

Guidance Note for Special Purpose Vehicles

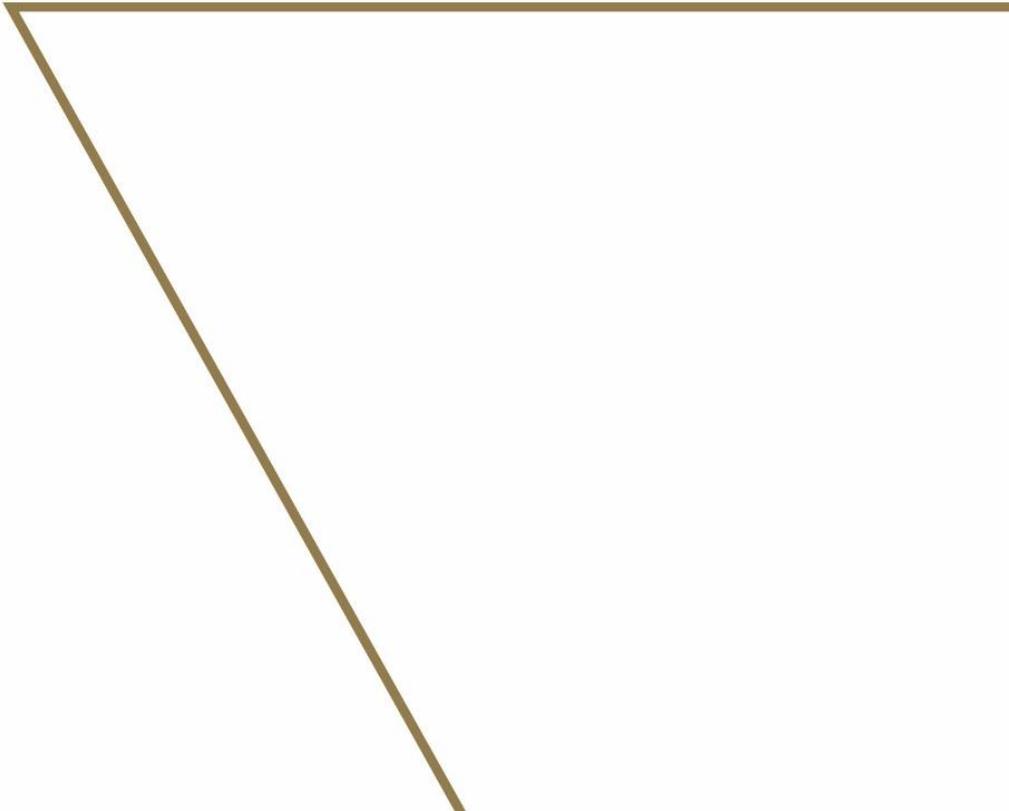


Table of Contents

Table of Contents	2
Background.....	3
Purpose of this Guidance Note.....	3
ADGM's Special Purpose Vehicle Regime.....	3
The Nexus Requirement for ADGM SPVs	4
Registrar's ultimate discretion	4
For More Information	5
Disclaimer	6

Background

Abu Dhabi Global Market (**ADGM**) is a financial free zone, established pursuant to Federal Legislation including *Abu Dhabi Law No. 4 of 2013 (Founding Law)* in the Emirate of Abu Dhabi. With its own civil and commercial laws based on English common law, ADGM is an international financial centre that offers the local, regional and international business community a world-class legal system and regulatory regime.

The Registration Authority is the independent commercial regulatory authority in the ADGM, which has the powers granted to it under the Founding Law. The Registration Authority's responsibilities include the incorporation of various corporate vehicles as well as the registration and commercial licensing of all businesses operating in or from Al Maryah Island, Abu Dhabi. Its responsibilities also include all aspects of the administration of ADGM's commercial legislation, which can be found at this link: <https://en.adgm.thomsonreuters.com/rulebook/commercial-legislation>

Purpose of this Guidance Note

This guidance has been provided to assist potential registrants in relation to the Registrar's requirements in relation to the establishment of a Special Purpose Vehicle (**SPV**) in ADGM.

This guidance is issued under section 28 of the *ADGM Commercial Licensing Regulations 2015*. It applies to all applications for incorporation and a commercial licence for an ADGM SPV, including applications to grant an ADGM company a commercial license to conduct any of the following controlled activities:

1. 7012: Special purpose company for professional investors;
2. 7013: Special purpose company for professional investment institutions;
3. 7016: Activities of special purpose company; or
4. 7017: Activities of special purpose vehicle.

In particular, this guidance explains what the Registrar will look for in an application for a commercial licence for an ADGM SPV when considering Rule 2 of the *Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2019*, in particular, the requirement to provide information showing (among other things):

- “(c) the controlled activity or controlled activities which the applicant proposes to carry on in or from the Abu Dhabi Global Market; and
- ... (g) such other information as the Registrar may require for the purpose of deciding whether to grant a licence.” (together, **Licensing Conditions Rule 2**)

This guidance does not purport to cover all the requirements for the establishment of an ADGM SPV and should be read in conjunction with all applicable Federal, Emirate and ADGM regulatory requirements, including the application requirements prescribed under ADGM's commercial licensing regulations and rules. Where any inconsistency exists, the relevant legislative requirements will prevail.

ADGM's Special Purpose Vehicle Regime

ADGM's SPV Regime is designed to cater to a broad range of business types, uses and industry sectors. These include corporates, financial institutions, sovereign wealth funds, family offices and individual investors. ADGM SPVs are corporate vehicles, used for a variety of purposes, including to establish subsidiaries, project or joint venture vehicles. The key feature of an SPV is its separate legal personality, enabling the isolation of financial and legal risk from the assets and liabilities of the SPV's shareholders or any of its sister companies.

In ADGM, an SPV is incorporated either as:

- a Private Company Limited by Shares and licensed to conduct SPV activities; or

- a Restricted Scope Company (**RSC**), which allows for more limited disclosure on the public register.¹

The Nexus Requirement for ADGM SPVs

To satisfy the Registrar of the requirement at Licensing Conditions Rule 2² in relation to an ADGM SPV, applicants must be able to demonstrate that the SPV will have an appropriate connection or 'nexus' to the ADGM, the UAE and/or to the GCC Region (the **Nexus Requirement**).

A connection or 'nexus' may be demonstrated in a number of ways, including documentary evidence that:

1. The SPV is owned or controlled by a UAE or GCC based private company, family/family office or individual;
2. The SPV holds assets that are located in the UAE or the GCC Region;
3. The SPV facilitates transactions connected, or provides real or economic benefit, to the UAE; or
4. The SPV's purpose includes the issuance of Securities that will be admitted to the Official List maintained by the Financial Service Regulatory Authority (**FSRA**), and / or admitted to trading on a Recognised Investment Exchange, MTF³, OTF⁴ or other licenced platform (including a PFP⁵) that is established in ADGM.

For example, UAE sovereign and state-owned entities will have the requisite connection to the UAE and would therefore satisfy the requirements of the Nexus Requirement.

Conversely, a SPV wholly owned by a foreign non-resident person that solely holds assets located outside the UAE or the GCC Region would not meet the requirements of the Nexus Requirement.

Note: an SPV that is intended for a purpose that would otherwise have no connection to the UAE or GCC region, would not meet the Nexus Requirement by appointing an ADGM (or UAE based) Company Service Provider.

Registrar's ultimate discretion

The Registrar recognises that not all circumstances or transactions are the same and will, at all times, maintain the discretion to consider and decide each SPV application on a case-by-case basis. However, the Registration Authority is unlikely to accept an application to incorporate an SPV if it does not satisfy the Nexus Requirement.

Note: Pursuant to section 10 of the Commercial Licensing Regulations 2015, the decision to grant or refuse an application for the grant of a commercial licence in ADGM is ultimately at the discretion of the Registrar.

¹ Subject to satisfying the eligibility criteria to apply for an RSC, as per the relevant sections of the ADGM Companies Regulations 2015.

² In addition to all the applicable licensing requirements prescribed in the ADGM commercial licensing regulations and rules.

³ Multilateral Trading Facility.

⁴ Organised Trading Facility.

⁵ Private Financing Platform.

For More Information

For more information on ADGM's SPV regime go to: www.adgm.com/setting-up/spv/overview

For any questions on incorporating an SPV in ADGM, please email your ADGM Business Development contact person, or the Registration Authority's Registration & Incorporation Team at: ADGM.registration@adgm.com.

Contact Us

The Registration Authority's offices are open from Sunday to Thursday, 9:00am to 3:00pm and may be contacted during normal working hours as follows:

By telephone: +971 2 333 8888;

By email: ra@adgm.com; or

In person: 3rd floor, ADGM Building, North Side, Registration & Incorporation unit of ADGM Registration Authority, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates.

Disclaimer

This guidance sets out ADGM Registration Authority's position on the requirement for ADGM companies licensed to conduct SPV and related activities to have a nexus to the UAE or GCC. Further advice from a specialist professional in relation to the implementation of this guidance may be required. The Registration Authority makes no representations as to accuracy, completeness, correctness or suitability of any information and will not be liable for any error or omission. Information in this guidance is not to be deemed, considered or relied upon as legal advice and should not be treated as a substitute for a specific advice concerning any individual situation. Any action taken upon the information provided in this guidance is strictly at your own risk and ADGM Registration Authority will not be liable for any losses and damages in connection with the use of or reliance on information provided in this guidance.

For more information, please contact the Registration Authority by email: ra@adgm.com

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