



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

*CONSULTATION PAPER  
NO. 6 OF 2021*

**PROPOSAL TO AMEND ADGM  
BENEFICIAL OWNERSHIP AND  
CONTROL REGULATIONS 2018**

**25 November 2021**



**TABLE OF CONTENTS**

Why are we issuing this paper? .....	3
Who should read this paper? .....	3
How to provide comments .....	3
What happens next? .....	3
Scope and approach to the proposed amendments.....	4

## Introduction

### Why are we issuing this paper?

1. The Registration Authority (RA) of Abu Dhabi Global Market (ADGM) has issued this Consultation Paper to seek views on its proposed amendments to the ADGM Beneficial Ownership and Control Regulations 2018 (BOC Regulations).
2. A draft of the Beneficial Ownership and Control Regulations 2018 showing the effect of the proposed amendments is attached as **Annex A**.

### Who should read this paper?

3. This Consultation Paper should be of interest to all individuals and organisations with an interest in establishing a presence in the ADGM, ADGM entities already established in ADGM as well as their legal advisors.

### How to provide comments

4. All comments should be made in writing and sent to the address or the email address specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments.
5. The RA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of submitting those comments. Comments supported by reasoning and evidence will be given more weight by the RA.

### What happens next?

6. The deadline for providing comments on the proposed framework is **23 December 2021**. After receiving your comments, we shall consider whether any modifications are required to the proposals and the ADGM Board of Directors (Board) will then proceed to enact the proposal in their final form.
7. You should not act on these proposals until final amended regulations are issued by the Board. We shall issue a notice on our website when that happens.

### Comments to be addressed to:

Consultation Paper No. 6 of 2021  
Registration Authority  
Abu Dhabi Global Market Square  
Al Maryah Island  
PO Box 111999  
Abu Dhabi, UAE  
Email: [consultation@adgm.com](mailto:consultation@adgm.com)

## Background

### Scope and approach to the proposed amendments

1. A key component in detecting and preventing financial crime, money-laundering, terrorist financing, bribery, corruption, insider dealing and other forms of market abusive behavior is the accessibility of information relating to corporate beneficial ownership and control. This is in addition to other steps designed to enhance transparency and accountability both at a national level and in conjunction with other regulatory bodies globally. The availability of beneficial ownership information, that is, the natural person behind a legal person, corporate structure or other complex arrangement, is a key requirement of international tax transparency and the fight against tax evasion and other financial crimes.
2. The RA has taken significant steps to implement relevant international standards on anti-money laundering and combating the financing of Terrorism and Proliferation. The RA monitors those standards and remains strongly committed to help the UAE fulfil its obligations as part of the international community. In particular, there are ongoing evaluations of the UAE by:
  - a. the Financial Action Task Force (FATF) measuring out steps against the FATF Recommendations, being the International Standards on anti-money laundering and combating the financing of Terrorism and Proliferation (AML/CFT) and following the [FATF Mutual Evaluation Report of the UAE](#) published on 30 April 2020;
  - b. the Organisation for Economic Cooperation and Development (OECD) in respect of compliance with accepted international taxation standards. The UAE is currently a member of both the OECD Global Forum for the Exchange of Information for Tax Purposes (OECD Global Forum<sup>1</sup>) and the OECD Inclusive Framework on Base Erosion and Profit Shifting (OECD BEPS). In particular, the OECD Global Forum has oversight over those countries that have committed to the bilateral “exchange of information for tax purposes” (EOIR) and those countries that have committed to the automatic exchange of information for tax purposes (Common Reporting Standards – CRS).
3. In order to remain aligned with the requirements of the OECD and FATF, the RA has conducted a review of its BOC Regulations that apply to all ‘ADGM Persons’ (as defined in subsection 26(1) of the BOC Regulations) to assess whether the BOC Regulations remain aligned with such requirements.
4. Furthermore, the RA also has reviewed its BOC Regulations against the requirements of:
  - a. Cabinet Resolution No. 10 of 2019 Concerning the Implementing Regulations of Federal Decree by Law No. (20) of 2018 Concerning Anti-Money Laundering and

<sup>1</sup> see [A Beneficial Ownership Implementation Toolkit](#) Prepared by: The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes Inter-American Development Bank\* March 2019

Counter Terrorism Financing and Financing of Illegal Organizations; (Federal AML Legislation); and

- b. Cabinet Resolution No. 58 of 2020 concerning the regulation of beneficial ownership procedures (Federal UBO Regulations) applicable to entities in the wider UAE (excluding those legal persons and legal arrangements registered in ADGM and DIFC).
5. In order to further align the BOC Regulations with the OECD, FATF Standards, Federal AML Legislation and Federal UBO Regulations on beneficial ownership, the RA is proposing the following amendments to the BOC Regulations:
- a. Clarifying the cascade approach for identifying beneficial owners of ADGM Persons who are natural persons who indirectly have a material ownership interest in an ADGM Person through an intermediate holding entity;
  - b. Imposing duties on ADGM Persons which have one or more nominee directors to maintain a record of nominee directors and the identity of the person on whose behalf each nominee director acts and to keep their particulars;
  - c. Clarifying that ADGM Persons must ensure that no share transfer or change of ownership in the entity will be recognised or given any effect unless the record of beneficial owners is updated and the required particulars are provided to the Registrar;
  - d. Adding a power for the Registrar to recommend that a person is removed from the record of beneficial owners of the ADGM Person if the Registrar considers that having such person as a beneficial owner is contrary to the ADGM regulations or prejudicial to the interests of ADGM; and
  - e. Adding a power to allow the Registrar to cancel the licence of, or strike-off, an ADGM Person for failing to comply with a notice given by the Registrar.
6. To ensure ADGM Persons are provided with sufficient time to collect the necessary information relating to these amendments, the RA is also proposing to have a delayed effective date for the sections of the BOC Regulations that relate to the establishment of a nominee director register and the revised particulars of beneficial owners.

***Clarifying the ‘cascade approach’ in identifying ‘natural persons’ having material ownership interest in ADGM Persons***

7. The ADGM has adopted the FATF definition of beneficial owner and the relevant FATF guidelines and materials dealing with beneficial ownership information for both legal entities and legal arrangements. FATF has recommended the use of a cascading information-gathering approach where legal persons are concerned. This requires ADGM Persons to consider each step in the identification process in succession if they do not result in the identification of the beneficial owner. These identification procedures are contained in the FATF’s Interpretative Note to Recommendation 10.14.

8. The first step in the identification procedure is identify the individuals holding ownership interests either directly or through a chain of other nominees, entities or arrangements. Where it is not possible to identify persons with control through ownership, or if there is doubt that those persons are in fact the beneficial owners, then natural persons who control the ADGM Person through other means, such as personal or financial influence, should be clearly identified. Examples of control by other means include controlling the voting rights in the ADGM Person or the power to appoint or remove a majority of the board of directors. Only when none of the previously described approaches is able to identify a beneficial owner (or owners) the identification of an officer of the ADGM Person, who could be the entity's manager, CEO, CFO, secretary or director, would be required (please refer to the definition of 'officer of an ADGM Person' in subsection 26(2) of the BOC Regulations). The notion of effective control is important in situations where a beneficial owner may not have a readily identifiable ownership interest and/or is not a person on whose behalf a transaction is conducted or business relationship being established. Understanding the make-up and organisation of a legal person can help determine any individuals who have effective control.
9. In light of the above, the RA is proposing to:
- a. Amend the meaning of 'beneficial owner' in Schedule 1 of the BOC Regulations by clearly including the 'cascade approach', as recommended by FATF, for identifying the beneficial owners of an ADGM Person as defined in the BOC Regulations;
  - b. Amend the meaning of 'beneficial owner' in relation to trusts as follows:
    - i. Consistent with the FATF and OCED recommendations that the location of the trustee, rather than the law by which the trust is governed, should determine the scope of application of the relevant regulations, the amended Regulations require that a trustee of an express trust, regardless of the applicable law of the trust, which is located in ADGM must comply with the amended BOC Regulations;
      - Such obligations shall apply to ADGM based trustees which operate from a permanent establishment in ADGM. As natural persons are considered residents of the UAE rather than of ADGM, trustees which are natural persons are outside the scope of the Regulations;
      - The amendments further clarify that the filing requirements are excused in respect of trustees of Investment Trusts, as the power to identify and maintain records of beneficiaries is already enforced through existing FSRA Funds and AML Rules;
    - ii. Adding to the list of beneficial owners to be identified in relation to a trust 'any protector or enforcer appointed to the trust', to meet the FATF and OECD requirements; and
  - c. Amend the definition of 'ADGM Person' in the BOC Regulations in order to clarify the scope of application of the BOC Regulations by adding 'limited partnership which has elected to possess legal personality which has been registered under the Limited Partnership Act 1907 in the ADGM' to the definition; and

- d. Delete subsection 2(6) of the BOC Regulations on the basis that, under the cascade approach above, the ‘officer’ of the ADGM Person (who could be the entity’s manager, CEO, CFO, secretary or director) should be considered as the ADGM Person’s beneficial owner in the absence of a natural person holding a material interest in the ADGM Person. Accordingly, an ADGM Person must identify at least one beneficial owner who is a natural person.

**Question 1:**

DO YOU AGREE WITH THE PROPOSED AMENDMENTS TO THE CASCADE APPROACH ADOPTED, THE AMENDMENTS TO THE DEFINITION OF ‘ADGM PERSON’ AND TO THE MEANING OF ‘BENEFICIAL OWNER’ IN RELATION TO TRUSTS, AS EXPLAINED ABOVE?

***Imposing duties on ADGM Persons in relation to identifying and maintaining records of nominee directors***

10. A nominee director is a director, just like any other director, of an ADGM Person. What makes him or her stand apart from other directors is having been nominated by a shareholder or other stakeholder to represent the stakeholder’s particular interests.
11. Nominee directors represent the interests of an appointer but must balance these interests with the common law and the statutory fiduciary duties they owe as a director to the ADGM Person.
12. The Interpretative Note to FATF Recommendation 24 relevantly provides that:
- Countries should take measures to prevent the misuse of nominee shares and nominee directors, for example by applying one or more of the following mechanisms: (a) requiring nominee shareholders and directors to disclose the identity of their nominator to the company and to any relevant registry, and for this information to be included in the relevant register; or (b) requiring nominee shareholders and directors to be licensed, for their nominee status to be recorded in company registries, and for them to maintain information identifying their nominator, and make this information available to the competent authorities upon request.*
13. Currently, the BOC Regulations include provisions in relation to nominee shareholders but are silent on nominee directors. Further, there is no specific reference in the BOC Regulations to nominee directors exercising control over the management of the ADGM Person or influencing the board of the relevant entity. Therefore, the RA is proposing to impose duties on ADGM Persons which have one or more nominee directors to:
- maintain a record of such nominee directors;
  - identify the person on whose behalf each nominee director acts; and
  - require ADGM Persons to keep a record of their particulars.

**Question 2:**

DO YOU AGREE WITH THE PROPOSED AMENDMENTS RELATED TO IMPOSING DUTIES ON ADGM PERSONS TO IDENTIFY AND MAINTAIN RECORDS OF NOMINEE DIRECTORS AND PERSONS ON WHOSE BEHALF NOMINEE DIRECTOR ACT?

***Requiring ADGM Persons to not recognise or give any effect to a share transfer or change of ownership unless the record of beneficial owners is updated and the required particulars are provided***

14. This amendment includes a duty on an ADGM Person (i) to be provided with a statement by or on behalf of the transferee on whether or not the share transfer will result in a change in the record of beneficial owners and the nature of such change, and (ii) to obtain the required particulars in respect of each new beneficial owner.
15. The amendment is the result of recognising FATF's recommendations 10 and 22 which require that "*financial institutions and DNFBP's carry out customer due diligence measures to identify and verify the identity of customers, including beneficial owners, when (inter alia) there are doubts about the veracity or adequacy of previously obtained customer identification data*".

**Question 3:**

DO YOU AGREE WITH THE PROPOSED AMENDMENT REQUIRING THE ADGM PERSONS TO NOT RECOGNISE OR GIVE ANY EFFECT TO A SHARE TRANSFER OR CHANGE OF OWNERSHIP UNLESS THE RECORD OF BENEFICIAL OWNERS IS UPDATED AND THE REQUIRED PARTICULARS ARE PROVIDED?

***Empowering the Registrar to recommend that a person is removed from the record of beneficial owners of the ADGM Person and to cancel the licence of an ADGM Person for failure to comply with such recommendation***

16. Appropriate compliance, monitoring, and enforcement processes are critical to ensuring that laws and regulations on beneficial ownership are observed.
17. This amendment will enable the Registrar to recommend that a person identified by the ADGM Person as a beneficial owner be removed from their record on the basis that the person is:
  - a. subject to a sanction imposed by any government, any entity that is a representative, constituent part or extension of a sovereign state or a political subdivision thereof or any entity that is established under international law or the laws of any two or more sovereign states; or
  - b. involved or has been involved in any proceedings that are law enforcement related or criminal, civil, regulatory, tax or administrative in nature,

and the Registrar considers that having such a person as a beneficial owner of an ADGM Person is:

- i. contrary to the BOC Regulations or any other enactment administered by the Registrar; or
  - ii. prejudicial to the interests of the ADGM.
18. After giving procedural fairness to the ADGM Person involved, the Registrar may exercise its powers to cancel the ADGM Person's licence or strike-off the ADGM Person if the concerned person has not been removed as a beneficial owner of that ADGM Person within the timeframe prescribed by the Registrar.
19. It is worth mentioning that any contravention of the BOC Regulations would result in a fine to be imposed on the ADGM Person that is not exceeding \$25,000 (level 7 fine) which is in addition to the power of the Registrar to cancel the ADGM Person's licence or strike-off the ADGM Person.
20. Including this amendment ensures that the RA can effectively limit those people satisfying the criteria set out in paragraph 17 from remaining as beneficial owners of ADGM entities or prevent further activity of such entities through the Registrar's strike-off process.

**Question 4:**

DO YOU AGREE WITH THE PROPOSED AMENDMENT TO RECOMMEND THAT A PERSON IS REMOVED FROM THE RECORD OF BENEFICIAL OWNERS OF THE ADGM PERSON AND TO CANCEL THE LICENCE OF, OR STRIKE-OFF, AN ADGM PERSON FOR FAILURE TO COMPLY WITH SUCH RECOMMENDATION?

***Delayed Effective Date for subsection 2(4) and sections 2A of the BOC Regulations***

21. Given the introduction of the duty to establish and maintain records and particulars of nominee directors and the persons on whose behalf nominee directors act, and in light of the changes which are proposed to be made to the particulars of beneficial owners, the RA is proposing to have the sections relating to these duties come into force later date than the date on which the BOC Regulations will be published.
22. This delayed effective date (for the sections related to the duty to establish a new record and the updated particulars) will allow more time for ADGM Persons to comply with these new requirements.

*Proposed Amendments*

**Annex A** Beneficial Ownership and Control Regulations 2018 showing the effect of the proposed amendments