Bodies (i.e. recognised clearing houses and recognised investment exchanges with the exception of recognised clearing houses and investment exchanges which are established outside of ADGM).

GEN expands on the breadth of the Regulator’s monitoring and supervisory powers, covering applications for amendment of permission, requests for information by the Regulator and the approval/notification requirements for change of control over Regulated Firms.¹³

General regulatory requirements (“Principles”) that Regulated Firms, Approved Persons and Recognised Persons must adhere to have been introduced.¹⁴ These track similar standards of conduct prescribed in the UK’s “general principles.” Designed to apply in conjunction with the Rules, the Principles are legally binding and must be adhered to at all times by Regulated Firms, Approved Persons and Recognised Persons (although the latter two categories are exempt from the application of certain Principles). Breach of the Principles may, for instance, result in administrative disciplinary action, including a suspension or withdrawal of Regulated Firm, Approved Person or Recognised Person status.

Rules on systems and controls are also prescribed. In particular, responsibility for internal management, organisation and compliance must be entrusted to the senior managers of a Regulated Firm. Approved Persons must ensure appropriate allocation of management responsibilities and are required to ensure that effective systems and controls over the affairs of the Regulated Firm are implemented. Guidance on complaints-handling, including acknowledgement and resolution of complaints, is also provided.¹⁵ The degree of protection afforded to clients of Regulated Firms varies depending on their classification (rules on client classification are contained in the Conduct of Business rulebook, as discussed below). For example, a written complaints handling procedure for retail clients is prescribed.

¹² Available [here](#).

¹³ Chapter 8 of GEN, available [here](#).

¹⁴ Chapter 2 of GEN, available [here](#).

¹⁵ Chapter 7 of GEN, available [here](#).

Finally, there are rules and non-binding guidance on audits and accounts (including standards for auditors, standardised financial reporting, appointment and termination of auditors and filing of accounts and regulatory returns),¹⁶ operation of a representative office¹⁷ as well as general interpretation, emergency procedures, disclosure requirements, complaints procedures and the maintenance of public records.¹⁸

Conduct of Business

Regulated Firms operating in the ADGM are required to adhere to additional rules of conduct which are contained in the Conduct of Business Rules (“COBS”).¹⁹ Building from the Principles, this Rulebook describes with greater precision the international standards of business and client treatment, taking into account obligations of regulated entities in sophisticated jurisdictions.

A three-tier client categorisation structure comprising “retail clients,” “professional clients” and “market counterparties” has been adopted, which provides different levels of protection to different categories of clients. Within this, there are three sub-categories of professional clients:

- “deemed” professional clients - those who have been classified as professional by virtue of the fact that they meet certain financial thresholds to qualify as a “Large Undertaking;” clients who are a Recognised Body; clients who are a Regulated Firm, etc. The full list of entities who are “Deemed” Professional Clients is set out in COBS;
- “service-based” professional clients - those who have been classified as professional by virtue of the fact that they provide certain services; and
- “assessed” professional clients - clients who have been classified as professional based on their net assets.

Detailed guidance on how and when Regulated Firms should make these classifications is set out in the COBS Rulebook. Retail clients are afforded higher levels of protection as detailed in Table B below. For example, a Regulated Firm will be held to a higher standard in assessing whether the marketing material it produces is appropriate (i.e. clear, fair and not misleading) where such material is aimed at retail clients, whereas communications aimed at professional clients and market counterparties may be presented differently and may include less information. Similarly, although suitability assessments must be undertaken for retail clients, they do not need to be undertaken for market counterparties.²⁰

¹⁶ Chapter 6 of GEN, available [here](#).

¹⁷ Chapter 9 of GEN, available [here](#).

¹⁸ Chapter 4 of GEN, available [here](#).

¹⁹ Available [here](#).

²⁰ Chapter 3.4.2 of COBS, available [here](#).

Table B: Protections for different categories of clients

Rules	Level of Protection		
	Retail clients	Professional Clients	Market Counterparties
Marketing material	Must be fair, clear and not misleading.		
Suitability assessment	Must undertake appropriate assessment of needs, objectives, finances, risk appetite, knowledge etc.	Assessment may be limited or dispensed with depending on agreement with client.	
Best execution	Must provide best execution under prevailing market conditions and deal at price/conditions no less advantageous to client.	Must provide best execution under prevailing market conditions and deal at price/conditions no less advantageous to client.*	Not applicable.
Aggregation and allocation of orders	Aggregation only allowed in line with the firm's written policy if there is: (a) no disadvantage to any clients; and (b) disclosure in writing to clients.	Aggregation only allowed in line with the firm's written policy if there is: (a) no disadvantage to any clients; and (b) disclosure in writing to clients.*	Not applicable.
Record keeping	Must make and retain recordings of voice and electronic communications in relation to transactions from the Regulated Firm's equipment.		
Investment management and contingent liability investments	Periodic statements must be provided at suitable intervals in relation.	Periodic statements must be provided at suitable intervals in relation.*	Not applicable.
Confirmation notes for investment transactions for clients	Must be sent within two business days from when the transaction is executed.	Must be sent within two business days from when the transaction is executed.*	Not applicable.
Miscellaneous dealing rules	Regulated Firms are required to comply with additional dealing rules relating to churning, timely execution and allocation, averaging of prices, direct electronic access etc.	Regulated Firms are required to comply with additional dealing rules relating to churning, timely execution and allocation, averaging of prices, direct electronic access etc.*	Not applicable.

* Unless the transaction is in relation to managing a Fund of which it is the Fund Manager, then this is not applicable.

Additionally, a separate regime is applicable to credit rating agencies.²¹ This separate regime has been drafted to ensure that the regulation of such agencies in the ADGM is in line with relevant International Organization of Securities Commissions ("IOSCO") standards.²²

²¹ Operating a credit rating agency is a regulated activity (per art 65 of Schedule 1 of FSMR, available [here](#)) and credit rating agencies are therefore within the Regulated Firm category.

Prudential Requirements

New rules on regulatory capital have been developed. The Prudential - Investment, Insurance Intermediation and Banking Rules ("PRU")²³ are closely based on the Basel Committee on Banking Supervision's ("Basel Committee") prudential standards published in December 2010 and since revised (known as the "Basel III framework"). ADGM's bank capital and related rules are therefore intended to meet global best practice standards.

Each Regulated Firm will be allocated to one of five "Categories," primarily on the basis of the activities for which they are authorised.²⁴ Banking activities fall into Category 1, attracting stricter capital requirements than other activities. In contrast, certain fund management entities are placed in Category 5,²⁵ where, as a general rule, lower capital requirements apply. A firm must identify the category applicable to it in order to calculate its capital requirements.

²² Code of Conduct Fundamentals for Credit Rating Agencies, available [here](#).

²³ Available [here](#).

²⁴ As set out diagrammatically below at Table C, as well as at Appendix 1 of PRU, available [here](#).

²⁵ Regulated Firms are considered to be in Category 1 if they are authorised to accept deposits or manage profit sharing investment accounts. Conversely, Category 5 Regulated Firms are Islamic Financial Institutions which manage profit sharing investment accounts. Further guidance on these categories can be found at PRU 1.3, available [here](#).

Table C: Prudential categories

Category 1	Category 2	Category 3A	Category 3B	Category 3C	Category 4	Category 5
Accepting Deposits	Providing Credit	Dealing in Investments as Principal (only as a Matched Principal)	Providing Custody (only if for a Fund)	Managing a Collective Investment Fund	Arranging Credit	An Islamic Financial Institution Managing a Profit Sharing Investment Account which is a PSLAu
Managing a Profit Sharing Investment Account which is a PSLAu	Dealing in Investments as Principal (not as a Matched Principal)	Dealing in Investments as Agent	Acting as the Trustee of an Investment Trust	Managing Assets	Arranging Deals in Investments	
				Managing a Profit Sharing Investment Account which is a PSLAr	Advising on Investments or Credit	
				Providing Custody (other than for a Fund)	Arranging Custody	
				Providing Trust Services as a trustee of an express trust	Insurance Intermediation	
				Providing Money Services	Acting as the Administrator of a Collective Investment Fund	
					Administering a Specified Benchmark	
					Operating a Credit Rating Agency	
					Creating a Multilateral Trading Facility or Organised Trading Facility	
					Operating a Representative Office	
					Providing information in Relation to a Specified Benchmark	
					Providing Trust Services other than as a trustee of an express trust	

Table D: Minimal Capital Requirements

Prudential Category	Capital Requirements	Base Capital Requirement	Risk Capital Requirement	Expenditure Based Capital Minimum	Capital Conservation Buffer²⁶
Category 1	Higher of applicable Base Capital Requirement (PRU 3.6) or Risk Capital Requirement (PRU 3.8).	US \$10 million	√	-	√
Category 2	Higher of applicable Base Capital Requirement (PRU 3.6), Risk Capital Requirement (PRU 3.8) or Expenditure Based Capital Minimum (PRU 3.7)	US \$2 million	√	√	√
Category 3A	Higher of applicable Base Capital Requirement (PRU 3.6), Risk Capital Requirement (PRU 3.8) or Expenditure Based Capital Minimum (PRU 3.7)	US \$500,000	√	√	√
Category 3B	Higher of applicable Base Capital Requirement (PRU 3.6) or Expenditure Based Capital Minimum (PRU 3.7). Must also maintain liquid assets which exceed its Expenditure Based Capital Minimum.	US \$4 million	-	√	-
Category 3C	Higher of applicable Base Capital Requirement (PRU 3.6) or Expenditure Based Capital Minimum (PRU 3.7). Must also maintain liquid assets which exceed its Expenditure Based Capital Minimum.	US \$250,000	-	√	-
Category 4	Higher of applicable Base Capital Requirement (PRU 3.6) or Expenditure Based Capital Minimum (PRU 3.7). Must also maintain liquid	US \$10,000	-	√	-

²⁶ The capital conservation buffer requirement is equivalent to 25% of a Regulated Firm's risk capital requirements in CET1 form. Risk capital requirement is the aggregate measures of the components of a firm's capital requirements relating to credit risk, market risk, operational risk and certain commercial risks.

Prudential Category	Capital Requirements	Base Capital Requirement	Risk Capital Requirement	Expenditure Based Capital Minimum	Capital Conservation Buffer ²⁶
	assets which exceed its Expenditure Based Capital Minimum.				
Category 5	Higher of applicable Base Capital Requirement (PRU 3.6) or Risk Capital Requirement (PRU 3.8).	US \$10 million	√	-	√

The ADGM prudential rules do not seek to “front-run” any of the Basel Committee standards by implementing rules in ADGM ahead of any relevant timetables set out in the Basel III framework. The general approach is to follow the Basel III implementation timeline. Accordingly, certain requirements, such as the Liquidity Coverage Ratio (“LCR”), are provided for according to the required level of phase-in by 1 January 2015, as set out in Basel III. However, some other items, such as a binding leverage ratio, have not yet been included at this stage in the rules as these require implementation by a later date (in this instance, 1 January 2018).

Market Infrastructure

The rules for financial market infrastructures is modelled on IOSCO, European and English regulatory standards, enabling ADGM to potentially be “plugged into” cross-border recognition regimes. The regulatory basis for the operation of financial market infrastructure is set out here. In particular, Part 13 of FSMR prescribes the requirements that investment exchanges and clearing houses must fulfil to become “Recognised Bodies” and therefore exempt from the General Prohibition. Equivalent risk mitigation techniques applicable to OTC derivatives in the EU have been imported into the ADGM, including mandatory clearing of OTC derivatives that have been declared subject to the clearing obligation. Requirements applicable to non-cleared contracts are also based on the EU regime, although these requirements are yet to be activated.

Settlement finality provisions safeguard the integrity and finality of trades executed/cleared through market infrastructure by insulating contracts between market participants and exchanges or clearing houses from the impact of insolvency of other clearing members or of the exchange or clearing house itself. Primacy is given to the Recognised Body’s own default management rules and procedures, over any contrary insolvency or property laws, to ensure that market infrastructure can operate effectively to protect counterparties in times of economic turbulence.

FSMR is supplemented by the Market Infrastructure Rules (“MIR”)²⁷ which are applicable to exchanges and clearing houses incorporated or operating in the ADGM. These rules prescribe special conduct and organisational rules for recognised investment exchanges or recognised clearing houses. Guidance is provided for investment exchanges and clearing houses incorporated outside of the ADGM wishing to obtain recognition so as to gain access to users inside the ADGM. A recognition regime based on the European model of recognition has been crafted.

²⁷ Available [here](#).

Recognised investment exchanges and recognised clearing houses will be subject to notification obligations, supervisory powers of the Regulator, capital requirements and in the event of non-compliance, disciplinary measures.

Regulated Firms that operate a MTF or OTF must also comply with certain rules in the Market Rules module (“MKT”)²⁸ and are subject to additional requirements in relation to that part of their business.

Funds

FSMR establishes the framework for the regulation of collective investment funds, including investment trusts, and prescribes the rules that such entities must comply with, including creation, registration and notification requirements.²⁹

To support this regulatory framework, the Fund Rules³⁰ contain clear and concise guidelines on the management and marketing of funds which aim to provide a balance between effective and flexible regulatory oversight on the one hand and certainty and investor protection on the other. Consideration was given to approaches taken in multiple other jurisdictions, including the EU Alternative Investment Fund Managers Directive.

For example, in contrast to the approach taken in some other jurisdictions, the Board of ADGM decided against the micro-categorisation of domestic ADGM funds (such as private equity funds, infrastructure funds etc.). It was considered that such micro-categorisation and application of different rules to different categories could lead to uncertainty over which category might apply to any given fund and also result in unnecessary complication of the funds regulatory framework.

To ensure that the level of fund regulation in the ADGM was sufficient for it to be regarded as robust, whilst not unnecessarily burdening fund managers, certain additional requirements similar in spirit to those recently introduced by European legislation have been included, but some of the more bureaucratic, burdensome adjuncts have been left out. For example, the following requirements are included in the Fund Rules:

- (a) notification requirements: a fund manager must notify the Regulator when delegating a “critical management” function, such as portfolio and/or risk management;
- (b) disclosure requirements: a fund manager must include certain minimum disclosure items in the prospectus of a foreign fund being marketed to investors in the ADGM; and
- (c) functional and hierarchical separation, and independence, between the functions of (i) risk management; and (ii) portfolio management.

A requirement to appoint an “eligible custodian” to perform custody services is also included to reflect the increased market practice of appointing a custodian following the Madoff scandal.

²⁸ Available [here](#).

²⁹ Part 11 of FSMR, available [here](#).

³⁰ Available [here](#).

In contrast to some jurisdictions which have a separate and/or additional set of winding up procedures applicable to funds, the Fund Rules provide for only minimal circumstances in which an ADGM fund can be wound up separately from the generally applicable insolvency legislation. This ensures that the ADGM funds framework is simple and efficient.

Islamic Finance Rules

Islamic products are included in the list of financial instruments that are subject to regulation under the FSMRs. The Islamic Finance Rules³¹ contemplate two categories of Shari'a-compliant financial institution: an Islamic Financial Institution (being a financial institution that undertakes all of its activities in compliance with Shari'a) and an Islamic Window (being a segregated business unit of a conventional financial institution with only that segregated business unit undertaking Shari'a-compliant activities). This approach reflects the way in which the Islamic banking world operates and is consistent with the approach taken in other jurisdictions.

The Islamic Finance Rules have been prepared as a supplement to the other rulebooks of the ADGM. What this means in practice is that an Islamic Financial Institution or Islamic Window is required to comply with all of the regulations that would apply to a conventional financial institution and, in addition, is required to comply with the Islamic Finance Rules. This level of overlap is necessary to ensure that financial institutions are subject to the same standards of regulation whether or not they are Shari'a-compliant. This harmonisation of regulatory approach is also intended to encourage the growth of Islamic banking by ensuring that a party is not adversely impacted by investing and banking in accordance with their conscience.

The additional regulatory compliance obligations set out in the Islamic Finance Rules address the key issues for Islamic banking: Shari'a supervision and accounting and audit. Shari'a is not a codified body of law and consequently is open to interpretation by the different schools of Islamic jurisprudence. The Islamic Finance Rules allow Islamic Financial Institutions and Islamic Windows to adhere to whichever school of thought that institution elects, prescribing only the need for an Islamic Financial Institution or an Islamic Window to maintain an appropriately qualified Shari'a board. Questions as to Shari'a compliance will be the responsibility of that Shari'a board.

The Islamic Finance Rules allow for ADGM to establish a central Shari'a board, should it wish to do so in order to harmonise interpretations. There is currently no intention to establish such a central board but flexibility has been included to allow for this if there is demand in the market for it. The concept of a central Shari'a board reflects the practice in Malaysia as opposed to the general practice in the Middle East where this concept is not currently used.

In terms of the accounting treatment for Islamic Financial Institutions and Islamic Windows, the standards of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) should be followed for the most part and this requirement is reflected in the Islamic Finance Rules. The Islamic Finance Rules also prescribed certain regulatory capital requirements that should be adhered to for Islamic Financial Institutions and Islamic Windows. The main point of difference for the Islamic Finance Rules versus their conventional equivalent concerns

³¹ Available [here](#).

Profit Sharing Investment Accounts (PSIAs). There is no conventional equivalent of a PSIA which gives rise to the need for a specific set of rules to govern how they operate. A PSIA is an investment account that a depositor holds with an Islamic Financial Institution or an Islamic Window which provides for the sharing of profits from that account but which, in contrast to a deposit, is not capital protected i.e. an investor may lose the full amount that it invests. However, as a result of market forces, it is common for banks to nevertheless over-pay profit on PSIAs so as to replicate the returns that would have been payable on a commercial deposit including the return of principal in full (notwithstanding any losses that may have been incurred). This gives rise to a specific category of regulated activity which is governed by a regime that is found only in the Islamic Finance Rules.

Islamic Collective Investment Funds are also subject to regulation under the Islamic Finance Rules. Similar to the approach taken to Islamic Financial Institutions and Islamic Windows, the Islamic Finance Rules augment the Collective Investment Rules by prescribing certain additional conditions with which an Islamic fund must comply – mostly relating to Shari’a supervision. Again, the approach has been to ensure that all collective investment funds comply with the same level of regulation in order to be classed as such, with Islamic funds being subject to certain additional rules. The Islamic Finance Rules similarly prescribe additional requirements for securities to be marketed as Islamic securities and for insurance to be marketed as Takaful.

Insurance Businesses

All insurers (i.e. Regulated Firms authorised to carry on the regulated activity of conducting insurance business) are required to comply with the “Prudential – Insurance Businesses” module (“PIN”)³² for insurance business.

The rules set out prudential requirements for insurers in key areas, including capital adequacy, risk control, long-term insurance business, measurement of assets and liabilities, reporting and actuarial activity. There is also an additional module, the Captive Insurance Business Rules (“CIB”),³³ which contains additional rules regulating captive insurance business in ADGM.

Securities

FSMR prescribes an extensive set of rules on the listing of securities in ADGM.³⁴ In particular, the Regulator has responsibility for maintaining the official list, the admission of securities to listing, the discontinuance and suspension of listings and the approval of prospectuses and sponsors.³⁵ Listed entities are subject to disclosure requirements and any prospectuses which contain misleading statements or omissions may lead to disciplinary measures.³⁶ Provision has also been made for business transfer schemes and the corresponding powers and

³² Available [here](#).

³³ Available [here](#).

³⁴ Parts 6-7, 10-12 and 15 of FSMR, available [here](#).

³⁵ Part 6 of FSMR, available [here](#).

³⁶ Part 6 of FSMR, available [here](#).

duties of the ADGM court in approving such a scheme.³⁷ Finally, the rules on listing are complemented by rules on suspension and removal of financial instruments from trading.³⁸

More specific rules on securities listing are set out in MKT,³⁹ which is substantively based on current EU Prospective Directive requirements. MKT covers offers of securities to the public, the appointment and obligations of sponsors, market abuse, market disclosure and governance. These rules should be broadly familiar to businesses with experience of dealing in the London and other European securities markets. However, the rules diverge from EU listing rules in certain aspects. For example, the minimum free float requirement states that a certain number of shares must be held by public hands at the time of admission of securities in ADGM. The precise free float amount is calibrated according to the size of the issuer's market capitalisation at the time:

- Issuers with a market capitalisation of under \$500 million: at least 20% of the shares in relation to which the application for admission is made must be held in public hands;
- Issuers with market capitalisations between \$500 million or more, and under \$1 billion: 15% of the shares for which the application for admission is made must be held in public hands; and
- Issuers with a market capitalisation of \$1 billion or more: at least 12% of the shares in relation to which the application for admission is made must be held in public hands.

This approach is influenced by the methodology used in the Singaporean listing rules, avoiding the EU one-size-fits-all 25% minimum float requirement, in favour of a more tailored calibration which takes into account the market capitalisation of the issuer as the relevant benchmark for the minimum float requirement. It is hoped that a relatively low float requirement for smaller issuances may attract regional companies to list their securities in ADGM.

Market Abuse

FSMR prescribes the general framework for market abuse protections in the ADGM.⁴⁰ In particular, Part 8 of FSMR provides protections equivalent to the present EU regime for market abuse. Its drafting is a tailored amalgamation of Part VII of the UK Financial Services Act 2012, updated to reflect the EU Market Abuse Directive. The approach has been to avoid "front-running" any forthcoming European legislation (including the Market Abuse Regulation, currently due to come into force in mid-2016) to ensure consistency with current international standards. Part 9 of FSMR similarly contains more general rules on misleading statements and impressions and related defences.

The Rules of Market Conduct ("RMC")⁴¹ provide more detailed guidance on the market abuse regime. The RMC do not have legally binding force but are intended to assist persons in determining whether conduct amounts to market

³⁷ Part 7 of FSMR, available [here](#).

³⁸ Part 15 of FSMR, available [here](#).

³⁹ Available [here](#).

⁴⁰ Parts 8-9 of FSMR, available [here](#).

⁴¹ Available [here](#).

abuse in ADGM and to provide guidance to persons subject to the market abuse regime in FSMR on whether certain market practices, in the Regulator's view, would ordinarily amount to market abuse. The RMC are substantively based on the UK's Code of Market Conduct (the "UK Code"). This approach captures the benefit of the extensive UK jurisprudence in the complex area of market abuse.

Anti-money Laundering and Sanctions

The Anti-Money Laundering and Sanctions Rules and Guidance rulebook ("AML")⁴² is intended to provide a single reference point for all persons and entities that are supervised by the Regulator for the purposes of their anti-money laundering and sanctions compliance. Persons subject to Anti-Money Laundering and Sanctions Rules and Guidance include Regulated Firms, Recognised Bodies and Representative Offices. However, unlike the rest of the financial regulatory framework, the AML rules also apply to real estate developers or agencies, law firms, notary firms, accounting firms and dealers in precious metals or stones.

The AML Rulebook is drafted to reflect key international standards in this area, most importantly the Financial Action Task Force ("FATF") Recommendations of February 2012,⁴³ the FATF Guidance on Transparency and Beneficial Ownership of November 2014⁴⁴ and the Basel Committee standards on the "Sound Management of Risks Related to Money Laundering and Financing of Terrorism" of January 2014.⁴⁵ The EU Money Laundering Directives, specifically the Fourth Money Laundering Directive 2015, have also been taken into account in drafting the rules to ensure that best practice levels of anti-money laundering compliance are present in ADGM. "Know-your-customer" rules, which require scrutiny of ultimate "beneficial owners," have been based on FATF standards. For example, the rules on dealing with politically exposed persons (so-called "PEPs") broadly mirror EU requirements.

The AML rulebook explicitly states that persons subject to AML must adhere to sanctions imposed by the United Nations Security Council ("UNSC"). Persons subject to AML must also establish and maintain effective systems and controls to make appropriate use of UNSC Sanctions and resolutions.⁴⁶ The rulebook also references FATF guidance on specific UNSC Sanctions and resolutions regarding the countering of the proliferation of weapons of mass destruction. In relation to unilateral Sanctions imposed by specific jurisdictions (e.g. the European Union, HM Treasury and the United States Office of Foreign Assets Control), the Regulator expects persons subject to AML to take positive steps to ensure compliance where required or appropriate.

⁴² Available [here](#).

⁴³ FATF Recommendations of February 2012 available [here](#).

⁴⁴ FATF Guidance on Transparency and Beneficial Ownership of November 2014, available [here](#).

⁴⁵ Basel Committee standards on the "Sound Management of Risks Related to Money Laundering and Financing of Terrorism" of January 2014, available [here](#).

⁴⁶ Chapter 11 of AML, available [here](#).

Fees

A Fees Rulebook⁴⁷ has been drafted to ensure transparency of regulatory processes. In addition to fees for applications, there is an annual fee to be paid in full to the Regulator.

Forms

Further to the rules, forms have been developed for applications for Regulated Firm status, Approved Person status, change of control approval, waivers or modifications, registration of collective investment funds and other supplementary forms.⁴⁸

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.

⁴⁷ Available [here](#).

⁴⁸ Available [here](#) in a non-editable and reference only format. To receive editable versions, please contact the FSRA at authorisation@adgm.com or +971 2 333 8548.

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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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