



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

*CONSULTATION PAPER  
NO. 5 OF 2024*

**Proposed amendments concerning:**

- (1) Charges against continuing companies;  
and**
- (2) Single Family Offices and RSCs**

**14 June 2024**



**CONTENTS**

<b><i>Introduction</i></b> .....	<b>3</b>
<b>Why are we issuing this paper?</b> .....	3
<b>Who should read this paper?</b> .....	3
<b>How to provide comments</b> .....	3
<b>What happens next?</b> .....	3
<b><i>Scope and Approach to the Proposed Amendments</i></b> .....	<b>5</b>
<b><i>Amendments to the company charges regime for continuing companies</i></b> .....	<b>5</b>
<b>Current Position</b> .....	5
<b><i>Amendments to the SFO and RSC regime</i></b> .....	<b>9</b>
<b>Current Position</b> .....	9
<b><i>Proposed Amendments</i></b> .....	<b>14</b>

## Introduction

### Why are we issuing this paper?

The Abu Dhabi Global Market (“**ADGM**”) Registration Authority (“**RA**”) has issued this Consultation Paper to invite public feedback and comments on proposed amendments to:

- A. the Companies Regulations 2020;
- B. the Commercial Licensing Regulations (Controlled Activities) Rules 2022; and
- C. the Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2023.

The proposed amendments to the commercial regulations and rules are set out in Annex A and Appendices 1 to 2, respectively, to this Consultation Paper.

### Who should read this paper?

The proposals in this Consultation Paper would be of interest to all individuals and organisations operating or proposing to operate in the ADGM and their professional advisors.

### How to provide comments

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

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

### What happens next?

The deadline for providing comments on this proposal is **14 July 2024**.

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

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

**Comments to be addressed to:**

Consultation Paper No. 5 of 2024

Registration Authority  
Abu Dhabi Global Market Square Al Maryah Island  
PO Box 111999  
Abu Dhabi, UAE  
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## *Scope and Approach to the Proposed Amendments*

1. This Consultation Paper aims to explain the proposed amendments to the following regulations and Rules:
  - a. Companies Regulations 2020 (the “**CR2020**”);
  - b. Commercial Licensing Regulations (Controlled Activities) Rules 2022 (the “**Controlled Activity Rules**”); and
  - c. Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2023 (the “**Conditions of Licence Rules**”).
  
2. Specifically, these amendments will:
  - a. Remove inconsistencies under the CR2020 with respect to charges against companies continuing into the ADGM, whilst providing certainty to existing charge holders of continuing companies.
  
  - b. With respect to single family offices (“**SFOs**”) and restricted scope companies (“**RSCs**”):
    - i. provide clarity as to what constitutes SFO activity in the ADGM;
    - ii. introduce minimum requirements to ensure the SFO regime in the ADGM is not abused whilst at the same time ensuring SFOs provide benefit to the region; and
    - iii. clarify when an RSC application can be made.

## *Amendments to the company charges regime for continuing companies*

### **Current Position**

1. Part 24, Chapter 1 of the CR2020 sets out the requirements for the registration of a company’s charges and a charge in a series of debentures (collectively, “**charges**”). Sections 784 and 785 of the CR2020 provide that a charge created by a company must be registered with the Registrar within 21 days of the date of its creation. However, where a company is continuing into ADGM from another jurisdiction, it is probable that the continuing company’s existing charges were created more than 21 days prior to the continuance.

### 21-day Limit and Continuing Companies

2. The effect of section 784's 21-day requirement is that charges not registered with the ADGM's Registrar within 21 days of their creation (unless they receive the blessing of the Court under section 789), are void against a creditor, liquidator, or administrator of the company, in addition to the other resulting effects of subsection 791(4).

### Method for Determining Charge Registration Date

3. Determining the priority of charges is based on a number of factors. In addition to rules determining priority between floating and fixed charges, the general rule is the charge creation date determines priority (or the 'first in time' principle). However, where a charge can be perfected, such as where notice is required, or where a registration of a charge is required, priority will be given to the date of perfection.
4. This is relevant in the context of charges against continuing companies, as charges are registered with the ADGM's Registrar during the continuation application process. In instances where multiple charges exist, the result would be that charges are perfected at the same time. This may alter the rights of charge holders where an existing order of priority existed prior to the continuance.

## **Proposed Changes**

### 21-day Limit and Continuing Companies

5. It is recommended that a new subsection (4A) be inserted after section 784(4) that provides or has the effect of the following, *"Despite section 784(4), "the period allowed for delivery" for a company that applies for a certificate to continue as a company registered under these Regulations is the date the application is made to the Registrar for a continuance under section 102."*
6. This would be accompanied by a new subsection (6A) after section 785(6) that provides that, *"Despite section 785(6), "the period allowed for delivery" for a company that applies for a certificate to continue as a company registered under these Regulations is the date the application is made to the Registrar for a continuance under section 102."*
7. We further recommend, on the basis that a "charge filing statement" as defined by section 787 is the means of evidencing a charge to the Registrar for registration, in addition to a certified copy of the instrument creating the charge where such instrument exists (as per section 784(3)) or a certified copy of one of the debentures in the series (as per section 785(4)), a new subsection 102(1A) is introduced which states that:

*"(1A) Where section 784(4A) or 785(6A) apply, section 102(h) shall include, for each charge, as is applicable:*

- (a) a charge filing statement in accordance with section 787,*
- (b) a certified copy of the instrument creating the charge,*

- (c) *a certified copy of one of the debentures in the series or each series,*
  - (d) *a currently applicable certificate of the registration of the charge from the appropriate official or public body in the jurisdiction to which section 102(2)(a) applies, and*
  - (e) *any other information deemed relevant by the Registrar.”*
8. Placing the obligation to provide the information to register a charge of a continuing company under section 102 will only put an obligation on the company to provide the documentation, whilst the ability to register a charge is ordinarily exercisable by both the company and any person with an interest in the charge. However, placing the obligation at section 102 benefits from ensuring that there is an obligation to provide the charge filing statement at the point of applying for a continuance.
9. An amendment will also be made to section 116 so that it is clear that, in addition to it being an offence to knowingly or recklessly providing false, misleading or deceptive information during an application for a continuance, it is also an offence to knowingly or recklessly fail to provide relevant information, so that failures to provide information with respect to existing charges amount to an offence in the same manner as providing incorrect information.
10. This amendment will be accompanied by an internal ADGM RA policy which will ensure that continuations are granted simultaneously with the registration of charges, and that where charges cannot be registered, then a continuance cannot be granted until any issues relating to the registration of the charge are resolved. This will ensure that the continuation process does not create any period where a charge is not registered.

#### Method of Determining Charge Start Date

11. We recommend inserting a new section 799A which will have the effect of ensuring that charges taken on a company’s property which is continuing into the ADGM maintain their priority as existed directly before the continuation.
12. Where a company is continuing from a jurisdiction which does not provide for the registration of a charge, or considers perfection or prioritisation via other means, it is not proposed that this is a matter for legislation to determine, but instead for interested parties to consider prior to a continuation via contractual means. This contractual documentation will be required to be maintained and made available for inspection under the current section 787 of the CR2020.

Q1: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED WORDING AND/OR APPROACH TO THE AMENDMENT TO THE CR2020, AS SHOWN UNDER ANNEX A?

Q2: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON WHAT SHOULD OCCUR WHERE A COMPANY FAILS TO PROVIDE A CHARGE FILING STATEMENT FOR AN EXISTING CHARGE DURING AN APPLICATION FOR A CONTINUANCE, AND WHETHER THERE SHOULD BE A STATUOTY INTERVENTION?

Q3: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, PROVIDING GREATER FLEXIBILITY WHEN DEALING WITH CHARGES OF A CONTINUING COMPANY?

Q4: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, WHETHER AN INTERESTED PARTY OTHER THAN THE COMPANY SHOULD ALSO BE ABLE TO PROVIDE THE RELEVANT INFORMATION FOR THE REGISTRATION OF A CHARGE WITH RESPECT TO A COMPANY THAT IS APPLYING FOR A CONTINUANCE?

Q5: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, WHETHER THE CR2020 SHOULD PROVIDE A STATUTORY POSITION WITH REGARDS TO COMPANIES CONTINUING FROM A JURISDICATION WHICH DOES NOT HAVE A REGISTER OF CHARGES OR PROVIDED ALTERNATIVE MEANS FOR PERFECTION AND/OR PRIORITISATION OF SUCH CHARGES?



## *Amendments to the SFO and RSC regime*

### **Current Position**

13. An SFO is a private organization that is established to manage the financial and personal affairs of a single wealthy family. Its primary purpose is to oversee investment management, estate planning, tax management, and other aspects of the family's wealth and assets, providing comprehensive and customized financial, legal and other services tailored to the specific needs of that particular family to include concierge and organisational services. An SFO can be contrasted with a multi-family office, which will support the needs of multiple families.
14. SFOs can have a net benefit to an economy, ordinarily managing substantial assets, requiring experienced and skilled individuals to manage those assets. This can add to a thriving economy where the assets are held and managed locally (i.e. through local banks or Company Service Providers) and invested locally (whether in local stock markets or local businesses more generally), whilst investing in the people of the local economy through employment and education. SFOs could similarly benefit the ADGM and the emirate of Abu Dhabi.
15. SFOs can benefit from being registered as an RSC as one of the conditions for registering a company as an RSC under the CR2020 is that it is wholly owned by a single family. The benefits include fewer disclosure requirements helping maintain the confidentiality of a single family (although the requirements of AML regulation continue to apply).

#### SFO Activity

16. The SFO regime currently provides for the activities which an SFO can conduct. However, although the activities are provided for in broad terms, the regime could benefit from additional clarity both in terms of the specific activities an SFO can perform, and the true breadth of activities.

#### Economic Benefit

17. There are no legislative requirements imposed on SFOs to ensure that they bring a tangible benefit to the ADGM. Competitor jurisdictions require SFOs to make certain investments in the local economy, employ a certain number of local individuals, or make investments into a locally hosted stock exchange for example. It is proposed that licensing conditions concerning the asset value of the SFO or the family are applied to help

contribute to the ADGM and Abu Dhabi economy.

### Restricted Scope Company (“RSC”)

#### *Members of the same family*

18. A company can be registered as an RSC under the CR2020 dependant on the company’s ownership. Amongst the ownership options, s.3(4)(c) allows single person or same family ownership. With regards to the family ownership condition, although it is implied it is not expressly stated that the company must continue to be wholly owned by members of the same family.
19. The definition of ‘members of the same family’ is defined in prescriptive terms, preventing for example SFOs from being established by individuals to also service the needs of their grandparents. Nor can an RSC be owned by descendants past the great grandchildren of the founding member, preventing an SFO from continuing as an RSC whilst also being a structure that can be utilised in perpetuity. It is proposed that the definition of ‘members of the same family’ is widened to reflect how SFOs often operate.

#### *One person*

20. A company can also register as an RSC where the company is wholly owned by one person. Where the ‘one person’ category is relied upon, it is the policy intention that this one person be a natural person, although this is not accurately reflected within the legislation.

#### *SFO activity or Registrar’s discretion*

21. Where an application is made for a company to be registered as an RSC, it is the policy intention that, unless one of the exemptions under section 3(4)(a) or (b) apply, that the RSC be used for SFO activity only, unless the Registrar deems that special circumstances warrant an applicant benefitting from the reduced disclosure requirements of an RSC, in which case the company may conduct any type of economic activity and still be registered as an RSC.

## **Proposed Changes**

### SFO Activity

22. It is proposed that the following controlled activity is inserted into the Controlled Activity Rules:

#### *Single Family Office*

- (1) *Conducting any of the following activities through a legal entity or legal arrangement, where the legal entity or arrangement is set up for the purpose of servicing only a single family:*

- (a) *Concierge services for the family (such as property management, travel and education);*
- (b) *Human resources (family and business);*
- (c) *Strategic and risk management services (such as business and family structuring advice, risk analysis, personal and cyber security, technology advice and insurance);*
- (d) *Taxation and wealth planning;*
- (e) *Investment management and advisory services (investment policies and procedures, investment management, investment advisory, strategic analysis);*
- (f) *Legal and regulatory services (advising, drafting, liaising with external regulators and professionals);*
- (g) *Financial services (budgeting, financial controls, accounting, bookkeeping);*
- (h) *Holding company (acting as holding company for family business and other family assets);*
- (i) *Acting as trustee or foundation (holding family business interests and other assets for the benefit of the family);*
- (j) *Any other controlled activity undertaken for a single family.*

- (2) *“Single family” means all direct ancestors and descendants of an individual, or group of individuals who are all related, including blood relations, step-children and adopted children whether of the individual or group of individuals.*

### Economic Benefit

23. It is suggested that the Conditions of Licence Rules are amended to include a provision which has a similar effect to the below:

#### Specific conditions of licence – Single Family Office

- (1) A value requirement for the SFO or family to be calculated via one of the following means:
  - (a) Net asset value of the family;
  - (b) The net investable / liquid assets of the family (calculated on a 180-day period);
  - (c) The net asset value of the assets which the SFO provides services for;
  - (d) The net investable / liquid assets held by the SFO (calculated on a 180-day period);
- (2) Set the minimum value requirement under (1) as either:
  - (a) USD 5,000,000
  - (b) USD 10,000,000
  - (c) USD 30,000,000
  - (d) USD 50,000,000

### Restricted Scope Company

#### *Members of the same family*

24. It is suggested that an amendment to the CR2020 be made to make it explicit that an RSC registered in accordance with section 3(4)(c)(ii) must remain wholly owned by the members of the same family that originally registered the company as an RSC.
25. It is proposed this is achieved via a subparagraph to section 3 of CR2020, or a new section to CR2020 be included, which states that:

*“A transfer of ownership of a registered RSC to a person outside of the definition of a ‘member of the same family’ as per section 3(5) is void.”*

26. It is also proposed that the definition of family member under section 3(5) be expanded to include grandparents of the founding member, and the definition of descendant should be drafted in terms that enable ongoing ownership in perpetuity. This will operate in a similar manner to the proposed definition of “single family” under the proposed amendment to the Controlled Activity Rules.

#### *One person*

27. It is proposed that the CR2020 is amended so that section 3(5)’s application of the ‘natural person’ requirement applies to the one person option under section 3(4)(c)(i) as well as the members of the same family option under section 3(4)(c)(ii).

#### *SFO Activity or Registrar’s Discretion*

28. It is proposed that the CR2020 be amended so that current section 3(10) becomes section 3(11), and new wording for section 3(10) is inserted which reads, *“A company may only be registered as a restricted scope company under section 3(4)(c) where the Registrar at their discretion, deems that the circumstances of the application warrant the registering of the applicant’s company as a restricted scope company.”* This would be accompanied by a public policy statement which provides that SFOs can apply to be registered as an RSC, and otherwise at the Registrar’s discretion where such registration is, in the view of the Registrar, warranted.

Q1: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED WORDING AND/OR APPROACH TO THE AMENDMENT TO THE CR2020, AS SHOWN UNDER ANNEX A?

Q2: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED LIST OF ACTIVITIES WHICH, IF CONDUCTED BY A LEGAL ENTITY OR ARRANGEMENT FOR A SINGLE FAMILY, CONSTITUTES SFO ACTIVITY?

Q3: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSAL TO INCLUDE THE NEW SFO ACTIVITY WITHIN THE CONTROLLED ACTIVITY RULES?

Q4: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED DEFINITION OF 'SINGLE FAMILY' STATED UNDER THE PROPOSED NEW SFO ACTIVITY UNDER PARAGRAPH 28 ABOVE?

Q5: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, LEGISLATING FOR A NET VALUE REQUIREMENT FOR SFOs, AND DO YOU HAVE A PREFERENCE FOR ONE OF THE OPTIONS UNDER PARAGRAPH 23(1)(a), (b), (c) OR (d)?

Q6: DO YOU HAVE ANY CONCERNS WITH, FEEDBACK ON, OR A PREFERENCE FOR ONE OF THE VALUES UNDER PARAGRAPH 23(2)(a), (b), (c) OR (d)?

Q7: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, MAKING IT EXPRESS THAT AN RSC REGISTERED ON THE BASIS OF SINGLE FAMILY OWNERSHIP MUST REMAIN IN SINGLE FAMILY OWNERSHIP, AND IT BE THE SAME FAMILY AS ORIGINALLY REGISTERED THE RSC?

Q8: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, MAKING A TRANSFER OF OWNERSHIP OF AN RSC OUTSIDE OF THE SINGLE FAMILY VOID AS OPPOSED TO VOIDABLE OR REVERSABLE?

Q9: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, EXPANDING THE DEFINITION OF 'MEMBERS OF THE SAME FAMILY' APPLICABLE TO RSC REGISTRATION?

## *Proposed Amendments*

### **Regulations and Rules**

**Annex A** Proposed Companies Regulations (Amendment No. 2) 2024

**Appendix 1** Proposed Commercial Licensing Regulations (Controlled Activities) Rules 2024 (editorial redline)

**Appendix 2** Proposed Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2024 (editorial redline)