

FOUNDATIONS REGULATIONS (AMENDMENT NO. 2) 2020

Regulations to amend the Foundations Regulations 2017

Regulations to make provision for the establishment and registration of foundations
in the Abu Dhabi Global Market

Date of Enactment: [●]

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market, as amended, issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations—

1. Amendments to the Foundations Regulations 2017

The Foundations Regulations 2017 shall be amended by—

- (1) In the Table of contents, replace the heading of Section 18 with “Non-Exempt Foundations to have a Company Service Provider”.
- (2) In the Table of contents, insert a new Section 18A immediately after Section 18.
- (3) In the Table of contents, insert a new Section 18B immediately after Section 18A.
- (4) In Section 4(2)(d), substitute the words “Company Service Provider” for the words “Registered Agent”.
- (5) In Section 5(1), substitute the words “Company Service Provider” for the words “Registered Agent”.
- (6) In Section 7(11)(b), substitute the words “Company Service Provider” for the words “Registered Agent”.
- (7) In Section 9(2)(h), substitute the words “Company Service Provider” for the words “Registered Agent”.
- (8) After the heading of Part 5 (FOUNDATION OFFICIALS), substitute the words “Company Service Provider” for the words “Registered Agent”.
- (9) Delete Section 18 in its entirety and replace it in full by the following:

“18 Non-Exempt Foundations to have a Company Service Provider

- (1) Subject to subsections (2) and (3), a Foundation must at all times have a Company Service Provider, licensed pursuant to the Commercial Licensing Regulations 2015 to carry out the controlled activity of providing company services, as defined in Rule 7 of the Commercial Licensing Regulations 2015 (Controlled Activities) Rules 2020.

- (2) Notwithstanding subsection (1), a Foundation that has demonstrated to the satisfaction of the Registrar to have—
 - (a) substantial resources, experience and personnel in the United Arab Emirates, and
 - (b) adequate governance policies and procedures, in each case as may be specified by rules made by the Board or guidance issued by the Registrar,need not have a Company Service Provider.
- (3) Any Non-Exempt Foundation registered in ADGM—
 - (a) prior to or on the date on which the Foundations (Amendment No. 2) Regulations 2020 comes into force, shall only be obliged to have a Company Service Provider from the first day of the month starting 12 months from the date on which the Foundations (Amendment No. 2) Regulations 2020 came into force; and
 - (b) after the date on which the Foundations (Amendment No. 2) Regulations 2020 came into force, shall only be obliged to have a Company Service Provider from the first day of the month starting eight months from that date.
- (4) Prior to the registration of a Foundation, the Founder or Founders may appoint a Company Service Provider by including the name and address (in the Abu Dhabi Global Market) of such Person in the Charter forming part of the Foundation's Registration Application. References in the Charter or By-laws of all Foundations registered under these Regulations to a "registered agent" shall be construed as a reference to a Company Service Provider.
- (5) A Foundation may appoint and remove from office a Company Service Provider by Resolution of Councillors.
- (6) A Non-Exempt Foundation must, within the period of 14 days from a person becoming or ceasing to be a Company Service Provider of the Non-Exempt Foundation, give notice to the Registrar of the change and of the date on which it occurred.
- (7) Notice of a person having become a Company Service Provider of the Non-Exempt Foundation must be accompanied by that person's consent in the prescribed form to act in that capacity.
- (8) If default is made in complying with subsection (1), a contravention of these Regulations is committed by—
 - (a) the Non-Exempt Foundation; and
 - (b) every Councillor who is in default.
- (9) A Person who commits the contravention referred to in subsection (8) is liable to a fine not exceeding level 7.

- (10) If default is made in complying with subsection (6), a contravention of these Regulations is committed by—
- (a) the Non-Exempt Foundation; and
 - (b) every Councillor who is in default.
- (11) A Person who commits the contravention referred to in subsection (10) is liable to a level 2 fine.”

...

- (10) After Section 18, insert a new Section 18A as follows:

“18A Obligations of Company Service Provider and Non-Exempt Foundation

- (1) The Company Service Provider of a Non-Exempt Foundation shall maintain the records that the Non-Exempt Foundation is required to maintain under or in accordance with any enactment or subordinate legislation applicable to the Non-Exempt Foundation, including
- (a) these Regulations;
 - (b) the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2020 and any licence granted thereunder; and
 - (c) the Beneficial Ownership and Control Regulations 2018.
- (2) The Company Service Provider of a Non-Exempt Foundation is authorised to represent the Non-Exempt Foundation in its dealings with the Registrar and shall give all notices and make all filings that the Non-Exempt Foundation is obliged to make to the Registrar under any enactment or subordinate legislation applicable to it, including—
- (a) these Regulations;
 - (b) the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2020 and any licence granted thereunder; and
 - (c) the Beneficial Ownership and Control Regulations 2018.
- (3) A Non-Exempt Foundation must make available to its Company Service Provider such documents and information as is required to enable the Company Service Provider to comply with its obligations under this section.
- (4) If a default is made in complying with subsection (3), a contravention of these Regulations is committed by—
- (a) the Foundation, and
 - (b) every Councillor who is in default.

- (5) A Person who commits the contravention referred to in subsection (4) is liable to a fine not exceeding level 6.”

...

- (11) After Section 18A, insert a new Section 18B as follows:

“18B Service of Documents on Foundation

- (1) A document may be served on a Foundation registered under these Regulations by leaving it at, or sending it by post to, the Foundation’s registered office or the office of its Company Service Provider appointed in accordance with section 18.”

...

- (12) In Section 24(1), substitute the words “Company Service Provider” for the words “Registered Agent”.

- (13) In Section 31(8), substitute the words “Company Service Provider” for the words “Registered Agent”.

- (14) In Section 38(2)(f), substitute the words “Company Service Provider” for the words “Registered Agent”.

- (15) Delete Section 47 in its entirety and replace it in full by the following:

“47. Definitions

- (1) In these Regulations, unless otherwise defined –

“Accounting Records” is defined as follows:

- (a) Accounting Records means records that are sufficient –

- i. to show and explain the Foundation’s transactions,
- ii. to disclose with reasonable accuracy, at any time, the financial position of the Foundation at that time, and
- iii. to enable the Councillors to ensure that any accounts required to be prepared comply with the requirements of these Regulations.

- (b) Accounting Records must, in particular, contain records and underlying documents comprising initial and other accounting entries and associated supporting documents such as cheques; records of electronic fund transfers; invoices; contracts; the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries; work sheets and spread sheets supporting cost allocations, computations, reconciliations and disclosures; and a record of the Assets and liabilities of the Foundation.

“ADGM Founding Law” has the meaning set forth in the Interpretation Regulations 2015;

“Assets” means any property in which a Foundation has any interest or over which it has any rights;

“**Beneficiary**” has the meaning set forth in section 31;

“**By-laws**” means the by-laws of a Foundation, if any, adopted under section 13, as may be amended from time to time under section 14;

“**Charter**” means the charter of a Foundation adopted under section 2, as may be amended from time to time under section 7;

“**Company Service Provider**”, in relation to a Foundation registered under these Regulations, has the meaning set forth in section 18;

“**Confidential Disclosure**” means the following information, whether or not this information is also included in the Charter:

- (a) the name and address of each of the Councillors;
- (b) the names and addresses of any Beneficiaries;
- (c) the names and addresses of the Guardian (if any); and
- (d) the name and address of each beneficial owner of each Founder which is a Legal Person (if any),

to be held confidentially by the Registrar, subject to any requirement to disclose such information to public authorities as set out in section 3(10), or in any other applicable law or regulations.

“**Council**” means the council of a Foundation referred to under section 19;

“**Councillor**” means a natural person or Legal Person appointed as a member of a Council under section 22;

“**Court**” has the meaning set forth in the Interpretation Regulations 2015;

“**Designee**” has the meaning set forth in section 9(2)(g);

“**Foundation**” means a foundation established under section 1;

“**Foundations Register**” means the register of Foundations kept by the Registrar under section 3;

“**Founder**” means each natural person or Legal Person who subscribes their name to the Charter establishing a Foundation acting on their own account or on behalf of another, and who endows the Foundation with a portion of its Initial Assets;

“**Guardian**”, in relation to a Foundation, means a natural person or Legal Person, if any, appointed under section 26;

“**Initial Assets**”, in relation to a Foundation, means the initial Assets endowed by a Founder which become the property of a Foundation;

“**Legal Person**” means a company, a corporation or any other entity having separate legal personality;

“**Minor**” means an individual who is less than 18 years of age;

“**Non-conflicted Councillors**” has the meaning set forth in section 19(4)(f)(iii);

“**Non-Exempt Foundation**” means a Foundation that is obliged to have a Company Service Provider in accordance with section 18;

“**Overseas Foundation**” has the meaning set forth in section 35(1);

“**Person**” means a natural person or Legal Person;

“**registered**”, in relation to a Foundation, means registered as a Foundation under these Regulations;

“**Registrar**” has the meaning set forth in the Interpretation Regulations 2015;

“**Registration Application**” has the meaning set forth in section 1(1)(a).

“**Remaining Beneficiary**”, in relation to the Surplus Assets, means a natural person or Legal Person who, according to the Charter or By-laws, is entitled to receive any Surplus Assets;

“**Resolution of Councillors**”, in relation to a Foundation, means –

- (a) a resolution approved at a duly convened and constituted meeting of the Councillors by a simple majority (which in the case of a Foundation with only two Councillors shall mean that both Councillors must assent), or a larger majority as may be specified in the Charter or By-laws, of the Councillors present at the meeting, in person or by alternate or proxy, who voted; or
- (b) a resolution agreed to in writing by a simple majority (which in the case of a Foundation with only two Councillors shall mean that both Councillors must assent), or by such larger majority as may be specified in the Charter or By-laws, of the Councillors;

“**Subsequent Transferor**” means a natural person or Legal Person who endows a Foundation with Supplementary Assets;

“**Supplementary Assets**” means Assets endowed to a Foundation other than the Initial Assets;

“**Surplus Assets**” means the Assets of a Foundation, if any, remaining after its dissolution;

“**to endow**” means to transfer or covenant to transfer, the title in property, absolutely, with or without consideration, to a Foundation so that the property becomes an Asset of the Foundation;

“**Unanimous Resolution of Councillors**” with respect to a Foundation, means –

- (a) a resolution approved unanimously at a duly convened and constituted meeting of the Councillors by a unanimous vote of all the Councillors present at the meeting, in person or by alternate or proxy, who voted; or
 - (b) a resolution agreed to in writing by all of the Councillors;
- (2) Any reference to a level of fine shall be interpreted as a reference to the applicable level set forth in the Commercial Licensing Regulations 2015 (Fines) Rules 2020.”

...

- (16) Delete “SCHEDULE 1 – FEES” in its entirety and replace it in full by the following:

“SCHEDULE 1 – FEES

The following fees are payable in respect of applications and notifications made in accordance with the Regulations-

<u>Application or notification</u>	<u>Fee Payable (USD)</u>
Application for registration of a Foundation	200
Application for renewal of a Foundation (Annual Fee)	200
Notification of a change in particulars of the Foundation -	
(i) by a Foundation	100
(ii) by a Foundation with a Company Service Provider appointed, where the change in particulars of the Foundation is a result of a change in particulars of the Company Service Provider	Nil
Notification of appointment and cessation of Company Service Provider	100
Notification of an appointment of a Company Service Provider	100
Notification of a cessation of a Company Service Provider	100
Notification of an appointment and cessation of a Councillor	100
Notification of an appointment of a Councillor	100
Notification of a cessation of a Councillor	100
Notification of change of particulars of a Councillor	100
Notification of an appointment and cessation of a Guardian	100
Notification of an appointment of a Guardian	100
Notification of a cessation of a Guardian	100
Notification of change of particulars of a Guardian	100
Notification of a change of name of a Foundation	100
Amendment of the Charter by the Founder(s) or in the event of Founder's death by Court Order	100
Beneficiary request for information from the Registrar	100
Continuation to ADGM	500
Continuation from ADGM	500

Application to strike off	100
Reinstatement of a Foundation on the Register	Nil

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2. Short title, extent and commencement

- (1) These Regulations may be cited as the Foundations Regulations (Amendment No. 2) 2020.
- (2) These Regulations shall apply in the Abu Dhabi Global Market.
- (3) These Regulations come into force on the date of their publication.