



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

*CONSULTATION PAPER
NO. 4 OF 2022*

**PROPOSAL TO ENHANCE THE
FRAMEWORK REGULATING
INSOLVENCY PRACTITIONERS**

9 June 2022

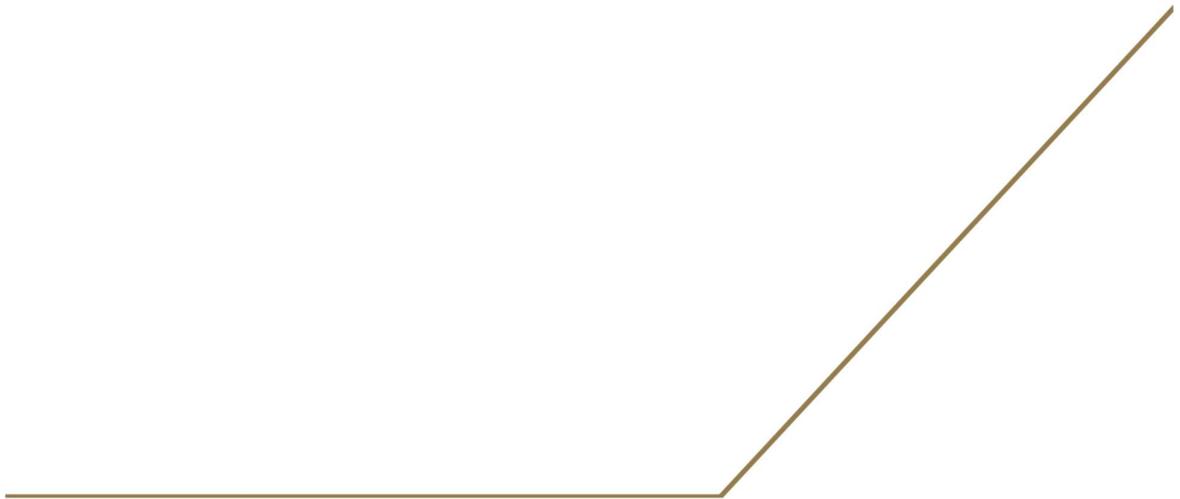


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Introduction

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 enhancements to its insolvency practitioner framework.

Who should read this paper?

2. This Consultation Paper should be of interest to all insolvency practitioners practicing or proposing to practice in ADGM and to individuals and organisations operating within the ADGM, as well as their legal advisors and auditors.

How to provide comments

3. All comments should be made in writing and sent to the email address specified below. Please reference the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments.
4. The RA reserves the right to publish 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?

5. The deadline for providing comments on the proposed framework is **23 June 2022**. 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.
6. 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. 4 of 2022
Registration Authority
Abu Dhabi Global Market
Email: consultation@adgm.com

Background

Scope and approach to the proposed amendments

1. Insolvency practitioners currently are regulated through a number of provisions in the Insolvency Regulations 2015 and the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2021.
2. The RA wishes to enhance the existing legislative insolvency practitioner framework to be aligned with international best practice, which will allow for an increased number of insolvency practitioners to practice within the ADGM and improve how the RA regulates and monitors insolvency practitioners. These enhancements will provide greater protection for insolvent parties and creditors.

In light of the above, the RA is proposing to:

Key Proposals

Insolvency Practitioner Rules

3. We propose to issue a set of Rules regulating the practice of insolvency practitioners in the ADGM to be aligned with international standards. The Insolvency Regulations (Insolvency Practitioner) Rules 2022 (the **Insolvency Practitioner Rules**) will contain registration requirements, including (i) being in continued employment with, or a member, director or partner, of a firm or body corporate registered within or outside the ADGM; (ii) holding a membership with a recognised professional body (or satisfying 'fit and proper' criteria); and (iii) providing evidence of insolvency experience. The insolvency practitioner also must submit evidence of professional indemnity insurance and a security bond (see further below in this respect).
4. There is no annual renewal requirement, but a registered insolvency practitioner must annually provide the Registrar with an insolvency practitioner return, which include details of insolvency appointments in the last 12 months and statements concerning compliance with the Insolvency Practitioner Rules.
5. For insolvency practitioners already registered with the Registrar, we propose a 'transition period' of 6 months from the publication of the Insolvency Practitioner Rules to apply for a registration under the Insolvency Practitioner Rules. Failure to do so will result in the insolvency practitioner being removed from the Registrar and ineligible for appointments under the Insolvency Regulations 2022.
6. If the Registrar considers that an insolvency practitioner has contravened the Insolvency Practitioner Rules, the Registrar may take any or all of the following

actions: censure statements, financial penalties, prohibition orders, enforceable undertakings or suspension or cancellation of the practitioner's registration.

Question 1:

DO YOU HAVE ANY COMMENTS ON THE REGISTRATION REQUIREMENTS SET OUT IN THE PROPOSED RULES?

Registration of individuals as insolvency practitioners

7. We further propose to remove the current requirement of licensing individual insolvency practitioners and replace it with a requirement for eligible individual insolvency practitioners to be registered on the Register to be maintained by the Registrar. The registered individual insolvency practitioner is not required to be employed by a firm licensed in ADGM.
8. This means that only individuals can be registered as insolvency practitioners, which is aligned with the ADGM Courts' practice to only appoint individuals as insolvency practitioners and the Registrar's previous policy to only grant commercial licences to legal persons (not to individuals). As a result, corporate entities cannot be appointed as insolvency practitioners and must 'operate through' a registered individual insolvency practitioner.
9. In this regard, it is envisaged that the controlled activity '*Insolvency Practitioner, Official Liquidator, Receiver, Administrative Receiver and Administrator activities*' under business activity 6921 will be phased out and renamed to '*insolvency consultancy*'. This activity will not, however, permit the license holder to be appointed as an insolvency practitioner.

Question 2:

DO YOU AGREE WITH THE PROPOSAL TO REQUIRE INDIVIDUAL INSOLVENCY PRACTITIONERS TO BE REGISTERED (NOT LICENSED) WITH THE ADGM?

Security bond and professional indemnity insurance

10. To be aligned with international best practice, the RA is of the view that the ADGM insolvency practitioner regime should include a requirement for registered insolvency practitioners to obtain and maintain a security bond. The bond can be in writing or electronic form and the surety must undertake to be jointly and severally liable for losses caused by the fraud or dishonesty of the insolvency practitioner or committed by a person with the connivance of the insolvency practitioner.
11. The bond must provide for a general penalty sum of US\$ 350,000 (or the equivalent amount in other currency) and a specific penalty sum equal to the lesser of the value of the insolvency party's assets and US\$ 1 million. The insolvency practitioner will be

required to provide the general penalty sum upon registration with the ADGM and maintain this for the duration of his/her registration. The specific penalty sum is only to be obtained in case of an ADGM insolvency appointment.

12. In addition to the security bond, we propose that the registered insolvency practitioners maintain professional indemnity insurance (whether held by the individual or his/her employer), which covers all types of civil liability arising in connection with the conduct and business carried out by the insolvency practitioner. The insolvency practitioner must annually provide the Registrar with information relating to this professional indemnity insurance, including terms and duration of, any claims made under, the policy.

Question 3:

DO YOU HAVE ANY COMMENTS ON THE PROPOSAL OF REQUIRING SECURITY BONDS AND PROFESSIONAL INDEMNITY INSURANCE FROM THE REGISTERED INSOLVENCY PRACTITIONERS?

Other

13. The proposed framework will principally be effective by the enactment of the Insolvency Regulations 2022, the Insolvency Regulations (Insolvency Practitioner) Rules 2022, and the Insolvency Regulations (Insolvency Practitioner Fees) Rules 2022. Finally, some consequential changes have been made through the enactment of the Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2022, the Commercial Licensing Regulations (Controlled Activities) Rules 2022, and the Commercial Licensing Regulations (Exemptions) Order 2022.

Proposed Amendments

Annex A	Insolvency Regulations 2022
Appendix 1	Insolvency Regulations (Insolvency Practitioner) Rules 2022
Appendix 2	the Insolvency Regulations (Insolvency Practitioner Fees) Rules 2022
Appendix 3	Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2022
Appendix 4	Commercial Licensing Regulations (Controlled Activities) Rules 2022

Appendix 5**Commercial Licensing Regulations (Exemptions) Order 2022**