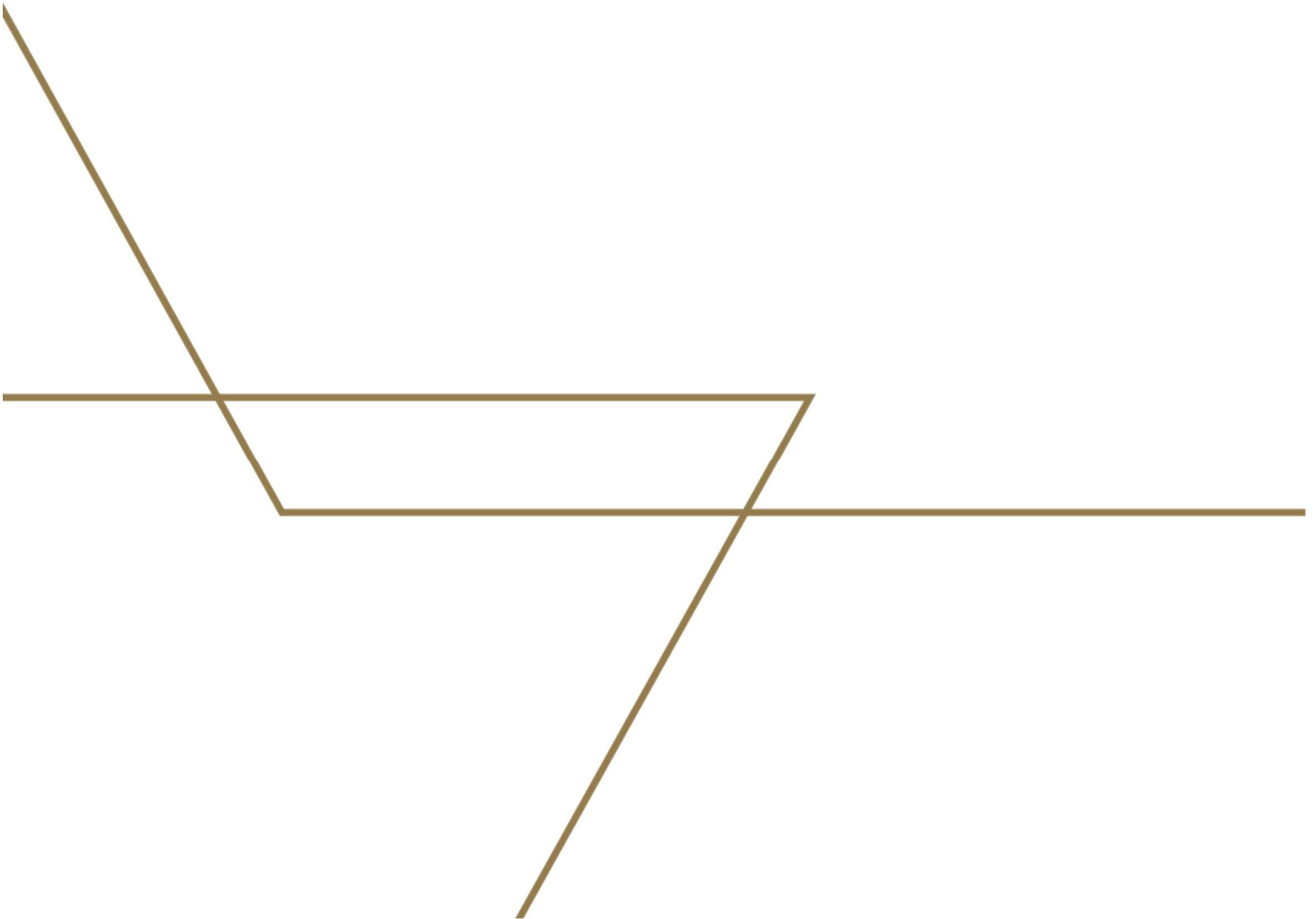




ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

*CONSULTATION PAPER
NO. 3 OF 2024*

**Proposal concerning
Registration of certain Trusts
Particulars**



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Introduction

Why are we issuing this paper?

The Abu Dhabi Global Market (“**ADGM**”) Registration Authority (“**RA**”) has issued this Consultation Paper to invite public feedback and comments on proposed amendments to the Beneficial Ownership and Control Regulations 2022 (“**BOCR 2022**”) concerning the proposed requirement of registering certain particulars of express trusts with the Registrar.

In addition, we are seeking feedback on a proposed amendment to the Limited Liability Partnership Regulations that will require the partnership to appoint at least one natural member.

The proposed amendments are set out in Annex A and Annex B to this Consultation Paper.

Who should read this paper?

The proposals in this Consultation Paper would be of interest to all individuals and organisations who are operating or proposing to operate an express trust within the ADGM, and their professional advisors.

How to provide comments

All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments.

The ADGM RA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making any comments. Comments supported by reasoning and evidence will be given more weight.

What happens next?

The deadline for providing comments on this proposal is **21 April 2024**.

After receiving your comments, we shall consider whether any modifications are required to the proposals and the ADGM Board and the RA will then proceed to enact the proposals in their final form.

You should not act on these proposals until these proposals are finalised and the final regulations, rules and guidance are issued by the ADGM Board and the RA. We shall issue a notice on our website when this happens.

Comments to be addressed to:

Consultation Paper No. 3 of 2024

Registration Authority
Abu Dhabi Global Market Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com

Scope and Approach to the Proposed Amendments

1. In line with international best practice, and ADGM's commitment to fighting and preventing money laundering, terrorist financing, and proliferation financing ("**AML**"), the ADGM RA proposes the introduction of a register of certain particulars of express trusts (the "**Trust Regime**").
2. This Consultation Paper aims to explain proposed amendments to the BOCR 2022 to introduce the proposed Trust Regime and seek comments on both the scope of the Trust Regime and the proposed amendments.
3. The draft amendments to the BOCR 2022 can be found at Annex A to this Consultation Paper.
4. For the avoidance of any doubt, it is noted that ADGM trusts are not separate legal entities, and the proposed new Trust Regime is not intended to create any obligation to register the trust as an 'entity', rather the new Trust Regime will merely require certain details of the trust to be provided to the Registrar.
5. In addition, this Consultation Paper invites feedback on a miscellaneous amendment to the Limited Liability Partnership Regulations, which can be found in Annex B hereto.

Introduction of the Trust Regime

Current Position

6. The existing regime of beneficial ownership requirements for ADGM Persons¹ under BOCR 2022 conforms with international standards designed to fight against money laundering as set out by the Financial Action Task Force ("**FATF**"). However, the international standards set by FATF also make recommendations for beneficial ownership and control registers for legal arrangements, including trusts. The ADGM RA currently does not maintain such register.
7. The ADGM's current beneficial ownership and control regime under the BOCR 2022 requires ADGM Persons (i) to maintain an internal register of the particulars of the beneficial owners and controllers of the ADGM Persons, and (ii) to provide those particulars to the Registrar for the Registrar to maintain in their own register regarding beneficial ownership. The ADGM Persons and the Registrar have obligations of security and confidentiality with regards to the beneficial ownership particulars.

¹ Currently drafted to include: (a) a company incorporated under the Companies Regulations; (b) an LLP established under the LLP Regulations; (c) a limited partnership which has elected to possess legal personality which has been registered under the Limited Partnership Act 1907 in the ADGM; (d) a foundation established under the Foundations Regulations or the DLT Foundations Regulations; or (e) a person, which acts as a trustee of an express trust.

8. There are no similar requirements for trusts.

Proposed Changes

9. The ADGM RA proposes to amend the BOCR 2022 by enacting the Beneficial Ownership and Control Regulations (Amendment No. 2) 2024 to introduce the Trust Regime.
10. The proposed Trust Regime will operate in a similar manner to the existing beneficial ownership regime within the BOCR 2022 with respect to ADGM Persons such legal entities and foundations (as described above).
11. The Trust Regime will only apply to those trusts which have a trustee licensed under the Commercial Licensing Regulations 2015. This restricts the application of the Trust Regime to trusts which have a trustee, who is acting by way of business (i.e., a professional trustee). This will exclude many 'bare trusts' where the trustee is not acting by way of business.
12. Such professional trustees ("**relevant trustees**") will have to establish and maintain a confidentially and securely held internal register which will hold:
- a. the beneficial ownership information of the trust,
 - b. the name of the trust,
 - c. the trust's creation date, and
 - d. the objectives for which the trust was established
- (collectively, the "**record of the trust**").
13. The record of the trust will be shared with the Registrar who will have an obligation to hold the information securely and confidentially, only processing requests for information in line with section 12 of the BOCR 2022.
14. Under the proposed amendments, relevant trustees will have an obligation to populate and maintain the register of the trust on an ongoing basis. The particulars of the register of the trust should already be collected and maintained by relevant trustees as a result of compliance with their AML obligations as set out under the ADGM's Anti-Money Laundering and Sanctions Rules and Guidance². Therefore, this change is unlikely to amount to a change for relevant trustees in real terms. The substantive change resulting from the proposed Trust Regime will be the new requirement for relevant trustees to submit the particulars contained within the record of the trust, and any changes that occur thereto as they occur, to the Registrar (the "**Register of Trusts**").
15. The Register of Trusts will be confidential. No one other than the trustee and the Registrar will be entitled to access the information. However, information can be provided to competent authorities where requests are made by such authorities, as well as to AML regulated persons where specific criteria are satisfied as per section 12 of the BOCR 2022.
16. The Registrar will also have a power to inspect the internal register of the trust maintained by

² Please refer to Chapter 8 of the Rules and Guidance on Customer Due Diligence.

a relevant trustee, and to request information from a relevant trustee for the purpose of confirming the relevant trustee's compliance with the BOCR 2022, and ensuring the particulars the Registrar holds are accurate and up to date.

17. The ADGM RA does not propose to include a power for beneficial owners of the relevant trust to inspect the register in line with section 363 of the Companies Regulations as currently applies for ADGM Persons under the BOCR 2022. Rather, a unique name and section in the BOCR 2022 have been created for the record of trust, which means that section 2(3) of the BOCR 2022 will only apply to records of beneficial ownership of ADGM Persons. The ADGM Data Protection Regulations 2021 will allow for a correction of personal information held by a controller (i.e., the relevant trustee) without setting out a new power for beneficial owners and controllers to inspect their own information. This is in line with the sensitivity requirements of trusts.
18. ADGM RA is further proposing to remove a person, which acts as a trustee of an express trust, from the definition of an ADGM Person under the BOCR 2022. Capturing trustees in the definition of ADGM Persons is not in keeping with the aim of the BOCR, nor approaches elsewhere, as trustees are not always a legal entity, and are not a legal arrangement (e.g., a trust) by themselves. To the extent they are a corporate trustee, they will be captured by an existing definition of an ADGM Person and therefore will have to comply with the BOCR requirements as a result of their own establishment and incorporation. Hence, there is no need to designate such trustees as an ADGM Person in any additional capacity. Further, trustees who are caught under the FSRA framework provide their beneficial ownership information for registration purposes.
19. The current definition of an 'ADGM Person' in section 26(1)(e) of the BOCR 2022 captures all trustees of express trusts, whether the trustee is acting by way of business or not. The issue that arises is that there are many instances where a common law trustee relationship is formed where the trustee is not acting by way of business, or may not even know that a common law trustee relationship has been formed. In these circumstances, the trustee is in breach of the BOCR requirements. Balancing this reality, with the proposal to create a trust register for trusts managed by a professional trustee only, the risks from reducing the scope of trustees caught are an appropriate risk-based approach.
20. In pursuance of the ADGM RA's continued commitment to monitor and mitigate AML risks associated with legal persons and arrangements, it is further proposed that the current exemption for Investment Trusts is removed. The particulars, including beneficial ownership information, of all express trusts with professional trustees will be included in the Register of Trusts.
21. For relevant trustees of existing trusts, the proposed amendments would come into effect 3 months after publication of the amendments.

Miscellaneous Amendments

22. ADGM RA is proposing an increase in the maximum penalty for breaches of the BOCR 2022, to further incentivise compliance, and to be consistent with amendments taking place onshore. The increase in the maximum penalty will be from a level 7 (USD25,000) to a level 8 (USD50,000).
23. Further, ADGM RA is proposing an amendment to the Limited Liability Partnerships

Regulations 2015 to require the appointment of a natural person designated member in a comparable manner to the requirement under the Companies Regulations 2020 to appoint a natural person as director of a company. This reflects the common manner in which limited liability partnerships (“**LLPs**”) are utilised (professional firms such as law firms and accountancy practices) and to ensure corporate designated members cannot be abused to make determining beneficial ownership purposefully complex. At the same time, the proposed amendment prevents the need for unnecessarily burdensome beneficial ownership requirements in instances where there are no 25% owners or 25% controllers, leading to a requirement to provide the beneficial ownership information of the entity’s designated members and one or more of the designated members is a corporate.

24. For existing LLPs, the proposed amendments would come into effect 6 months after publication of the amendments.

Consultation Questions

Q1: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED WORDING AND/OR APPROACH TO THE AMENDMENT TO THE BOCR 2022, AS SHOWN UNDER ANNEX A?

Q2: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, ONLY APPLYING THE TRUST REGIME REQUIREMENTS TO RELEVANT TRUSTEES ONLY, AND NOT INCLUDING TRUSTEES NOT ACTING BY WAY OF BUSINESS SUCH AS IN FAMILY BARE TRUST ARRANGEMENTS?

Q3: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE CIRCUMSTANCES UNDER WHICH DISCLOSURE OF TRUST REGISTER PARTICULARS MAY BE DISCLOSED IN ACCORDANCE WITH SECTION 967 OF THE CR 2020?

Q4: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE REQUIREMENT FOR AN INTERNAL REGISTER OF THE TRUST TO BE MAINTAINED BY A RELEVANT TRUSTEE?

Q5: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED EXEMPTIONS FOR REGULATED TRUSTEES OR THE PROPOSED REMOVAL OF AN EXEMPTION FOR INVESTMENT TRUSTS?

Q6: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, INTRODUCING A REQUIREMENT FOR AN LLP TO HAVE AT LEAST ONE NATURAL PERSON DESIGNATED MEMBER?

Proposed Amendments and Enactments

Regulations

Annex A *Proposed Beneficial Ownership and Control Regulations (Amendment No. 2) 2024*

Annex B *Proposed Limited Liability Partnership Regulations (Amendment No. 1) 2024*

Attachment

Attachment 1 *Blackline of the Beneficial Ownership and Control Regulations 2022 showing the amendments proposed by Beneficial Ownership and Control Regulations (Amendment No. 2) 2024*