سـوق أبـوظبـي العـالمـي
ABU DHABI GLOBAL MARKET

CONSULTATION PAPER NO 2 OF 2015

6 JANUARY 2015

COMPANIES REGULATIONS

WHY ARE WE ISSUING THIS PAPER?

1. The Board of Directors (the "**Board**") of Abu Dhabi Global Market ("**ADGM**") have issued this Paper to invite public comment on the Board's proposals to adopt new regulations for ADGM to be called the Companies Regulations (the "**Regulations**"). A proposed draft of the Regulations is set out at Annex A to this paper.

WHO SHOULD READ THIS PAPER?

2. The proposals in this Consultation Paper would be of interest to individuals, organisations and investors with an interest in establishing a presence in ADGM or otherwise doing business in ADGM, and their professional advisors.

HOW TO PROVIDE COMMENTS

3. 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. You may, if relevant, identify the organisation you represent in providing your comments. The Board reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by the Board.

WHAT HAPPENS NEXT?

4. The deadline for providing comments on this proposal is 5 February 2015. Once we receive your comments, we will consider whether any modifications are required to this proposal. We will then proceed to enact the Regulations. You should not act on these proposals until the relevant regulations are issued by the Board. We shall issue a notice on our website telling you when this happens.

COMMENTS TO BE ADDRESSED TO:

Consultation Paper No. 2 of 2015

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BACKGROUND

5. ADGM was established pursuant to Abu Dhabi Law No. 4 of 2013 as a financial free zone in the Emirate of Abu Dhabi, with its own civil and commercial laws. ADGM will offer market participants a world-class legal system and regulatory regime.

APPROACH TO LEGAL SYSTEM

6. ADGM has decided to legislate for English common law to apply in, and form part of the law of, ADGM. English common law, as it stands from time to time, will therefore govern matters such as contracts, tort, trusts, equitable remedies, unjust enrichment, damages, conflict of laws, security, and personal property.

7. The adoption of the common law as the underlying framework is not inconsistent with the adoption of legislation on matters including companies, insolvency and financial markets. In common law jurisdictions such as England, Australia, Singapore, Hong Kong, and New Zealand, the common law (i.e. the rules and principles formulated in court decisions) is supplemented by legislation (i.e. statutes, statutory instruments, ordinances, orders, regulations and rules). Typically, in the event of any conflict or inconsistency, legislation will override the common law. Accordingly, English common law in ADGM will be subject to, and capable of being superseded by, legislation adopted in ADGM.

APPROACH TO THE COMPANIES REGULATIONS

8. The decision has been taken by the Board, as with certain other legislation adopted by ADGM, for these Regulations to be based on UK precedents. For a number of reasons, the Board considers that adopting Regulations based on the UK Companies Act 2006 (the "**UK Act**") is likely to result in a coherent legal framework. The UK Act is a well-established and highly regarded statute that has undergone evolution and improvement over a long period of time. Further, it is supported by precedents and regular court decisions, providing the legal certainty and predictability preferred by the commercial community. A particular benefit of this approach is that the UK Act is well known to a large number of practitioners in the United Arab Emirates and widely used in international business. The UK Act is also consistent with European Union law and therefore the companies laws of EU member states.

9. Nevertheless, ADGM has the opportunity to take the best of the UK approach, while avoiding some of its historic peculiarities that have been removed or abandoned by the best practice of other jurisdictions. Further, the opportunity has been taken to introduce a new type of company - a "restricted scope company" ("**RSC**") - which offers a deregulated vehicle which may be appropriate to some group structures and regional investors. The key features of the RSC are described below.

10. Shares in ADGM companies will not have a par value, in line with the approach taken in other jurisdictions such as Hong Kong, Singapore, and Australia, to name a few.

11. As ADGM does not have the authority to create criminal laws, all references in the UK Act to criminal offences have been amended to breaches of the Regulations only, punishable by a monetary fine and/or disqualification. The Regulations classify breaches into several levels, with the amount payable at each level to be separately determined by the Board in the light of the approach being taken by ADGM more generally.

12. In most cases where the Regulations contemplate the implementation of secondary or derivative legislation (e.g., in connection with the accounts regime) the power to adopt such legislation has been reserved to the Board. However, in more procedural areas (e.g., company names adjudication), this power has been delegated to the registrar in the interests of efficiency. Where other regulatory bodies

are to be granted the ability to pass supplementary rules, the Regulations will be amended to reflect this, though for now it is assumed the Board will not delegate legislative power. Correspondingly, references to UK Parliamentary processes of affirmative and negative resolution procedures have been removed as they are not replicated in ADGM. Additionally, references to Scotland, Wales or Northern Ireland have been removed as ADGM will adopt English law.

13. References to "traded" and "quoted" companies in the UK Act are not included in the Regulations. It is the intention of these Regulations to keep all additional requirements for companies listed on any exchange that is set up in the future in a separate set of listing rules. It is expected that setting all such additional requirements in one place will prove to be a more user friendly approach.

ISSUES FOR CONSIDERATION

Q1: THE BOARD WOULD LIKE YOUR VIEW ON THIS APPROACH.

PART 1 - GENERAL

14. Section 1 - Companies: To be subject to the Regulations, a company will need to be formed or registered in ADGM. Registration may capture companies that were not originally incorporated in the jurisdiction. For instance, certain non-ADGM companies are permitted to change their jurisdiction of incorporation (the principle of "continuance" - See Part 7, Chapter 2). Entities such as these will need to be registered in ADGM if they elect to move their jurisdiction of incorporation to ADGM.

15. Other departures in this section from the UK Act reflect the fact that certain companies in the UK were incorporated under separate legislation; this will not be the case in ADGM. References to community interest companies have also been removed as these were not considered relevant to ADGM.

16. Section 3 - Private and public companies: This section introduces the concept of the RSC - a vehicle with less onerous disclosure and compliance requirements. It is envisaged that these will be holding vehicles for professional investors and limited instances of institutions for whom less regulation and a greater degree of confidentiality will be appropriate. We are also considering extending this regime to include entities owned entirely by an individual or their close family members (single family offices).

17. The Regulations as currently drafted include a number of provisions intended to address Financial Action Task Force ("**FATF**") standards.[1] For example, RSC's are required to file annual returns with the registrar, and to maintain up-to-date membership records. Despite a "light" approach to disclosure relative to private companies, the existence of restricted scope companies would not prevent ADGM from being compliant with FATF anti-money laundering standards, for so long as either a RSC allows other

[1] The UAE is a member of the Middle East and North Africa Financial Action Task Force ("**MENAFATF**") which follows the FATF "40+9 Recommendations" on Combating Money Laundering and the Financing of Terrorism and Proliferation.

companies to conduct client due diligence in relation to it (including by allowing it to inspect its private filings with the registrar) or the RSC avoids, for example, financial business through wire transfers.

18. A RSC will have the following features:

(a) A RSC will be required to file its articles, details of its registered office, details of its directors and secretary (if it has one) and an annual return with the registrar. Of these documents, only a RSC's constitution and details of its registered office will be made publicly available.

(b) A RSC will be obliged to keep accounting records, to have an accounting reference date and to prepare (but not audit) accounts on the basis of the "small companies regime". RSCs will not however be obliged to file these accounts with the registrar (unless requested by the registrar) or to circulate them to its members or debenture holders. A RSC will not be required to prepare directors' reports.

(c) A RSC may only be incorporated as a subsidiary of a group which publicly files consolidated accounts or as a subsidiary of a company formed by Emiri decree. It will not be possible to re-register a private or public company as a RSC, as to do so may deprive existing shareholders and creditors of protections previously enjoyed by them. Third parties will know a RSC is subject to less onerous requirements due to the requirement to have the "(Restricted)" in the company's name. The onus will then be on such third parties to conduct diligence on the company as part of a bilateral dialogue, rather than through an open register.

(d) The requirement to seek members' approval for certain transactions with directors, including directors' service contracts is dis-applied for a RSC, in keeping with the proposed deregulated regime for such companies.

ISSUES FOR CONSIDERATION

Q2: THE FEATURES OF THE RSC ARE DESCRIBED IN MORE DETAIL THROUGHOUT THIS PAPER. WE ARE ALSO CONSIDERING EXTENDING THIS REGIME TO INCLUDE ENTITIES OWNED ENTIRELY BY AN INDIVIDUAL OR THEIR CLOSE FAMILY MEMBERS (SINGLE FAMILY OFFICE).– THE BOARD WOULD WELCOME YOUR COMMENTS ON THE CONCEPT OF THE RSC AND THESE FEATURES.

PART 2 - COMPANY FORMATION

19. Section 5 - Method of forming a company: Memoranda of association are effectively now obsolete under the UK Act. The Regulations remove all references to a memorandum of association, and now refer exclusively to a company's constitution and/or articles. A subscriber's intention to form a company under the Regulations and its agreement to become a member will now be expressed in the application for registration itself.

20. Section 7 - Statement of capital and initial shareholdings: It has been decided that companies with a share capital shall have shares without a nominal value. In reaching this decision, we considered much of the commentary around the drafting of the UK Act. When consulting on the draft UK Act in 1999, the DTI Company Law Review Steering Group recommended that the concept of nominal value be abolished:

"*We believe that the requirement that shares should have a nominal value has become an anachronism. There is no real distinction between share capital and share premium account, except that the latter may be applied in certain (very limited) ways in which share capital account may not. The existence of a nominal amount of share capital attributable to a share, which rapidly ceases to have any significance other than a historical one, tends to confuse the layman. The only real function of nominal value is to set a minimum price below which shares cannot be issued. But as long as all the proceeds of an issue [of shares] are retained in an undistributable capital account, there is no reason to impose any particular limit below which the issue price cannot fall. Thus arguments based on the need for a minimum issue price are in our view misconceived. New issues of shares can never damage creditors, indeed they will always be for their benefit. Members of a company issuing NPV [no par value] shares are well aware of the commercial position on the price that can be charged for a new issue. For these reasons, we would favour the end, for public and private companies alike, of the requirement for shares to have a nominal or par value.*"

21. Ultimately, concerns over the practicalities for existing companies in connection with a move to no nominal value, combined with the requirements of the Second EU Company Law Directive for shares to have a value assigned to them, either as a nominal value or accountable par, meant that the concept of nominal value was retained in the final version of the UK Act. It is the ADGM's view that neither reason should be relevant to ADGM which, as a newly created jurisdiction, should be free to follow the best practice in other markets such as Singapore or Hong Kong which have abolished the concept. We see no advantage to ADGM in retaining the concept of nominal value.

ISSUES FOR CONSIDERATION

Q3: THE BOARD WOULD LIKE YOUR VIEW ON THIS APPROACH.

PART 3 - A COMPANY'S CONSTITUTION

22. Notice to Registrar – Section 34 of the UK Act has been deleted as no company formed in ADGM will be eligible to have their constitution amended by an enactment.

PART 4 - A COMPANY'S CAPACITY AND RELATED MATTERS

21. Constitutional Limitations – Charities: The concept of a charitable company is not retained in the Regulations as ADGM does not consider it appropriate or necessary in the circumstances of ADGM. Accordingly, section 39 of the UK Act was not included.

22. Section 41 – Execution of Deeds: As the concept of a deed is to be retained under the laws of ADGM, an express provision for the execution of deeds will be retained in the Regulations.

23. Section 47 – Reservation of name: We have included a procedure requiring a name to be reserved in connection with the incorporation of a company.

PART 5 - A COMPANY'S NAME

24. Section 53 – Private Limited Companies: Subsection (2) inserts the new requirement for RSCs to reference their restricted status in their name. The possibility for the registrar to grant an exemption to this and similar requirements for other forms of company has been included in section 53(1), however the requirements and obligations on a company benefitting from this provision have been shortened and simplified. Accordingly, sections 61-63 of the UK Act have not been included in the regulations. In practice, we do not expect this provision to be used with any regularity, but felt it sensible to retain as much flexibility for the Board as possible.

PART 6 - A COMPANY'S REGISTERED OFFICE

25. There are no material departures to this part of the Regulations from its equivalent in the UK Act. RSCs are not exempt from the Regulations' requirements as regards registered offices.

PART 7 – RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS

26. Sections 79-82 – Re-registration of a private company as a public company: Given the removal of nominal value in ADGM companies, the proposed provisions necessary for a private company to become a public company have been simplified. The intention is to make the transition from private to public as straightforward as possible. We have proposed that public companies require at least US$50,000 of share capital.

27. Sections 83-87 – Re-registration of a public company as a private company: The proposed process for conversion of a public company to a private company closely follows the UK Act, including the right of a certain number of shareholders to apply to the court to cancel the resolution approving such re-registration in certain circumstances. It was felt that this was a necessary protection given the reduced shareholder protections and governance requirements and the likely reduced transferability of shares that may exist in ADGM private companies.

28. Sections 98-101 – Re-registration of a RSC as a non-restricted scope company with the approval of their members. RSCs will not be suitable vehicles for all who choose to incorporate in ADGM. The exemption of such companies from several of the provisions requiring members approval prior to entering certain transactions (such as substantial property transactions with directors) mean that they may be less attractive to joint ventures, where both parties want to rely on the existing protections of the law rather than having to specifically draft for all appropriate protections. It was decided, however, that it should not be possible for private or public companies to re-register as RSC's – to do so might prejudice the interest of creditors and shareholders.

29. Chapter 2 – Continuance – General: Although not part of the UK Act, "continuance provisions" have been included in the Regulations to provide a route for companies to re-domicile in ADGM. Provisions such as this feature in a number of other jurisdictions (such as Delaware, New Zealand, Bermuda, Jersey and the BVI). The provisions are reciprocal, allowing a foreign body corporate to continue as a company in ADGM and an ADGM company to continue as a body corporate in other jurisdictions. A number of restrictions and requirements apply to both forms of continuance, which in turn are supplemented by any relevant restrictions and requirements in the corresponding foreign jurisdiction.

30. Chapter 2 is based on Part 18C of the Companies (Jersey) Law 1991. Any substantive amendments made to the text of that Law are explained below. The dual-bodied regulatory approach (the Commission and registrar) in Jersey has been amended to reflect the single body of the registrar in ADGM.

31. Section 104 – Application to registrar for continuance within ADGM: Under section 102(1)(c), a statement of solvency from the directors of a body corporate must accompany an application to continue in ADGM. The requirements for the statement are set out in section 114.

32. Under section 104(2), satisfactory evidence that the continuance will be effective under "local law" must accompany the application. This ensures that the continuance will become effective if approved by the registrar.

33. Determination of application to registrar for continuance within ADGM: The Jersey Law allows a corporation that is refused permission to re-domicile in Jersey to appeal to the court against that decision. No right of appeal has been included in this Chapter, as we feel it is in ADGM's interest for the registrar to retain ultimate control over who can continue as an ADGM company and is consistent with the provisions of Abu Dhabi Law No. (4) of 2013.

34. Section 109 – Effect of issue of certificate of continuance within ADGM: Sub-section (3)(c) omits unlimited liability companies as a type of ADGM company into which the foreign body corporate may continue. This is intended to protect members of the body corporate from facing unlimited liability upon continuance into ADGM where previously their liability was only limited. In order to impose unlimited liability on members, the company will be required to go through the re-registration process with appropriate publicity under these Regulations.

35. Whilst a foreign body corporate may continue as a RSCs in ADGM, provided it meets the appropriate criteria, it will still be subject to the same initial disclosure and evidential requirements under this Part when making an application to the registrar.

36. Section 110 – Objections by members to continuance overseas: Under section 110, members of an ADGM company who have objected to the continuance of the company in an overseas jurisdiction can apply to the court for an order to prevent it on the basis that their interests will be unfairly prejudiced. This gives objecting members a right to prevent the continuance which they would otherwise not have if they were outvoted by the requisite majority at the general meeting to approve the continuance. Objecting members will have to seek a remedy in respect of the continuance by bringing an unfairly prejudicial claim under the later provisions of the Regulations.

37. Section 113 – Application to registrar for authorisation to see continuance overseas: Under section 111(1)(b), a statement of solvency from the directors of an ADGM company must accompany an application for authorisation to seek continuance overseas. The requirements for the statement are set out in section 114.

38. Under section 113(2), satisfactory evidence that the continuance in a new non-ADGM jurisdiction will be effective under "local law" must accompany the application. This ensures that the continuance is possible for an ADGM company prior to the registrar making a decision on authorisation.

39. Determination of application to registrar for authorisation to seek continuance overseas: The Jersey Law allows a Jersey corporation that is refused permission to re-domicile overseas to appeal to the court against that decision. No right of appeal has been included in this Chapter.

ISSUES FOR CONSIDERATION

Q4: THE BOARD WOULD LIKE YOUR VIEW ON THIS APPROACH.

PART 8 - A COMPANY'S MEMBERS

40. Section 123 – Right to inspect and require copies: RSCs will not be required to provide a copy of their register of members to anyone who is not a member of the company or the registrar. This is a departure from section 116 of the UK Act, but necessary to create an environment in which RSCs may operate.

41. Overseas branch registers – The UK Act requirement for companies to retain a register of branches in certain countries has been deleted; this is a peculiarity of the UK Act derived from the UK's relationship with dominions and other dependencies. Accordingly, chapter 3 of part 8 of the UK Act has not been retained in the Regulations.

PART 9 - EXERCISE OF MEMBERS' RIGHTS

42. There are no material departures to this part of the Regulations from its equivalent in the UK Act.

PART 10 - A COMPANY'S DIRECTORS

43. Section 153 – Register of directors: The requirement for the register of directors to be kept available for inspection by the general public will not apply to RSCs.

44. Section 165 – Duties to avoid conflicts of interests: The Law Society Company Law Committee and City of London Law Society Company Law Committee (the "**CLCs**") previously submitted to the UK Business Innovation and Skills Select Committee that considerable uncertainty arises as to when one might be in breach of duty, under section 175 of the UK Act, given that the duty is to avoid conflict rather than a duty on what to do when one is in conflict. In line with the recommendations in their submission the Regulations do not include a duty to avoid possible conflicts, but instead include a duty not to act in relation to matters where the director has an actual or possible conflict, without the approval of the un-conflicted directors or the members. It is hoped that such a change will reduce uncertainty in the duty, thereby reducing costs for companies, including legal costs, in complying with its requirements.

45. Section 171 – Consequences of a breach of general duties: The amendments to this section from section 178 of the UK Act on which it was based are to emphasise the basis on which common law rules and equitable principles will apply in ADGM, namely to the extent provided for in the "Application of English Law Regulations", once they have taken effect.

46. Chapter 4 – Transactions with Directors requiring approval of members: The requirement to seek members' approval for certain transactions with directors is dis-applied for RSCs, in keeping with the proposed deregulated regime for such companies.

47. Further, section 194(1) follows the recommendations of the CLC by relaxing the exceptions pursuant to which a company may offer a loan to its directors. Under the Regulations, a company may fund a director's expenditure on defence proceedings in defending any criminal or civil proceedings of any kind, not just those in connection with negligence, default etc. This position more closely follows that previously used in the Companies Act 1985 (s337A), and would allow a company, for instance, to assist a director by providing him with a loan for expenditure in connection with US litigation combined with extradition proceedings to the US.

48. Chapter 5 – Directors Service Contracts: The requirement to seek members approval for a director's service contract is dis-applied for RSCs (section 177), in keeping with the proposed deregulated regime for such companies.

49. Chapter 6 – Contracts with sole members who are directors: The requirement to record such contracts in a memorandum or in the minutes if they are not in writing is dis-applied for RSCs (section 218(1)(a)), in keeping with the proposed deregulated regime for such companies.

50. Section 221 – Qualifying Pension Scheme Provision: In the absence of existing regulation providing definitions for "occupational pension scheme", the Regulations seek to include such a definition for the purposes of creating the qualification to the principles on directors' indemnities in section 222(2).

51. Chapter 9 – Disqualification of Directors: The provisions of the Regulations dealing with the disqualification of directors have been drawn from two sources. The substantive grounds on which directors may be disqualified have been largely taken from the Company Directors Disqualification Act 1986. Although under that Act the power to disqualify directors rests with the Court, it is proposed that in ADGM the power be vested in the registrar. The procedure to be followed by the registrar is based on the procedures adopted by the UK Financial Conduct Authority. The procedures envisage a staged process involving the issuance of a warning notice followed by an opportunity to make representations to the registrar; the issuance of a decision notice followed by the opportunity to contest the registrar's decision in court and finally the issuance of a final notice. It is believed that this approach will better align the powers of the registrar as regards the disqualification of directors and the ADGM Financial Markets Regulator as regards the withdrawal of financial services authorisation.

52. The registrar is able to issue statements of policy with respect to the making of disqualification orders and the acceptance of disqualification undertakings. Breach of a disqualification order or undertaking would constitute a contravention of the Regulations punishable with a fine, as well as exposing the person committing the contravention to personal liability for the company's debts. Similar provisions have been included in relation to equivalents of disqualification orders and undertakings in non-Global Market jurisdictions.

ISSUES FOR CONSIDERATION

Q5: THE BOARD WOULD LIKE YOUR VIEW ON THIS APPROACH.

53. Section 276 – Members of a director's family: The breadth of who can be captured by references to members of a directors' family has been narrowed to reflect the customs of the region.

PART 11 - DERIVATIVE CLAIMS

54. Section 283 – Derivative Claims: A common criticism of the derivative claims regime in the UK is that it can be used by any member, regardless of shareholding or interest. In particular, this can make the process vulnerable to activists, who might avail themselves of derivative claims to further personal campaigns simply by acquiring one share. Although the protections from abuse present in the UK Act are retained in the Regulations (an applicant being required to show a prima facie case against the defendant, and then only being permitted to proceed with the court's permission), given that the court in ADGM will be newly-formed, we think it advisable to try to reduce this potential burden further.

55. Accordingly, it is proposed in section 283(3) that the right to bring a derivative claim be restricted to "eligible members" holding 5% of the share capital. It is intended that by doing so the derivative claims

regime will only be utilized by those with significant holdings and, therefore, legitimate and material grievances. The eligible member test is also reflected in section 284(1) and section 285(2) regarding permission to continue a claim. Members holding a lower percentage than this will still be able to pursue the remedy of unfair prejudice, if appropriate.

ISSUES FOR CONSIDERATION

Q6: THE BOARD WOULD LIKE YOUR VIEW ON THIS APPROACH.

PART 12 - COMPANY SECRETARIES

56. Section 291 – Qualifications of Secretaries: Rather than include a prescribed list of qualifications for secretaries in the Regulations, it is proposed to leave this to the directors of the companies in question. Additional requirements may be set in Listing Regulations.

57. Section 297 – Acts done by person in a dual capacity: The UK Act provides that where a provision requires or authorises something to be done by or to both a director and a secretary of a company, it will not be satisfied if done by the same person acting in both capacities. While we appreciate the need for additional checks and balances in a public company which should be held to a higher standard, it is considered that this is an unnecessary inconvenience on private companies. As such, the Regulations do not apply this principle for private companies, so as to improve the dynamism of execution in private companies.

58. It was considered whether an RSC should be required to appoint a registered agent or company secretary and file publicly information relating to his identity and address. Ultimately, the decision was taken not to impose this requirement on RSCs on the basis that details of an RSC's registered office will be provided.

PART 13 - RESOLUTIONS AND MEETINGS

59. Section 306 – Written resolutions of private companies: The prohibitions on using written resolutions to remove a director or auditor before the expiration of their respective periods of office in sub-sections (2)(a) and (b) have been removed for single member companies, so to allow companies to move more quickly if the member is dissatisfied.

60. Various provisions of the UK Act applicable to "traded companies" have been removed – any such provisions could be included in Listing Regulations, when enacted.

CONTROL OF POLITICAL DONATIONS AND EXPENDITURE

61. It is not within the scope of the Regulations to address political donations and expenditure by companies. Accordingly, there is no equivalent to Part 14 of the UK Act.

PART 14 - ACCOUNTS AND REPORTS

62. Section 368 – Scheme of the Part: The requirements of the Regulations with respect to accounts and annual reports largely follow the UK Act's requirements (which in turn reflect the relevant EU directive requirements - most recently revised and set out in the Accounting Directive (2014/34/EU) (the "**Accounting Directive**")).

63. The UK Government has recently consulted on possible changes to the UK Act to take advantage of the further reductions in accounting requirements, in particular for small companies, which the Accounting Directive makes available to EU member states or to take advantage of certain options that the new Directive allows member states; thus, for example, the UK Government is proposing that a public company, if it does not have securities admitted to trading on a regulated market, could still be eligible to qualify as for the "small company" accounting regime on the basis of the relevant threshold tests.

64. Section 368(5) sets out which of the accounting requirements contained in Part 14 are applicable to RSCs. RSCs have to keep and maintain accounting records, prepare annual accounts and adopt a financial year (see Chapters 2,3 and 4). RSCs are, however, permitted to prepare accounts under the 'small company' regime irrespective of their size and they are not required to circulate accounts to their members or to file accounts with the registrar (though the registrar retains the right to inspect or require copies of a RSC's accounts on providing it with written notice of its desire to do so).

65. Section 370 and 374 – Certain private companies benefit from exemptions in connection with the accounting and reporting requirements. We believe that the adoption of four thresholds (micro, small, medium and large companies) for determining the form and content of accounts of ADGM companies is appropriate: a micro regime has been included as it may be useful for small restaurants etc. ADGM proposes to base the criteria for micro, small and medium entities on the thresholds used by the Department of Economic Development of the Emirate of Abu Dhabi (which are broadly consistent with those in UK and also Dubai). The qualification of companies as a micro, small or medium-size entity in the Regulations is based on the company in question meeting both a turnover and employee-numbers test. This is a departure from the approach in the UK where qualification is based upon a company meeting two of three criteria based on its turnover, balance sheet and number of employees.

66. Section 376 – Duty to keep accounting records: This section expressly extends the obligation under the Regulations to keep and maintain "adequate accounting records" to RSCs as well as all other companies.

67. Section 388 – IAS accounts: Under the UK Act, companies have a choice as to whether they prepare their individual accounts and, if they are not required by the EU IAS Regulation (1606/2002) to adopt IAS for these accounts, their group accounts, on either the UK Act basis (i.e. following UK GAAP) or an IAS basis. The Regulations will only allow the IAS basis to be adopted. The registrar may, however, decide to accept accounts prepared on the basis of different accounting standards in certain circumstances, such as where the parent company of the corporate group of which an ADGM company forms part uses a different accounting standard and the registrar is satisfied that such accounting standard should be accepted.

68. Section 399 – Director's remuneration: This section allows the Board to require the disclosure of certain information about directors' remuneration and other benefits. The UK Act sets out requirements with respect to both "quoted" and "unquoted" companies, which are not retained here. It will be for the Board to decide, at a future date, what disclosure about directors' remuneration it wishes companies - whether or not listed - to have to make in their annual accounts and whether, in the case of listed companies, it wishes to adopt any rules similar to the UK's new binding "say-on-pay" rules set out in the deleted sections.

69. "Quoted" company requirements: Certain of the accounting requirements under the UK Act (including the narrative reporting requirements of the new strategic report and the requirement for a directors' remuneration report) differ depending on whether the company concerned is a "quoted company" (e.g. listed, whether in the UK or elsewhere in the EEA, or traded on NYSE or NASDAQ). Any requirements corresponding to such UK "quoted" company provisions will, if considered appropriate, be included in ADGM financial services regulations and so no provision for such requirements in the Companies

Regulations has been made. This will also apply to corporate governance statements which will only be required for listed companies.

70. Chapter 9 – revised accounts: These sections cover the ability or obligation of a company to correct defective accounts or reports. In the UK, the Secretary of State has delegated to the Financial Reporting Council (the "**FRC**") responsibility for reviewing certain published company accounts. The Board will in due course decide whether it wishes to establish a similar body to the FRC to perform this role (and certain other roles) of the FRC.

71. Section 438 – Liability for misleading statements in directors' reports: An equivalent to the "safe harbour" provided by this section will need to be included in any provisions in Listing Regulations that require the publication of strategic reports by listed companies.

PART 15 - AUDIT

72. Section 449 and following: This Part of the Regulations sets out the requirements for most companies to have their annual accounts audited. Certain companies, as under the UK Act, may qualify for an audit exemption. These include:

(a) dormant companies;

(b) companies, including RSCs, subject to the small companies accounting regime; and

(c) subsidiary undertakings where the parent undertaking has given a statutory guarantee in respect of all of the outstanding liabilities of the subsidiary undertaking.

RSC accounts will not be subject to audit. Note that this Part of the Regulations is directed at companies and their requirements to have their accounts audited. Part 35 of the regulations is directed at auditors - who can act as a company's auditor and the regulation of auditors generally.

73. Chapter 4 – Removal of, or failure to reappoint, an auditor: The UK Act requires, in the case of any removal of, or failure to reappoint, an auditor, "special notice" to be given to the auditor allowing the auditor to make representations to shareholders about his removal or replacement. In addition, an auditor may not be removed by written resolution but only by ordinary resolution passed at a general meeting. In the case of sole member companies, these restrictions on an auditor's removal are generally considered to be unjustified and unnecessary and so the Regulations do not require a meeting to be held or special notice, in these cases.

PART 16 - SHARE CAPITAL

74. Section 503 – Shares and the nature of shares: As noted above, it is proposed that the shares of a company registered in ADGM will not have a nominal value. Removing the concept of nominal value will avoid the complications of requiring companies to create and maintain a share premium account, a concept that is very often misunderstood by companies and some advisers.

75. Section 516 – Return of allotment by limited company: As a consequence of the removal of the concept of the nominal value of shares, the return of allotment by a limited company will not need to specify the nominal value for the allotted shared, but will instead need to specify the issue price for those shares and the amount of the issue price which has been paid up.

76. Share Premium – Chapter 7 of this part of the UK Act is not required, as the removal of the concept of the 'nominal' value of shares also means that there will be no share premium and consequently no

requirement for companies to create and maintain a share premium account. Relief from the restriction on making distributions out of the share premium account (such as merger relief) will also not be relevant as a result of this change.

77. Redenomination of share capital: As shares of a company registered in ADGM will not have a nominal value, there is no need to include provisions in relation to the redenomination of a company's shares from one currency to another. However, the currency specifications in relation to the authorised minimum amount of share capital for public companies will continue to apply (see below).

78. Registration of documents following a change of share capital: Following a change of share capital, RSCs will not be required to make filings to the registrar. However, the registrar has the right to require details of the share ownership of an RSC at any time on providing it with written notice.

PART 17 - ACQUISITION OF COMPANY'S OWN SHARES

79. Section 618 and following – Financial assistance restrictions: Consideration was given to simplifying the UK rules on financial assistance under the Regulations, in particular, by allowing public companies to give financial assistance for so long as this is supported by a solvency statement and, for material financial assistance (eg an amount in excess of 5% of the shareholder funds i.e. share capital and reserves), a special shareholder resolution. However on balance it was decided that it was preferable to retain a similar degree of creditor and shareholder protection as is contained in the UK Act and the EU Second Company Law Directive.

80. RSCs will not be required to make public filings with respect to changes of its share capital. It will be required to file an annual return but this filing will not be available for public inspection. This is a departure from the UK Act, but is considered desirable to create a more confidential environment in which RSCs are able to operate.

PART 18 - DEBENTURES

81. Save for the addition of "loan stock" to the definition of "debenture", there are no material departures to this part of the Regulations from its equivalent in the UK Act.

PART 19 - PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

82. Chapter 2 – Authorised minimum allotted capital for public companies: The authorised minimum amount of a public company's allotted share capital shall be 50,000 US dollars, as opposed to £50,000. The Board is also be given the power in the draft to specify an amount in another currency which will be treated as equivalent to the US dollar amount of the authorised minimum.

PART 20 - CERTIFICATION AND TRANSFER OF SECURITIES

83. Section 709 – Duty of company as to issue of certificates etc on allotment: The concepts of loan stock and debenture stock are already addressed through the definition of "debenture", and so have been removed here to avoid confusion. ADGM does not intend to permit bearer shares or bearer warrants, and so references to such instruments have been removed.

84. Section 710 – Registration on transfer: The concept of an "exempt transfer" i.e. transfers of securities issued by the UK Government, etc, will not apply in ADGM, and references have been removed accordingly.

85. Section 713 – Execution of share transfer by Personal Representative: The UK Act concept of "personal representative" has been widened so as to include those who administer the estates of deceased members in other jurisdictions.

86. Section 717 – Issue of certificates etc: allotment or transfer to financial institution: Definitions by reference to English legislation (e.g. the Financial Services and Markets Act 2000) have been removed. The definition of "financial institution" will need to be reviewed once the Financial Markets Regulations of ADGM are prepared. Alternatively, if the Regulations may come into force prior to the Financial Markets Regulations, section 717 could be included at a later stage.

PART 21 - INFORMATION ABOUT INTERESTS IN A COMPANY'S SHARES

87. Under the UK Act a public company may investigate who has interests in its shares. This right is separate from the disclosure obligations imposed on shareholders of listed companies. These provisions are an important tool which enables companies to investigate the beneficial ownership of their shares, which has become increasingly relevant particularly for listed companies where shares are held in nominee accounts and electronic share registers. If a person fails to give the company the required information when served with a notice, the company has the right to apply to court for an order imposing restrictions on the shares. We propose that the Regulations adopt the same approach for ADGM public companies, but that the Regulations provide for the Board to extend these provisions so that they apply to other companies as they may specify.

88. Section 756 – Interests in shares: family interests: As with section 274 above, the breadth of who can be captured by references to members of a directors' family has been amended to reflect the customs of the region.

PART 22 - DISTRIBUTIONS

89. General: On balance, the approach taken in the Regulations on distributions is to follow the UK Act, requiring distributions only to be made out of "distributable profits" determined by reference to certain "relevant accounts" with the additional "net asset" test for public companies. The chief virtue of this approach is that the same distribution rules apply to all ADGM companies.

90. Consideration was given to whether a solvency test approach, such as that used in New Zealand, would offer better protection to creditors than the UK Act capital maintenance regime. However it was thought that a solvency test approach may give rise to concerns on the part of directors due to the increase in their potential liabilities, perhaps giving rise to the need to seek professional advice more frequently to avoid being held liable for improper distribution. This may lead to increased costs in running businesses.

91. Additionally, the business sector is likely to find the application of the solvency test to the distribution of dividends objectionable. The current provisions of the UK Act, that dividend should be declared out of distributable profits, have worked well historically and provided certainty. Moreover, it could be argued that the civil remedies under the New Zealand Companies Act, where payment of a distribution that does not satisfy the solvency test may be recoverable in the first instance from the shareholders who have received the payment, could also be objectionable to the investors in that it creates uncertainty upon their receipts of dividends.

92. It is noted that in recent reviews of their company laws, both Hong Kong and Singapore have decided to retain a "distributable profits" concept. We see no compelling need for ADGM to deviate from this approach.

93. Investment companies / long-term insurance companies: The Regulations do not carry forward the provisions of the UK Act (i) for distributions by investment companies with an accumulated surplus of realised profits; or (ii) relating to the realised profits and losses of long-term insurance companies. The Regulations do not distinguish between types of business such as "investment companies" and "long-term insurance businesses" at this point in time, though this may need to be revisited as the regulatory framework of ADGM develops.

ISSUES FOR CONSIDERATION

Q7: THE BOARD WOULD WELCOME YOUR COMMENTS ON THE APPROACH TO DISTRIBUTIONS ADOPTED IN THE REGULATIONS.

PART 23 - A COMPANY'S ANNUAL RETURN

95. Restricted scope companies: RSCs will be required to submit an annual return, but it will not be subject to public disclosure. There are no material departures to this part of the Regulations from its equivalent in the UK Act.

PART 24 - COMPANY CHARGES

96. Company holding property or undertaking as trustee: Section 859J of the UK Act has not been replicated in the Regulations. The section allowed filers of the relevant registration forms to tick a box to state that the chargor was acting as a corporate trustee, but experience has shown this was rarely used and of limited practical value.

97. Notification of addition/amendment to charge: Section 859O of the UK Act has not been replicated in the Regulations on account of its limited practical value. The provision only allows filers to amend the register to reflect an amendment to a registered charge which (a) adds a negative pledge or (b) varies the order of the ranking of a charge. In practice, this section is not used because a charge always includes a negative pledge on Day 1 (making (a) redundant) and priorities are usually addressed in a separate intercreditor agreement which is not required to be filed (making (b) redundant).

98. Section 801 – Notice of matters disclosed on the register: The priority of competing charges is not addressed in the UK Act but it is generally thought by academics that under English law registration of a charge constitutes "constructive notice" to those reasonably expected to search the register (such as a subsequent chargee). Constructive notice can be relevant to the ranking of competing charges granted by a company. For instance, a legal charge may not rank ahead of a prior equitable charge unless granted to a bona fide chargee for value and without notice of the equitable charge. We have inserted a new provision in section 801 (Notice of matters disclosed on the register) clarifying this point and stating that subsequent chargees are fixed with notice of a charge "disclosed on the register at the time the charge is created". This provision is also aimed at reducing the impact of the 21 day 'invisibility period' in the UK company charges system. Parties have 21 days to register a charge and during that time a subsequent chargee might search the register and assume, wrongly, that it could expect to have a first ranking charge. This amendment gives chargees an incentive to register security more promptly in order to benefit from the 'deeming' provision.

99. Part 25 largely follows the structure of the equivalent Part (Part 26) in the UK Act. It therefore provides a means whereby a company (or possibly, a creditor or a member of the company - though that would be very unusual owning to the co-operation from the "target" company required for court-approved schemes) can propose and seek creditor or member approval and the subsequent sanction of the court, for a scheme involving an arrangement or compromise between the company and its creditors or members (or any class of them).

100. Schemes of arrangement under this Part may just involve the company and its creditors or members. However, they may also form a part (as is possible under the UK Act) of a merger or a division (or demerger) transaction involving several companies. In that case, Part 26 of the Regulations sets out the requirements for publicity, etc. with respect to the proposed merger and shareholder approval for the merger. The merger still needs to be sanctioned or approved by the court, before it can become effective, as a "scheme of arrangement" under the powers given to the court by Part 25.

101. Section 803(2) – Application of this Part: This section contains a definition of "company" that is used throughout this Part and includes (except for one very restricted purpose mentioned below in relation to sections 814(1)(a) and (c)) both ADGM incorporated companies and non-ADGM companies whose countries of incorporation allow them to take advantage of the merger provisions of Part 25. Although we have permitted RSCs to make use of these provisions, we have not exempted them from the publicity requirements to ensure that the creditors of an RSC receive the same rights to object as they would otherwise be entitled to. As alternative approach we would oblige RSCs to only give notice to their members.

102. Section 807(1) – Court sanction for compromise of arrangement: The Regulations do not include the requirement that a majority in number of shareholders or creditors approve a scheme. This has been a point of concern in a number of UK schemes where some shareholders have been able to gain undue influence over the voting to approve the scheme by tactically splitting down their holdings into many smaller units. A number of other jurisdictions either do not have or have recently dropped or allow the court to waive, this "majority in number" requirement (e.g. New Zealand, Hong Kong and Singapore).

103. The requirement for approval by 75% in value of members has been altered to approval by members holding 75% of the voting rights because shares will not have a par value.

104. Section 808 – Powers of court to facilitate reconstruction or amalgamation: Under the UK Act this section is only concerned with the power of the court to order the transfer of the undertaking, property and liabilities of a UK-incorporated company which is involved in a scheme proposed for the reconstruction or amalgamation of UK-incorporated companies. In the Regulations, this restriction has been retained - but with reference to ADGM- incorporated companies - only so far as the powers of the court are concerned to order the transfer of property or liabilities (see sections 808(1)(a) and (c)). Except for that purpose, the section has been broadened so that it also covers powers of the court to make various other orders in connection with the merger (or the division) of a company under Part 26.

105. A definition has been included in section 808(5) of "scheme transferee company", "scheme transferor company" and "surviving company" which covers the types of companies in relation to which a court might make orders under section 812 - e.g. an ADGM incorporated company entering into a scheme of arrangement or a foreign company entering into a merger or participating in a division under Part 26.

106. Section 810 – Application of this Part: Part 26 of the Regulations is closely based on Part 27 of the UK Act, which implements an EU directive concerned with mergers between public companies (or the "division" of a public company) in the same member state. Where any significant changes have been made to the corresponding provisions of the UK Act, this is mentioned below.

107. It has to be said that since nearly all "mergers" in the UK take the form of private share (or asset) acquisitions or public takeover offers (often involving a scheme under the equivalent of Part 26 in the Regulations but still essentially involving a share acquisition), this merger procedure has barely, if at all, been used in the UK. There is therefore no precedent for its use or consideration by the English courts. The same is true for "divisions" or demergers under this Part.

108. The UK Act's Part 27 merger procedure is similar in a number of respects to the EU Cross Border Merger process (for which there is some precedent, including case law, for its use in the UK). In particular, as with EU Cross Border Mergers, Part 27 mergers in the UK involve the transfer of assets and liabilities and the dissolution without winding up of the "merged company".

109. Merger processes in a number of other jurisdictions - such as Delaware, Hong Kong, Bermuda, Jersey and the BVI - tend not to involve the “transfer” of assets and liabilities or the “dissolution” of one or more of the merging companies but instead involve "universal succession" concepts under which the "merged company" is absorbed or consolidated with another company into a successor or surviving company. This is the approach that has been adopted in Part 26 of the Regulations, in contrast to the UK Act's approach. However, the publicity and other administrative requirements required under the UK Act before a merger can be approved and become effective have been retained - e.g. the adoption of draft terms of merger, the preparation of various reports, the calling of shareholder meetings to approve the merger and the publication of the merger terms and reports prior to the meeting. These publicity requirements apply equally to RSCs.

110. The UK Act's merger process is restricted to mergers of public companies incorporated under the UK Act. In the Regulations, this restriction has been removed so that mergers under the Regulations may involve any "company" as defined in section 775(2) - i.e. an ADGM incorporated company and foreign companies whose countries of incorporation allow them to participate in mergers (or a division - see section 838 below) under the Regulations. However, at least one of the companies involved in the merger (and the company which is being "divided" or demerged under section 838) must be an ADGM incorporated company.

111. Section 812 – Mergers and merging companies: This section, which sets out the key requirements for a merger, has been amended as mentioned above, so that bodies corporate (i.e. non ADGM incorporated entities) may merge with ADGM incorporated companies, thereby allowing cross-border mergers. Such mergers may be effected either by:

(a) one or more combining with an existing company which becomes the single "successor company" (a "merger by absorption"), or

(b) two or more companies combining together to form a new "successor company" (a "merger by consolidation").

112. Section 812(2) introduces requirements for foreign merging companies to be authorised to merge under the Regulations under their "home jurisdiction".

113. Sections 813-814 – Draft terms of scheme (merger): Draft terms of merger have to be adopted by the boards of the merging companies (with prescribed particulars) and either filed with the registrar or made freely available for inspection on the merging company's website. Amendments to section 778(2)(b) have been made to allow cash, property rights and other securities as consideration for a merger transaction under the Regulations.

114. Section 816 – Approval of members of merging companies: As noted above, the Regulations do not include the requirement that a majority in number of shareholders should approve a merger scheme. The requirement for approval by 75% in value of members has been altered to approval by members holding 75% of the voting rights because shares will not have a par value.

115. Section 817 – Directors' explanatory report: This section requires the directors of the merging companies to prepare an explanatory statement on the merger scheme. In certain cases (see sections 791-796 below), this statement will not be required.

116. Section 818 – Expert's report (merger): This section differs from its UK Act counterpart in that an expert's report is only required where the merger will be a share exchange transaction (and not where cash consideration is used). The report is on the share exchange ratio used to determine the paper consideration for the merger. Again, in certain cases this report will not be required.

117. It is necessary to consider whether, either: (i) there should be no requirement for an expert's report in these merger transactions - there is no such requirement for a "simple" scheme under Part 25 or generally in respect of UK public takeover offers (which may involve a "simple" scheme), or (ii) if there is to be an expert's report, such a report should also be required where the consideration for the merger is neither shares nor cash but some other form of property.

ISSUES FOR CONSIDERATION

Q8: THE BOARD WOULD LIKE YOUR VIEW ON THIS ISSUE.

118. Section 819 – Supplementary accounting statement: An updated balance sheet has to be prepared by the merging companies where the balance sheet date of their last annual accounts is more than seven months before the date of the first of the shareholder meetings to approve the merger and the company has not published a half-yearly report.

119. Section 820 – Inspection of documents (merger): Members must be able to inspect or view on a website the various documents required to be prepared in connection with the merger. Additions have been made to this section to impose requirements in respect of mergers involving foreign entities to demonstrate that the merger is permissible (i.e. documentary proof of authorisations from the jurisdiction in which they are incorporated and a statutory declaration if the surviving company is to be a foreign company). In addition, the directors must report to the relevant shareholder meeting held to approve the merger, details of any material changes in the property or liabilities of the merging company since the mergers terms were adopted by the directors.

120. Sections 826-836 – These sections set out the circumstances when the various documentation, publicity and shareholder approval requirements for mergers are relaxed. The extent of the relaxation depends

on whether, for example, the merger involves a wholly-owned subsidiary, or 90% (or 100%) of the merging company's securities are held by the surviving company in the merger, or (in the case of a merger by absorption) no meeting of the surviving company has been demanded by shareholders of that company holding not less than 5% of the company's voting rights, etc.

121. Section 832 – Divisions and companies involved in a division: This section mirrors the UK Act's provisions which, as required by the EU directive mentioned above, require member states to provide in their law for public companies to be able to divide their undertaking, property and liabilities by a form of demerger.

122. As with mergers, section 832 of the Regulations is not restricted to public companies but it is restricted to ADGM incorporated companies, i.e. it is only such companies (and not foreign companies) that can make use of the process to divide (or demerge) themselves into separate companies. It would not be appropriate or likely legally feasible for an ADGM court to be able to exercise this "demerger" jurisdiction over a foreign, non-ADGM company. However, as currently drafted, it is possible under this section that one or more of the companies (a newly incorporated or an existing company) into which all or a part of the undertaking, property and liabilities of ADGM company is to be divided or demerged, could be a foreign company.

123. Also, as is the case with mergers under Part 27 of the UK Act, there is no precedent for the use of these "division" provisions in the UK and they do not seem to be present in many other jurisdictions. The Board might decide that providing for divisions of companies is not necessary or particularly useful in the Regulations or that they should be restricted to demergers where all of the companies involved are incorporated in ADGM.

124. Section 836 - Approval of members of companies involved in the division: As referred to in the comments in relation to section 7 above, the requirement in the UK Act that a majority in number of shareholders approve the "division" scheme has been deleted. The requirement for approval by 75% in value of members has also been altered to approval by members holding 75% of the voting rights because shares will not have a par value.

125. The remainder of the sections apply to divisions or demergers provisions that largely correspond to those in the earlier sections imposing various documentary, publicity and shareholder approval requirements for mergers.

126. Chapter 4 – Supplementary provisions: These sections contain supplementary provisions relating to the expert's (valuation) report required for mergers and divisions.

127. Sections 854 etc – Powers of Court: These sections empower the court to call both creditor as well as shareholder (or member) meetings, in the case of mergers or divisions and therefore allow the court to require creditor consent or approval to a merger or division where it considers this appropriate. They also allow the court to make further orders in connection with mergers or divisions, including fixing the date when the merger will become effective and dealing with the dissolution of a company that is being divided or demerged, etc.

TAKEOVERS ETC

128. This part of the UK Act has not been included since it is envisaged that separate Takeover Regulations will be issued by the Board establishing a takeover regulator, regulating takeovers generally and enabling and requiring the shares of minority shareholders to be purchased following a takeover offer that results in a bidder holding 90% or more of the shares of an ADGM incorporated or listed target.

PART 27 - FRAUDULENT TRADING

129. Section 859 – Fraudulent trading: This section imposes liability to a fine on any person knowingly involved in any fraudulent trading by a company (note that such a fine is without prejudice to any disqualification proceedings or other applicable penalty). As with the UK Act, it does not require the company to have become insolvent as a result of that activity. Consistent with the Regulations generally, this Part has been amended to remove the concept of a criminal offence of fraudulent trading, declaring it instead to be a contravention of the Regulations punishable by a fine. Otherwise, there are no material changes to this section from its UK Act counterpart.

PART 28 - PROTECTION OF MEMBERS AGAINST UNFAIR PREJUDICE

130. Part 28 provides an important form of protection and relief for minority shareholders and follows closely the equivalent sections in the UK Act. Part 28 allows the court, where a case of unfairly prejudicial conduct is successfully made, to make "such order as it thinks fit for giving relief in respect of the matters complained of". It is expected that these orders will typically require the majority shareholder (or company) to purchase, at a valuation approved by the court, the minority's shareholding.

131. There is extensive case law in the UK relating to these sorts of claims. Successful claims are most likely to be brought in connection with family-run or "quasi-partnership" companies (in relation to which members can sometimes argue that there are "understandings and agreements" that the relationship between the shareholders is not to be defined solely by reference to the company's constitution). There is very little (if any) precedent for any successful claim having being brought in relation to a listed public company. This is because the court will be very reluctant in the case of listed companies, with a wide shareholder base, to find any conduct by the majority to be unfairly prejudicial where it is in compliance with the company's constitution.

PART 29 - DISSOLUTION AND RESTORATION TO THE REGISTER

132. Section 881 – General effect of disclaimer: A drafting error has been corrected in this provision, which should read "determine" instead of "terminate", in line with section 178(4) of the UK Insolvency Act 1986, from which this provision derives.

133. Disclaimer of leasehold property: Disclaimer and dissolution provisions relating to leasehold property have been deleted in the Regulations pending consultation on ADGM's Real Estate and Strata Regulations. This section will need to be reviewed when the basis for property ownership in ADGM has been finalised.

PART 30 - INVESTIGATIONS OF THEIR COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS

134. General: The majority of the text in this Part 30 is taken from the Companies Acts 1985 and 1989. The UK approach requires that information obtained pursuant to an investigation is only disclosed to certain specified persons or bodies, or where the information fits a specific regulatory description. The list of persons and descriptions of information in the UK Act is based on the regulatory structure of the UK and will not necessarily map directly onto the regulatory structure of ADGM. Part 30 has, therefore, been drafted to give the registrar discretion as ADGM evolves to designate the circumstances in which information may be disclosed.

135. The registrar's powers as executive authority of ADGM will afford them the right to appoint investigators as they see fit, rather than in the specific regulatory circumstances envisaged by equivalent UK

legislation. The UK Act provides for inspectors to be appointed by the relevant government minister - we propose that the registrar be vested with these powers.

UK COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION

136. Part 33 of the UK Act has not been replicated in the Regulations as no company formed in ADGM will be incorporated other than in accordance with the Regulations. For example, there will be no concept of a joint stock company or an unregistered company in ADGM.

NON-OVERSEAS COMPANIES

137. The provisions in Part 31 of the UK Act are included in the Regulations as equivalent provisions, applying to non- ADGM companies and other legal persons, have been included in the Operating Regulations.

PART 31 - THE REGISTRAR OF COMPANIES

138. Section 937: – Registrar's functions: We have restated in this section the functions of the registrar as conferred under Abu Dhabi Law No. 4 of 2013, the Regulations and the Operating Regulations. In addition, we have expressly empowered the registrar to issue indicative and non-binding guidance, to prescribe forms and to carry out any tasks and powers properly delegated to him by the Board or any other authority in ADGM. The registrar is also given the power to delegate his functions and have provided that the registrar shall act in an independent manner.

139. Section 940: – Public notice of issue of certificates of incorporation: The UK Act requires public notice of company incorporations to be published in the Gazette (an official publication in the UK). The Regulations instead make provision for the registrar to provide this notice on the registrar's website as we do not expect there to be an equivalent to the Gazette created in ADGM. The registrar is subject to a number of publishing obligations in the Regulations. In each case, the requirement under the Regulations is to publish the relevant information on the registrar's website.

140. Section 954: Documents subject to enhanced disclosure requirements: The UK Act imposes a number of compulsory disclosure obligations on the registrar in respect under the "Directive Disclosure Requirements" regime. These provisions were enacted in the UK to bring into effect the requirements of European Directive 2009/101/EC which, broadly, was intended to ensure that certain key company information was published consistently in the European Union. By way of example, the information subject to these requirements in the UK Act include a company's:

    (a) constitution and (any changes to it);

    (b) accounts; and

    (c) share capital structure (and any changes to it).

    One notable obligation on the registrar in this context is that he is obliged to provide public notice of receipt of documents which fall within the regime described above.

141. The Regulations have preserved this concept of compulsory disclosure of certain information on the registrar's website as part of an "enhanced disclosure" regime. However, to ensure consistency with the premise that RSCs will be disclosing only limited information, the Regulations provide that only details of a RSC's constitution and registered office are subject to publication.

142. Section 963: – Material not available for public inspection: The UK Act makes provision for certain information, such as directors' residential address details, to be withheld from public inspection. The Regulations retain this concept and extend it so that, save to the extent disclosure is required by the enhanced disclosure regime (see above), documents filed by RSCs are also withheld from inspection.

143. Section 969: – Provision of information to public authorities: We have expressly allowed the registrar to disclose any material held by it to any relevant public authority in ADGM and any other body specified for the purposes of this section by rules made by the Chairman of the Board.

ISSUES FOR CONSIDERATION

Q9: THE BOARD WOULD LIKE YOUR VIEWS ON OUR APPROACH TO THE POWERS OF THE REGISTRAR.

PART 32 - CONTRAVENTION UNDER THE COMPANIES REGULATIONS

144. General Comment: Consistent with the remainder of the Regulations, the provisions of the UK Act relating to convictions for offences under the UK Act have been largely removed from the Regulations on the basis that penalties for contravention of the Regulations will be by way of fines and/or disqualification.

PART 33 - COMPANIES: SUPPLEMENTARY PROVISIONS

145. Section 1030-1033: – Requirement as to independent valuation: Sections 1150 to 1153 of the UK Act deal with the valuation of non-cash consideration received by public companies. The Regulations adopt the same approach as the UK Act with the exception that the Regulations do not contain any reference to the valuation of non-cash consideration received by a company prior to re-registration as a public company; this change is made on the basis that this requirement is not included in the Regulations.

PART 34 - INTERPRETATION

146. General Comment: This Part contains provisions which define many of the terms used in the body of the Regulations. The Regulations adopt the approach of the UK Act in this Part except where the relevant term is not used in the Regulations (for example, definitions of the terms "EEA State" and "former Companies Acts" have been deleted).

147. Section 1037: – Meaning of 'subsidiary': This section of the Regulations has been updated to reflect an anomaly identified by recent case law in the UK. Broadly, the definition used in the UK Act unintentionally omits from its purview arrangements where shares are held by a nominee or security agent due to the requirement in certain limbs of the definition that the relevant holding company be a member of the subsidiary. The Regulations include drafting recommended by the City of London Law Society to resolve this problem.

COMPANIES: MINOR AMENDMENTS

148. The provisions in Part 39 of the UK Act are not replicated in the Regulations on the basis that they deal with the repeal of existing legislation in the UK.

BUSINESS NAMES

149. The provisions in Part 36 of the UK Act are included in the Regulations as equivalent provisions, applying to companies and other legal persons, have been included in the Operating Regulations.

PART 35 - AUDITORS

150. Chapter 1 – Introductory: The Regulations adopt a much more streamlined approach to auditors in comparison to the UK Act, and seek more to set out little more than the minimum requirements and standards by which an auditor should abide.

151. It is proposed that the registrar may recognise firms of accountants to act as auditors of ADGM companies. It is envisaged that this will initially be done on a case by case basis, based on guidance published by the registrar, and that auditors will not be obliged, at least initially, to have a business presence within ADGM. The Regulations also provide for the Board to recognise members of "recognised professional bodies" to act as auditors of ADGM companies.

152. The Regulations do not retain the concept of *statutory* auditor in the Regulations on the basis that Part 42 of the UK Act implements obligations contained in the Statutory Audit Directive which is not applicable to ADGM. The concept of an auditor is retained for obvious reasons, though the definition in section 1210 of the UK Act is limited to those persons appointed under Part 15 of the Regulations.

153. Chapter 2 - Individuals and Firms: In order to effectively oversee the proper appointment of auditors prior to the establishment of a new audit regulatory regime in ADGM, the Regulations retain provisions requiring auditors to satisfy basic eligibility requirements. In ADGM, these requirements include: (i) recognition by the registrar or membership of a recognised professional body; and (ii) independence. The Regulations also retain provisions in the UK Act relating to the appointment of a partnership, as well as basic notification and information requirements.

154. Provisions in the UK Act relating to (i) supervisory bodies; (ii) professional qualifications of auditors; and (iii) enforcement provisions as may be considered and dealt with separately by the Board under a new audit regulatory regime.

155. Regulation of Auditors: Chapter 3 of the UK Act has not been replicated in the Regulations on the basis that any new audit regulatory regime may set out such provisions instead, including requirements for an Auditor General or equivalent thereto.

156. Registered third country auditors: Chapter 5 of the UK Act has not been replicated in the Regulations on the basis that the regulation of third country auditors may be addressed separately by the Board under any new audit regulatory regime.

157. Chapter 4- Supplementary and general: The Regulations retain basic provisions relating to misleading, false and deceptive statements in order to provide a minimum standard conduct in the absence of an existing audit regime. Provisions relating to the power of the Board to require a second company audit and delegation of the Board's functions have also been retained for practical purposes.

158. Provisions relating to (i) fees; (ii) co-operation with foreign competent authorities; (iii) transfers of papers to third countries; (iv) international obligations; (v) general provisions relating to offences; and (vi) notices are not included in the Regulations, as these may be considered and dealt with separately by the Board under a new audit regulatory regime in due course.

159. The UK Act does not contain any provisions for "cell companies" and so the drafting in the Regulations is based, in part, on provisions for cell companies contained in relevant Jersey law. Cell companies are typically used in the investment funds industry and, under the Regulations, may take two forms: (i) an "incorporated cell company", and (ii) a "protected cell company". Cell companies operate by means of creating "cells" within the company with their own allocated assets and liabilities which are intended to be distinct from the assets and liabilities of the company itself.

160. Several jurisdictions (including the UK in the case of "open-ended investment companies") make provision for a "protected cell company" regime. The cells of protected cell companies do not exist as separate legal entities in their own right but the relevant law treats the cells as if they were separate entities (see section 1057(1)(b) and (2) and seeks to restrict claims against particular cells to the assets solely attributable to the relevant cell (see sections 1071 and 1072).

161. Jersey has amended its law to provide for the creation of "incorporated cell companies", the cells of which do have their own separate legal identity and which may, therefore, in some jurisdictions provide better protection against "non-cellular" claims against a cell. Part 36 provides for both types of cell company.

162. Section 1054 – Cell companies: A cell company will be incorporated in the normal way under the Regulations but may not be a RSC. Each cell that it creates will, in addition to being registered with the Registrar (see section 1056), have to be "approved" by the Financial Markets Regulator. The approval of the Financial Markets Regulator will also be required for any transfer of a cell between cell companies (see section 1063(4)(c)).

163. Section 1058 – Register of members of cells: This section requires a cell company to maintain a separate register of the members of each of its cells but this register will not be available for public inspection via the Registrar (see section 1058(4)). Investors in cells would not expect their investments to be open to public inspection.

164. Section 1059 – Annual return in respect of cells: This section requires a cell company to include in its annual return information about its cells but, for the reasons mentioned above, any information that it includes with respect to the members of its cells will not be made available by the Registrar to the public.

165. Sections 1060 and 1061 – Accounting records and accounts of cell companies: provide that cells do not have to maintain their own accounting records or prepare their own accounts; these are the responsibility of the cell company. Section 1061 also provides that financial accounting information in relation to a cell will only be made available to members of that cell and will not be publicly available with any accounts of the non-cellular activities of the relevant cell company. Section 1061 does not seek to apply to the cell accounts that a cell company must prepare for the benefit of cell members the full accounting regime of the Regulations. Consideration will need to be given as to whether any more detailed requirements should be imposed with respect to such accounts and whether those requirements should arise under the Regulations or under financial services regulation.

166. The remainder of Part 36 sets out basic rules with respect to cell companies, including:

(a) the ability of a cell to become independent from its cell company (see section 1062). Normally, a cell (even a cell of an incorporated cell company) will always have to share the same secretary and registered office as its cell company but it may have different directors and/or members;

(b) the application of the Insolvency Regulations to cell companies (see section 1064); and

(c) restrictions on companies converting into cell companies and on cell companies converting into non-cell companies.

167. Chapter 2 of Part 36 contains provisions only relevant to protected cell companies, including those mentioned above with regards to restricting the liabilities and limiting the assets of cells to those solely attributable to the relevant cell. The court is also given power under section 1074 to determine, on the application of a protected cell company, from which assets – the company's non-cellular or cellular assets – a liability of the company is to be met.

ISSUES FOR CONSIDERATION

Q10: THE BOARD WOULD WELCOME YOUR COMMENTS ON THE INCLUSION OF THE CONCEPT OF CELL COMPANIES IN THE REGULATIONS AND ON THE APPROACH WE HAVE ADOPTED IN DOING SO.

TRANSPARENCY OBLIGATIONS

168. In keeping with the approach of the Regulations to carving out additional regulations for companies listed on any future ADGM exchange into a separate set of listing rules, there are no transparency obligations included in the Regulations.

MISCELLANEOUS PROVISIONS AND NORTHERN IRELAND

169. There are no equivalent provisions to Parts 44 and 45 of the UK Act in the Regulations.

PART 37 - SUPPLEMENTARY PROVISIONS

170. The only significant changes to what appears as s. 1288(2) and s. 1292(2) - (3) (and consequentially) in the UK Act. The Regulations provide that the Board can delegate any of its rule-making (i.e. Resolution making) powers, either to the "Registrar" or to the "Financial Markets Regulator", on such terms as it may think fit. Any "subordinate legislation" made by those person is to be treated as if it were a resolution made by the Board under the Regulations. Otherwise there are no material departures to this part of the Regulations from its equivalent in the UK Act.

PART 38 - FINAL PROVISIONS

171. There are no material departures to this part of the Regulations from its equivalent in the UK Act.

ANNEX A: PROPOSED COMPANIES REGULATIONS