

Client Alert

Global Islamic Finance & Investment Practice Group

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Abu Dhabi Global Market

Consultation Paper No. 1 of 2015: Application of English Law Regulations

On 6 January 2015, the Abu Dhabi Global Market (“ADGM”), the newly created free-zone and international financial centre located on Al Maryah Islands, Abu Dhabi, issued six consultation papers proposing new legislation for ADGM. This Client Alert provides an analysis of the proposals set out in Consultation Paper No. 1 of 2015 relating to the Application of English Law Regulations (the “Regulations”).

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Application of English common law

Under the Regulations, English common law shall constitute the underlying legal framework of the ADGM. This will mean that matters such as contracts, tort, equitable remedies, unjust enrichment, damages, conflict of laws, security and personal property will be governed by English common law. This will be supplemented by various English statutes which adjust or replace the common law in England & Wales.

Specific laws will also be enacted in the ADGM to deal with different areas such as companies, employment and insolvency. As one would expect, these, together with any Abu Dhabi law which is made specifically applicable to the ADGM, will take priority over any inconsistent principle of English common law. The application of English common law will also be subject to such modification as may be required by the circumstances of the ADGM—a sensible caveat.

The Courts

The Regulations give some indication as to how the ADGM Courts are likely to operate. In particular, decisions of the UK Supreme Court will be binding on the ADGM Courts but parties will not be able to appeal judgments of the ADGM Courts to the UK Supreme Court.

One may expect that given that the ADGM Courts will be applying English common law, at least some of the Judges are likely to be senior Judges or practitioners from England & Wales or other common law jurisdictions.

Commentary

By embracing an English common law framework, it appears that ADGM is endeavouring to secure the confidence of the international business community, as the Dubai International Financial Centre (“**DIFC**”) has done previously. It is however interesting to note that rather than adopt the model of the DIFC, which has codified certain principles of common law, the ADGM has looked further East to jurisdictions such as Hong Kong and Singapore, where English common law is applied directly. This is likely to mean that the law in the ADGM will develop in accordance with English law. However, the carve-out enabling modification in accordance with local circumstances, will likely play an important role in ensuring that principles of English law are not applied where they would be incongruous or inappropriate.



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