AIMA

Establishing an alternative asset management business in the UAE

A Comprehensive Primer

EFFECTA
REGULATORY CONSULTING

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FOREWORD

The United Arab Emirates is rapidly emerging as a prime destination for alternative asset managers.

Over the past year alone, a significant number have chosen to register in one or both of UAE's financial hubs, Dubai International Finance Centre (DIFC) and Abu Dhabi Global Market (ADGM). The trend is particularly pronounced among UK based and Asia Pacific firms.

The region's appeal is strengthened by a strategic charm offensive, leveraging the recessionary conditions in the UK and US as well as geopolitical challenges in parts of the Asia Pacific region.

The UAE leadership is making a concerted effort to attract top-tier businesses globally, offering incentives such as an attractive tax regime, long-term resident visas and a proactive government stance towards business development and prosperity. Consequently, there is a notable migration of fintech, crypto and alternative asset firms to the UAE.

Amid this surge in interest, we are delighted to present this primer. Topics covered include the necessary steps for setting up a financial services firm in the UAE, establishing a separate entity within the country, as well as the regulatory considerations and business restrictions in the UAE financial free zones.

Please note the contents of this primer constitute general information only and are not intended and should not be relied as legal advice. Due to the dynamic nature of this field, the meaning of key concepts may evolve over time.

We trust that you will find this publication useful.

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Abu Dhabi Global Market (ADGM)

ADGM is the international financial centre (IFC) operating across Al Maryah Island and Al Reem Island, an area of 14.38 million sqm, making it one of the largest financial districts in the world, strategically located in the heart of Abu Dhabi, the capital of the United Arab Emirates (UAE). Operating since 2015, ADGM has rapidly gained prominence as a preferred destination for global businesses looking to establish a presence in the region. The IFC provides:

A Hub for Asset Management:

Along with a conducive environment and robust regulations for private credit funds, collective investment funds and alternative financing, ADGM is home to some of the largest names within the Asset Management cluster. These names belong to sub-clusters within the sector such as hedge funds, private equity, institutional funds and venture capital firms.

Digital Asset Ecosystem:

A recognised and leading digital asset hub in the region, fostering innovation through regulatory support via its Virtual Assets framework, DLT Foundations regime and other enhancements introduced to its frameworks.

Tax Benefits:

Businesses operating within ADGM benefit from a highly competitive corporate tax environment, as well as zero restrictions on capital repatriation.

Regulatory Environment:

ADGM operates within a robust regulatory framework based on the direct application of English Common Law, providing a familiar and reliable legal environment for businesses.

Access to Capital:

ADGM acts as a single gateway and catalyst for global financial institutions and leading entrepreneurs, to enjoy seamless access to the capital, particularly in the sovereign-wealth space. Abu Dhabi is home to some of the largest SFWs such as Abu Dhabi Developmental Holding Company (ADQ), Abu Dhabi Investment Authority (ADIA), Mubadala Investment Company and Emirates Investment Authority, amounting to circa USD 1.55 trillion.

Strategic Location:

ADGM's access to MEASA (Middle Eastern, African, and South Asian) markets provides businesses with a strategic gateway to these regions. Unrivalled connectivity and geographical proximity are highlights for Abu Dhabi and the overall region, with one-third of the world merely four hours away by air, and two-thirds less than 8 hours away.

Business-Friendly Ecosystem:

ADGM is designed to support businesses of all sizes, from startups to multinational corporations, fostering innovation and growth across various sectors. The ecosystem enables access to technology infrastructure providers within ADGM's asset management ecosystem that supports a plug-and-play environment.

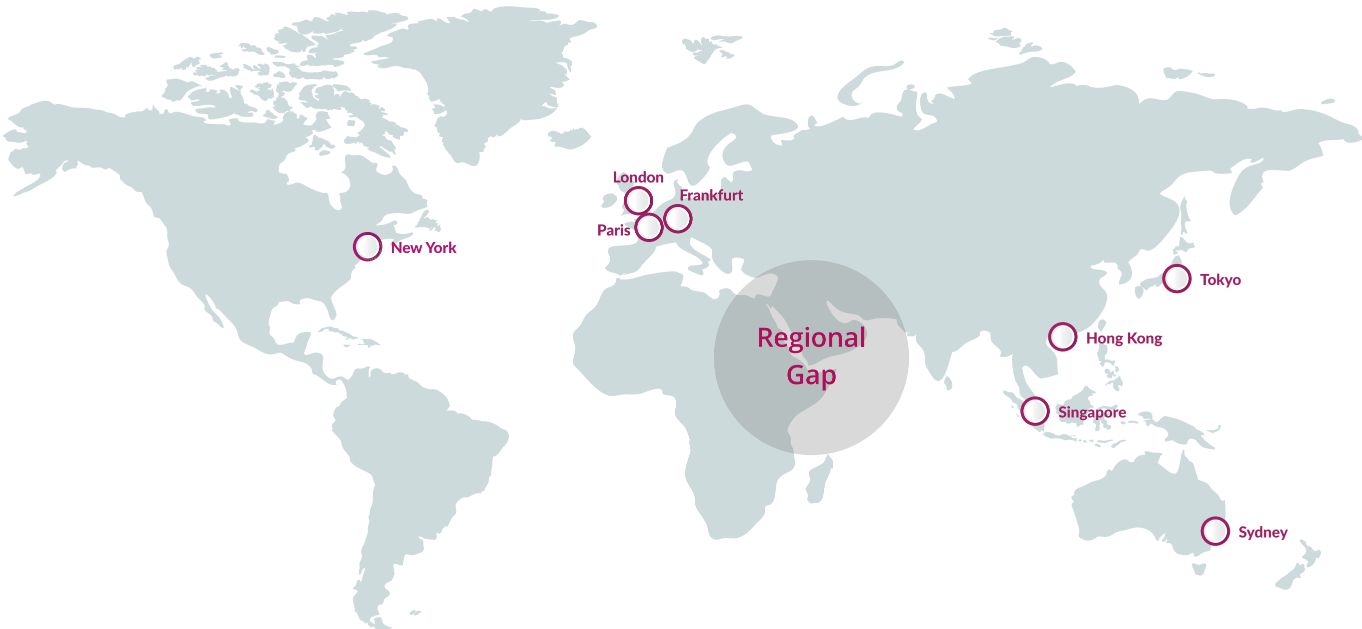
INTRODUCTION

The United Arab Emirates ("UAE") is a country in the Middle East. It is located at the eastern end of the Arabian Peninsula and shares borders with Oman and Saudi Arabia, whilst also having maritime borders in the Arabian Gulf with Qatar and Iran.

The UAE is an elective monarchy formed from a federation of seven emirates, consisting of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah, and Umm Al Quwain. Each emirate is an absolute monarchy governed by a ruler, and together the rulers form the Federal Supreme Council, the highest executive and legislative body of the UAE. The ruler of Abu Dhabi serves as president whilst the ruler of Dubai is vice president and prime minister. Abu Dhabi is the capital of the Emirate of Abu Dhabi and the national capital of the federation, whilst Dubai is the capital of the Emirate of Dubai and the most populous city in the UAE. As of 2023, the UAE has an estimated population of around 10 million. Emirati citizens are estimated to form about 11% of the population; the remaining residents are expatriates. Islam is the official religion and whilst Arabic is the official language, English is widely spoken and mainly used for business purposes.

The UAE has the third largest economy in the Middle East (after Saudi Arabia and Türkiye), with a gross domestic product (GDP) of $527.8bn (according to IMF data from April 2024). The total assets managed by sovereign wealth funds (SWFs) in the UAE has been estimated to be more than $1.8 trillion. Total sovereign wealth fund assets managed in the UAE stood at more than $1.6 trillion as of 2023.

The UAE is in the heart of the Middle East, with easy access to Europe and Asia, and serves as a global financial hub connecting these two continents.



FREE ZONES AND ONSHORE UAE

The UAE has established a system of more than 40 multi-disciplinary free zones, the majority of which are based in the Emirate of Dubai. A free zone is a designated economic zone within a defined geographic area, governed by its own specific framework of rules and regulations that do not apply to businesses outside the zone, and which are typically industry-specific (such as Dubai Media City or Dubai Healthcare City).

There are more than 40 multi-disciplinary free zones in the UAE including two financial free zones, the Dubai International Finance Centre and Abu Dhabi Global Market.

A free zone entity can be established as a domestic entity or a branch of a foreign entity, and both may be 100% foreign owned. Free zone entities are subject to the independent commercial laws and regulations applicable in the specific free zone (and which are often designed to encourage foreign investment), such as those relating to employment and immigration procedures. The licensing authority within each free zone is responsible for issuing commercial licences, and each free zone will list the commercial licences that entities can apply for, depending on the type of business activity to be conducted.

Two of the UAE's free zones, the Dubai International Financial Centre (the "DIFC") and the Abu Dhabi Global Market (the "ADGM"), are known as financial free zones, as each has its own separate financial services regulations and its own independent financial services regulator (in addition to its own commercial and civil laws). The remainder of the UAE's free zones are known as commercial free zones, as while they are subject to specific commercial regulatory frameworks, they do not have their own financial services regulations or financial services regulators.

The UAE excluding the DIFC and the ADGM is commonly referred to as "Onshore UAE". Onshore UAE therefore includes the UAE's various commercial free zones, and each commercial free zone is subject to the same financial services regulations that apply in the rest of Onshore UAE outside of the commercial free zones.

Entities that wish to establish themselves in Onshore UAE require commercial licences to operate. However certain entities may also need to apply for additional permissions depending on the nature of the business they conduct. For example, a financial services firm conducting regulated business in Onshore UAE would have to apply for a commercial licence, as well as authorisation from a relevant financial services regulator to conduct financial services.

There are two federal financial services regulators in Onshore UAE: (i) the UAE Securities and Commodities Authority ("SCA") that regulates capital markets, listed companies, securities, commodities and virtual assets and (ii) the Central Bank of the UAE (the "CBUAE") that regulates banks, finance companies, payment service providers and insurance companies. As commercial free zones are part of Onshore UAE, SCA and the CBUAE regulations generally also apply to commercial free zones.

A notable exception to the above is that the SCA does not regulate virtual assets within those parts of Onshore UAE that are within the emirate of Dubai (i.e. the emirate of Dubai, excluding the DIFC, but including all the commercial free zones). Rather, the Virtual Assets Regulatory Authority ("VARA") has jurisdiction over virtual assets in this part of the UAE. Please see Appendix A for further information on the regulation of virtual assets in the UAE (including in the financial free zones).

FINANCIAL FREE ZONES

The UAE has two financial free zones: (i) the DIFC and (ii) the ADGM. The DIFC and the ADGM are positioned as international financial hubs, each based on common law frameworks with independent commercial and financial services regulators, financial services regulations, judicial systems and tax-efficient regimes. As legislation within the financial free zones is based on common law and regulations are principles-based, international financial services firms often choose to establish in one and sometimes both financial free zones.

Both the DIFC and ADGM operate on English Common law principles.

Whist the DIFC and ADGM have mostly independent laws and regulations, entities established in a financial free zone will still be subject to federal criminal legislation and federal anti-money laundering ("AML"), counter-terrorist financing and sanctions legislation as well as (depending on the business conducted) federal economic substance legislation.

There are many similarities between the financial services regulations in the financial free zones and those in the UK and other global financial hubs, although over the course of time distinct differences have emerged in each jurisdiction.

The Dubai International Finance Centre (DIFC)

The DIFC was established in 2004 and offers a wide range of financial services licences for entities providing banking, asset management, insurance, and capital markets services to both professional and retail clients. The DIFC has its own independent legal system, based on English and other common law systems, as well as the DIFC Courts, which are an independent judicial body. DIFC laws and regulations include, for example, employment law and data protection law. The DIFC Registrar of Companies is responsible for all matters related to the incorporation, registration and commercial licensing of entities in the DIFC.

The Dubai Financial Services Authority ("DFSA") is the regulatory body responsible for licensing and supervising firms providing financial services in or from the DIFC. DFSA-regulated firms include investment firms, asset managers, brokers, financial advisers and insurance intermediaries. The DFSA rules are based on international standards, which firms regulated by the UK Financial Conduct Authority will find familiar. The regulatory framework is principles-based and the DFSA adopts a risk-based approach to supervision.

Entities operating in the DIFC must have a valid commercial licence and appropriate financial services regulatory licence to conduct regulated financial services in or from the DIFC.

The Abu Dhabi Global Market (ADGM)

The ADGM, Abu Dhabi's International Financial Centre, was established in 2013 and offers a wide range of financial services licences for entities providing financial services to both professional and retail clients in and from the ADGM. The ADGM Registration Authority is responsible for all matters related to the incorporation, registration and commercial licensing of entities in the ADGM, as well as for monitoring and enforcing compliance with ADGM commercial legislation.

The ADGM's Financial Services Regulatory Authority ("FSRA") is the regulatory body responsible for licensing and supervising firms providing financial services in or from the ADGM. FSRA-regulated firms include investment firms, asset managers, brokers, financial advisers and insurance intermediaries. The FSRA rules are also based on international standards and are principles-based.

Entities operating in the ADGM must have a valid commercial licence and applicable financial services regulatory licence to conduct regulated financial services in or from the ADGM.

TRADING ON STOCK MARKETS

The UAE has three primary stock markets:

(i) **Abu Dhabi Securities Exchange ("ADX")** – the ADX was established in 2000 as an Onshore UAE market and is wholly owned by the Abu Dhabi Government. Created to uphold financial and economic stability within the UAE, the market aims to provide a diverse array of investment opportunities on both a local and international scale. This market primarily deals in securities, shares of public joint stock companies, government and corporate bonds, exchange-traded funds, equities, funds, and sukuk. As of January 2024, 82 Public Companies in 12 sectors were listed on the ADX. The ADX is regulated by the SCA.

(ii) **Dubai Financial Market ("DFM")** – the DFM was founded in 2000 and was fully owned by the Government of Dubai until it was incorporated as an Onshore UAE market in 2007. As with the ADX, the DFM is regulated by the SCA. The DFM focuses primarily on the secondary trading of local companies. Both the ADX and the DFM trade using UAE Dirham and in both English and Arabic. Securities listed on the ADX and DFM may be subject to foreign investment limits, and before listing the relevant issuer (domestic or foreign) must have been approved by the SCA.

(iii) **Nasdaq Dubai** – this market was founded in 2005 as an exchange in the DIFC, catering to both regional and international investors. Regulated by the DFSA, Nasdaq Dubai provides company owners with the ability to access investment from the region, through a primary or dual listing. As an incentive and to promote IPOs on its exchange, Nasdaq Dubai has aimed to differentiate itself from its competitors by offering a reduced IPO minimum market capitalisation of $10 million and a reduced minimum free float of only 25% of a company's shares. Nasdaq Dubai is owned by the DFM and Borse Dubai. As of March 2024, over 70 companies were listed on Nasdaq Dubai. Unlike the DFM and ADX, Nasdaq Dubai does not encourage securities to be listed in UAE Dirhams and no foreign ownership restrictions apply.

PERSONAL TAX

In the United Arab Emirates (UAE), there is no federal or Emirate-level personal income tax for individuals. This means that residents and expatriates working in the UAE do not pay taxes on their salaries or dividends (provided that such dividends are derived from securities held as personal investments and not as part of an activity requiring a commercial licence). Additionally, there are no capital gains taxes or inheritance taxes. The absence of personal taxes is one of the key factors attracting expatriates and businesses to the country. However, there are indirect taxes such as a value-added tax (VAT) set at 5% (introduced in 2018), which applies to most goods and services.

TAXATION REQUIREMENTS

Income arising from UAE business operations is generally subject to corporate tax at 9% (where such income exceeds AED 375,000 in any Tax Period). Such corporate tax applies to the taxable income arising to an entity in its first Tax Period (usually an entity's financial year) that starts after 1 June 2023 (and in subsequent Tax Periods). This means that businesses, including Islamic businesses, will be subject to corporate income tax at 9% for their first Tax Period that starts after 1 June 2023 (unless they are able to utilise a relevant corporate tax exemption, or are considered to be a Qualifying Free Zone Person (which entitles such person to a corporate tax rate of 0% on qualifying income)).

Taxation: Corporate Tax Rate: **9%,** Free Zone Corporate Tax Rate: **0%** on Qualifying Income, VAT: **5%**

Entities located in the DIFC or the ADGM (or any other designated free zones for relevant tax purposes) will be subject to corporate tax at a rate of 0% on qualifying income, provided that they meet the requirements to be treated as a Qualifying Free Zone Person, including meeting relevant substance requirements.

Entities can repatriate 100% of their capital and profits outside of the UAE, subject in certain cases to UAE withholding tax (which currently applies at a rate of 0%).

Entities set up in the DIFC or the ADGM must register for Corporate Tax with the UAE Federal Tax Authority ("FTA") within applicable time limits, whether or not they are able to qualify as a Qualifying Free Zone Person. Such entities may also need to register for VAT with the FTA and charge VAT on their supplies at a rate of 5% (VAT was introduced in the UAE in 2018) depending on the nature of their business operations in the UAE.

Entities conducting business in the UAE should consider the implications of the introduction of the UAE corporate tax regime and seek advice on its impact and related compliance and reporting obligations, where necessary. In addition, please note that the FTA is in the process of considering the future implementation of a 15% corporate tax rate for certain multinational enterprises.

REGULATORY CONSIDERATIONS AND BUSINESS RESTRICTIONS IN THE UAE FINANCIAL FREE ZONES

AUTHORISATION AND LICENSING IN THE FINANCIAL FREE ZONES

Entities must be authorised and obtain a financial services licence if they intend to provide one or more financial services “by way of business” in or from the DIFC or the ADGM.

Both the DIFC and the ADGM have group entity exemptions in place, meaning that entities conducting activities only for group entities may not trigger financial services licensing requirements. However, this does not mean that: (a) entities funded by a group entity on a cost-plus basis, or (b) those solely deriving revenue from a group entity, would automatically be exempt from authorisation. A substance over form approach must be taken to assess the entity’s business activities and determine the need for a particular regulatory status.

DFSA/FSRA licensing required for financial services in the DIFC and ADGM.

Assuming a licensing exemption is not applicable to an entity. It would need to consider the range of activities to be provided and which corresponding financial services licences to apply for. Financial services are categorised by the DFSA and FSRA for prudential purposes, e.g. category 3C, 3A, 4, etc. Categories are ranked according to the level of financial risk that they lead to. Category 1 includes the highest risk business activities including entities that accept deposits, whilst categories 2 to 4 contain specific financial operations that present particular and defined services and associated risks. Category 5 relates to Islamic financial institutions managing unrestricted profit sharing investment accounts.

Note that the highest risk regulated activity covered by an entity’s licence would determine the prudential category of that licence (i.e. if the licence covers a regulated activity in category 3C, as well as a regulated activity in category 4, the relevant prudential category would be 3C).

The prudential categorisation of an authorised firm’s licensed activities generally determines the level of perceived risk of the entity’s activities to the financial free zone and investors and therefore impacts the regulatory capital and oversight required. Such prudential categorisation also allows the regulators to apply a risk-based approach, with the highest risk firms having a designated supervisor, and those with lower risk generally subject to pooled supervision.

Investment managers looking to set up in the DIFC or the ADGM usually apply for financial services which fall within prudential category 4 ("Cat 4") for fund marketing and distribution-type activities or prudential category 3C ("Cat 3C") for portfolio management-type activities. Occasionally, firms establish a representative office ("Rep Office"), which can only engage in marketing activity and is therefore subject to limited regulatory requirements. The marketing activity of a Rep Office must be related to the products and/or services of the Rep Office's group. Given the limited activities that can be conducted by Rep Offices, most investment managers prefer to apply for permissions within Cat 4 or Cat 3C.

DFSA ENDORSEMENTS

DFSA-authorised firms may also require certain endorsements, such as the following, to carry out certain activities:

- **Retail Client** – a DFSA-authorised firm will need to apply to the DFSA for a retail endorsement, if it wishes to carry on a financial service with or for a retail client;
- **Holding or Controlling Client Assets** – a DFSA-authorised firm will need to apply for this endorsement, if it wishes to hold or control client assets (managers are generally considered to control the client assets that they manage);
- **Use of a Fund Platform** – a DFSA-authorised fund manager will need to apply for this endorsement, if it wishes to operate a "Fund Platform" under DFSA rules; and
- **Islamic Endorsement** – a DFSA-authorised firm will need to apply for an Islamic endorsement (authorising it to conduct business either as an Islamic financial institution or through an Islamic window), if it wishes to conduct "Islamic Finance Business" under DFSA rules.

RESTRICTED BUSINESS

While there is a limited fund passporting regime in the UAE, there is no general passporting system between the financial free zones or indeed the rest of the GCC. Consequently, a licence from the DFSA or FSRA would not generally permit an entity to conduct regulated activities, or engage in regulated marketing, in Onshore UAE.

There is no general passporting system between the financial free zones and Onshore UAE.

The provision of financial services or the making of financial promotions in Onshore UAE would attract regulatory scrutiny from federal level regulators, such as the CBUAE or the SCA. Entities seeking to conduct business from a financial free zone are encouraged to seek advice on what activities they can and cannot conduct outside of the financial free zone in which they hold a license. To reiterate, having an entity in a financial free zone does not generally give a firm any passporting rights in Onshore UAE or the wider Gulf Cooperation Council area.

In addition, there are also certain restrictions on the types of business entities can undertake in and from the DIFC or the ADGM, including prohibitions on:

- accepting deposits from the Onshore UAE market or dealing in UAE Dirhams; and
- carrying out re-insurance activities only when it comes to insuring a risk within Onshore UAE.

SETTING UP A FINANCIAL SERVICES FIRM IN THE DIFC/ADGM

Setting up a financial services firm in the DIFC or the ADGM involves: (a) establishing a legal entity and obtaining a commercial licence; and (b) applying separately to the relevant financial services regulator for a financial services licence.

The expected process is for applicants to start their financial services licence application first and seek "in-principle approval" from the relevant regulator (i.e. confirmation that the regulator is willing to issue the licence subject to various conditions being met) before commencing the company incorporation or branch registration process. However, in some instances, it is possible to start both applications simultaneously and incorporate an entity or register a branch prior to receiving in-principle approval from the regulator, though applicants must seek permission from the relevant regulator to do so.

In determining whether to permit an applicant to incorporate/register prior to the receipt of in-principle approval, the regulator may take into consideration extenuating circumstances, such as the need to secure and renovate office premises, commence the process for opening a local bank account or process urgent visas for staff relocating with family. Applicants would typically then establish an unregulated "Managing Office" or similar entity and undertake that no financial services will be conducted prior to receiving a financial services licence.

Applicants should, however, consider the cost implications of incorporating/registering an entity ahead of receiving in-principle approval, as they will start paying for office rent, utilities and certain staff costs throughout the regulatory application process, rather than at the final stage of the application.

It may be possible to incorporate an entity or register a branch prior to receiving In-Principle approval.

FINANCIAL SERVICES LICENCE PROCESS

An application must be prepared and submitted to the DFSA or FSRA, depending on the relevant financial free zone the applicant is setting up in.

A typical application process for securing a financial services licence involves the following key steps:

(i) Pre-Application

There are two steps to follow when preparing your application:

1. An introductory meeting should first be arranged with the relevant local authority (DIFC or the ADGM) where an overall description of the proposed business activities and future plans are discussed.
2. Following this initial meeting, a 'Letter of Intent' should be submitted expressing interest in setting up (in the DIFC or the ADGM) and applicants will then have an introductory meeting with the DFSA/FSRA to discuss their business plan and intentions. This initial meeting is an opportunity for the applicant and/or the regulator to ask questions about the proposed financial services for which the applicant intends to apply, together with any other matters the regulator ought to be aware of.

(ii) Application Preparation

Create your business plan:

The regulatory application required to secure a financial services licence typically centres around several key topics which should be suitably detailed in a business plan.

A Regulatory Business Plan ("RBP") must be prepared by all applicants and is crucial to the application. The RBP should set out the strategy and rationale for establishing a regulated presence in the DIFC or the ADGM and demonstrate how the business will be managed and effectively controlled, which helps the regulator to understand the business model and assess the adequacy of systems and controls, as well as resources.

Among the key items that the business plan should include are:

a) Business activities: What types of products and services will the applicant propose to offer and how will this align with the scope of the financial services licence for which the applicant is applying? To help explain this, transaction flow charts should be included demonstrating the lifecycle of the product/service offering and how such services are proposed to be provided to the end client(s). Who, where and how will you market these products and services? Will you have the appropriate permissions to target certain clients and jurisdictions?

b) Management structure and organisation: The business plan should address who will make key decisions, and monitor and control the risks that the business may face. Other questions that your business plan will need to address include what the proposed legal structure and ownership of the applicant is, what the overall composition of the Board/Committees and experience of the members are and what the senior management team will look like and how significant responsibilities will be shared amongst them.

c) Capital Adequacy and Financial Resources: All applicants must demonstrate sufficient financial resources to support the proposed business activities. Any assumptions and calculated projections should include three years of operations shown on a quarterly basis.

d) Clients: Who are your target clients, where are they based and how will you source them? Applicants who wish to deal with retail clients must apply for an endorsement, if applying for a DFSA licence, and demonstrate how systems and controls will be enhanced to protect those clients. Will you deal with high risk or politically exposed persons, and how will this be managed?

e) AML Procedures: How will the applicant assess AML risks and comply with both the DFSA/FSRA AML Rules as well as applicable UAE Federal AML legislation? Has the applicant identified a suitably senior and experienced individual to perform the Money Laundering Reporting Officer ("MLRO") function? How will the applicant establish systems and controls to ensure compliance with targeted financial sanctions? Will the MLRO have direct and unrestricted access to the Senior Management and Board of Directors?

f) Compliance: How will senior management ensure a culture of compliance is embedded within the business? The regulator will seek to understand what systems and controls will be in place to monitor compliance and how the function will be resourced (noting that the individual performing the role of Compliance Officer ("CO") must be a UAE resident).

The SEO, CO and MLRO must be a UAE resident.

g) Documentation: The compliance manual and any associated policies and procedures are critical supporting documents to the application and are considered as part of the application process.

(iii) Regulatory Assessment

Following the introductory meeting with the respective regulator, applicants will typically receive access to the relevant DFSA/FSRA portal to:

a) provide background information on the entity (its structure, business activities, name, source of income, fit and proper questionnaire, shareholders, directors, ultimate beneficial owners, affiliate entities and compliance procedures); and

b) complete and submit application forms, including any supplementary or waiver application forms.

The DFSA/FSRA will then conduct a thorough assessment of the application, including reviewing the business plan, financials, compliance framework, and other relevant factors such as the key personnel involved in the applicant.

Interviews will be arranged with the key personnel holding mandatory functions, including the proposed Senior Executive Officer ("SEO"), CO, MLRO and Finance Officer ("FO"). The SEO, CO and MLRO must be UAE residents, however the FO does not need to be a UAE resident.

It is possible to outsource the CO, MLRO and FO functions, however the SEO function cannot be outsourced. It is also common for the same individual to perform the CO and MLRO functions. If the applicant is established as a domestic entity (i.e. not a branch) the regulator may also wish to meet the proposed directors of the entity.

OUTCOME

(iv) In-Principle Approval

After the DFSA/FSRA has reviewed the completed application and undertaken relevant due diligence, the regulator can either request that the applicant withdraw its application, reject the application or issue an in-principle approval decision.

This in-principle approval signifies the regulator's willingness to grant a financial services licence, subject to the applicant meeting specific conditions and requirements outlined in the in-principle letter. Applicants will typically commence the incorporation/registration process at this point, unless approval was granted by the regulator to incorporate/register an unregulated entity earlier in the set-up process, in which case the applicant would need to apply to convert the unregulated entity into a regulated entity.

(v) Financial Services Licence

Applicants must demonstrate to the DFSA/FSRA that all in-principle conditions have been met by providing sufficient evidence, where necessary. At this point applicants must be ready to be fully operational and will therefore be required to confirm this as part of this final stage of the application. If the application meets all regulatory requirements, the applicant will receive a formal Licence Notice from the DFSA/FSRA outlining the permitted financial services and any restrictions or conditions. At this point the applicant is considered regulated and can commence its regulated activities.

SETTING UP A SEPARATE ENTITY IN THE UAE

The process for registering a branch of a foreign company or incorporating a domestic entity in the DIFC or the ADGM involves the following key steps:

Preparation and Research

- Identify the business activities to be conducted.
- Determine the legal structure that best suits the applicant's business needs (e.g. Private Company, Partnership or Branch).
- Pick a suitable name. There are certain naming conventions that applicants should be aware of that require the approval of the relevant regulator, including using certain words such as "Bank" or "UAE" in the proposed name.

Submit Initial Application

- Complete the relevant application form on the DIFC or the ADGM registration authority portal.
- Upload the necessary documents, passport copies of shareholders, directors, and authorised signatories, as well as corporate documents relevant to any corporate shareholders. This requirement extends to all persons, including the applicant's beneficial owner(s).
- A Company Secretary is optional for most legal structures. If required, this position can be outsourced to a third-party corporate service provider.
- Any company documents need to be certified in line with DIFC or the ADGM certification requirements.
- A shareholder resolution to establish a company must be prepared and uploaded.
- Articles of Association must be submitted for a company. These are usually standard Articles of Association although bespoke versions can be provided and supported by a statement of compliance signed by the proposed directors of the company confirming that the bespoke articles are compliant with applicable law.

Initial Review

- Any fees required to form the company or register the branch must be paid by transferring funds to an online wallet or by making a bank transfer so that the application can be processed.
- The application will then be reviewed to ensure all relevant information has been submitted and is acceptable. Additional documentation may be requested at this stage.
- The estimated timeframe from submission to decision is approximately 1-2 weeks provided no additional documentation is requested.

Final Incorporation

- The final registration/incorporation happens at this stage.
- The applicant must determine the share capital structure of the entity if being incorporated, however this is not relevant for a branch registration.

Lease Office Space

- Secure an office space within the DIFC/ADGM that meets regulatory requirements and is large enough for the number of visas required (80 sq ft per visa in the DIFC and determined on a case-by-case basis in the ADGM). Applicants can also arrange serviced offices, where necessary.
- Signed lease agreements are usually registered by the landlord with the relevant DIFC/ADGM authority and details of the lease are then added to the application.

Sign Legal Documents

- Execute the relevant legal documents and ensure all shareholders and relevant parties sign as required. These documents can be executed electronically via DocuSign.
- The certificate of incorporation/registration and commercial licence are then issued. The applicant can now move ahead with applying for visas and opening a bank account, as well as getting operationally ready.
- Timeframes for completing this process can vary but may take approximately 1-2 weeks.

Residence visas and/or work permits for employees are widely available, including long term visas for 5 or 10 years.

Visa and Work Permit Processing

If required, initiate the process for obtaining visas and/or work permits for employees. This process can be initiated through the relevant DIFC/ADGM portal.

The UAE Golden Visa introduced in 2019 is a long-term residence visa which has been aimed at certain categories of investors, entrepreneurs, senior executives and professionals. The visa includes the ability to sponsor family members and travel outside the UAE for more than six months without expiring and is a long-term visa valid for 5 or 10 years.

Bank Account Opening

- Commence the bank account opening process as soon as possible, as this takes time and can cause significant delays to the application.
- Preferably open a corporate bank account with a local (UAE-based) bank. It is not essential that the bank is a UAE-based bank for the purposes of depositing the regulatory capital, however entities will require a local bank account for purposes such as paying utility bills and tax, where necessary. Branches do not need to deposit regulatory capital.
- Deposit the relevant share capital, where necessary.

Compliance and Reporting

- Understand ongoing compliance requirements, including annual reporting, auditing, data protection notifications and financial statement filings.
- Ensure timely compliance with regulatory obligations including relevant federal requirements such as Economic Substance Regulations, FTA tax returns and FATCA/Common Reporting Standards filings, where necessary.

POST-AUTHORISATION

Risk-based approach adopted by the DFSA, FSRA.

Once an entity is authorised by the DFSA/FSRA, the regulator will adopt a risk-based approach to ongoing supervision. The risk-based approach enables the DFSA/FSRA to focus its resources appropriately and mitigate risks to its regulatory objectives. Depending on the regulator's risk impact assessment, certain authorised firms may be assigned a Relationship Manager, however firms conducting activities falling within prudential categories 3C and 4 are generally subject to pooled supervision.

All regulated firms are bound by guiding principles of business and key personnel are also individually subject to certain principles, such as the requirement to act with integrity. The DFSA/FSRA expect authorised firms and key personnel to operate in an open and transparent manner. Both regulators are approachable, and authorised firms are therefore expected to keep the DFSA/FSRA informed of any significant events or anything else they may reasonably expect to be notified of.

Once authorised, firms must complete periodic filings and submissions, relevant to their permissions and licence categories. Examples of regular filings include an annual AML return, auditor reports and quarterly prudential returns. Failure to submit returns in a timely manner may result in financial penalties being imposed by the DFSA/FSRA. In addition to periodic filings, ad hoc notifications must also be prepared, for example where there is a change of key personnel. Ad hoc changes to the authorised firm typically require both regulatory and commercial filings within specific timeframes.

The DFSA/FSRA conduct periodic visits and may undertake regular thematic reviews through online surveys and onsite assessments. Findings and recommendations of such reviews and other supervisory matters are published via "Dear SEO" letters, "Dear MLRO" letters or reports. Authorised firms are encouraged to review regulatory publications and implement enhancements, where necessary.

Regulatory updates are also provided through publications such as Consultation Papers, an Annual Report and outreach sessions. Key personnel are encouraged to attend and participate in these sessions and provide feedback on Consultation Papers, where possible.

Enforcement action is published on the DFSA/FSRA website, including appeals and final decision notices.

OTHER AVENUES AVAILABLE TO FIRMS LOOKING TO SET UP A PRESENCE IN THE UAE

Given the growing number of firms looking to add the UAE to their investment offering, navigating the legalities and complexities of establishing and managing investment funds can be daunting. To help meet this growing demand, there are support services in the region including fund platforms to assist firms with establishing a local fund.

FUND SERVICE PROVIDERS IN THE UAE

The fund services ecosystem in the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) is a robust network that enhances operational efficiency, ensures regulatory compliance, and supports effective fund management. It encompasses regulatory and compliance support, fund administration, corporate governance, risk management, advanced technology solutions, cybersecurity, legal and tax advisory, and investor relations.

Both ADGM and DIFC provide state-of-the-art infrastructure and support services to businesses, including office space, technology infrastructure, legal and administrative support, and various fund services to further develop the financial services industry in the UAE. The investment funds ecosystem in these freezones is well-supported by world-class fund administrators, prime brokers, fund custodians, and other third-party fund services. This integrated support framework allows fund managers to concentrate on their core investment strategies while upholding stringent operational and regulatory standards.

For further information, please check with your local fund services provider to see what offering they have in the UAE region to best meet your needs.

THE LEGAL SYSTEM

The legal system in the UAE operates on both an emirate and federal level, allowing each emirate (Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Umm Al Quwain, Ajman, and Fujairah) to exercise control over their respective jurisdictions. Having adopted a dual legal system of civil and Sharia Laws, the UAE operates through three levels of courts: the Court of First Instance, the Court of Appeal and the Court of Cassation on the local emirate level. The federal judiciary is led by the Federal Supreme Court, which is the highest judicial authority in the UAE.

The DIFC legal and regulatory framework was created as part of Dubai's strategic vision to diversify its economic resources and attract capital and investments in the region. Having its own courts and consisting of a unique common law and English language jurisdiction, the DIFC is a hub for commercial and civil disputes resolution both regionally and nationally.

The ADGM, established in 2013, has adopted several laws from the UK and English common law is directly applicable in the ADGM in certain respects. The ADGM Court comprises two levels: a Court of First Instance (with Civil, employment, and Small Claims divisions) and a Court of Appeal.

APPENDIX A: VIRTUAL ASSETS

Virtual assets are regulated financial products in both the DIFC and the ADGM, and therefore a manager looking to manage a portfolio or fund investing in virtual assets would need to ensure that virtual assets are covered under the scope of its licence.

In Onshore UAE, there are three virtual asset regulators. Outside of the Emirate of Dubai, the SCA has general jurisdiction over virtual assets, whereas the CBUAE has jurisdiction over fiat-backed stablecoins and "stored value facilities" specifically. Within the Emirate of Dubai (but outside the DIFC), the virtual assets regulator is the Virtual Assets Regulatory Authority ("VARA").

Established in March 2022, the VARA is the sole regulatory authority in charge of regulating, supervising, and overseeing virtual assets and virtual asset activities in the Emirate of Dubai, including in Dubai commercial free zones but excluding the jurisdiction of the DIFC ("Onshore Dubai"). Those who wish to provide virtual asset activities in both Onshore Dubai and the DIFC will need to be licensed by both the VARA and the DFSA.

The VARA's Virtual Assets and Related Activities Regulations 2023 (the "Regulations") set out a comprehensive regulatory framework and address global risks of money laundering and terrorist financing, arising from the potential misuse of new technologies. The framework is designed to offer regulatory certainty – allowing the market to have greater clarity on the expected level of operator responsibility. It also mandates risk assurance and AML standards to be applied by licensed entities within Onshore Dubai.

Virtual Asset Service Providers ("VASPs") licensed by the VARA are required to comply with the Regulations as well as the relevant rulebooks which accompany the Regulations, comprising of:

- Compulsory Rulebooks (Company; Compliance & Risk Management; Technology & Information; and Market Conduct) which all VASPs must comply with;
- Activity-specific Rulebooks which a VASP must comply with to the extent related to the activity(ies) which it is licensed to carry on; and
- the Virtual Asset Issuance Rulebook, which provides rules for the issuance of virtual assets.

The management of virtual assets is a regulated virtual asset activity under the Regulations which, if carried on by way of business in Onshore Dubai, would generally require a "VA Management and Investment Services" licence from the VARA.

This VARA licence is likely required regardless of whether virtual assets are managed under a fund structure or otherwise (e.g. through a separately managed account). However, it is not entirely clear if an Onshore Dubai manager looking to manage funds that invest in virtual assets would also require a licence from the SCA, a federal level regulator, due to the relevance of fund units (which are non-virtual securities).

Please note that an entity looking to market virtual assets or funds investing in virtual assets in Onshore Dubai would likely require prior a VARA marketing approval, unless already VARA-licensed.

APPENDIX B: ABOUT AIMA

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$3 trillion in hedge fund and private credit assets.

AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over US$1 trillion of private credit assets globally.

AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

APPENDIX C: ABOUT SIMMONS & SIMMONS

A leading Middle East practice

Simmons & Simmons has advised clients on conducting business in the Middle East and wider region for more than 50 years, and we have had a presence in the UAE for 30 years. In 2023, we were awarded 'Financial Services Regulatory Team of the Year' at the IFLR Middle East Awards and in 2024, were awarded 'UAE Law Firm of the Year' at the Middle East Legal Awards.

We have the largest specialised financial services regulatory and funds team of any international law firm in the UAE and advise on the laws and regulations of the DIFC, the ADGM and the wider UAE. We provide a comprehensive and integrated service that covers our clients' requirements throughout the Middle East, and internationally, wherever their business takes them.

We are not newcomers to the region and really understand the local laws and regulations, with members of our team having been instrumental in developing many of them. We maintain strong relations with local authorities and regulators, and in recent years we have been instrumental in advising the majority of the leading international hedge fund managers setting up in the DIFC and ADGM.

Our long-standing regional experience also means that we know how to get things done practically and to do so efficiently. With support as needed from around our network, we are able to respond quickly to client needs with commercially driven, market-leading legal advice.

A global service through a single Partnership

Simmons & Simmons is a world-class international law firm providing the highest quality legal advice, wherever and whenever it is needed. Our clients rely on our specialist expertise, giving us the ability to understand their business and the world that they operate in.

We remain a single Partnership and in building our international business, we have created a closely knit and cohesive network of lawyers who seek to balance local business needs with the delivery of a global service.

We have a network of offices across the Middle East, Asia, US and Europe. We focus on the asset management and investment funds sector and are widely recognised as a leading global firm in the area of hedge funds and alternative asset management. We provide provide a full service practice offering including regulatory, fund formation, corporate, employment, data protection, capital markets, banking and tax.

APPENDIX D: ABOUT EFFECTA COMPLIANCE

Effecta Compliance Limited (“Effecta UK”) was established in July 2020 and Effecta Compliance Middle East Limited (“Effecta UAE”) was established in May 2022 (collectively “Effecta”). With offices in London, DIFC and ADGM, Effecta is well placed to assist firms who require regulatory advice and assistance specifically with regulatory obligations in the UK, DIFC and ADGM. Effecta wants all the work that we undertake for you to be “effective” and relevant to your specific business needs. To do this we look for solutions which not only comply with the relevant regulations, but from a delivery perspective, will also integrate and work for you and your Firms’ day to day business needs.

Effecta provides compliance consultancy services such as: regulatory authorisations and registrations across several jurisdictions, skilled persons reports and responses to enforceable undertakings, independent regulatory health checks and internal annual reviews, compliance infrastructure documentation production and reviews, compliance monitoring assistance through ongoing compliance retainers and/or ad hoc support, advice and on-site secondment, project management assistance to a wide variety of clients. We expect our consultants to understand not just the regulatory environment but your business as well, to assist the firm in providing value add consultancy by supporting you with your regulatory requirements.

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THE ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

The global representative of the alternative investment industry

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