



# Abu Dhabi Global Market: Draft regulations and accompanying consultation papers

February 2015

**C L I F F O R D**  
**C H A N C E**

## Publication of new draft Abu Dhabi Global Market regulations and accompanying consultation papers

The Abu Dhabi Global Market (the **Global Market**) was established as a new financial free zone located on Al Maryah Island, Abu Dhabi, in 2013. The Global Market's objective is to provide a broad-based financial services hub for local, regional and international institutions. It is proposed to have three key initial anchor sectors: private banking, wealth and asset management.

**The Board of Directors (the Board) of the Global Market published the first draft of the Global Market's application of English law, companies, operating, insolvency, employment and real property & strata regulations (the Draft Regulations) on 6 January 2015.**

**Additional regulations are expected later this year, in particular in relation to the Global Market's judicial system, financial services regulation, a takeovers regime and sector-specific operating regulations and an insolvency regime for regulated financial institutions.**

**Each Draft Regulation was accompanied by a consultation paper, outlining the Board's key proposals and inviting interested parties to submit responses to the Board's specific queries and wider commentary no later than 5 February 2015. It is expected that, following the public consultation, revised drafts of the Draft Regulations will be published and the final regulations will be enacted later this year – with the Global market then becoming formally operational.**

### Engagement with Clifford Chance

These are important milestones in the development of the Global Market. We have met with representatives of the Global Market to discuss the Draft Regulations and are working on submissions to the Board's public consultation.

This briefing highlights some of the key features and proposals set out in the Draft Regulations, together with some in-depth analysis. It is not a comprehensive review of the Draft Regulations or the issues relating to them, and summarises selected items only.

We are actively engaging with our clients in the financial institutions, investment management and corporate sectors about the opportunities presented by the Global Market and gathering feedback on the Draft Regulations. If you would like to discuss further please contact **Rupert Harper**, **Tim Plews** or **Graham Lovett**.

## Highlights

### Application of English Law

- English common law will apply in, and form part of, the law of the Global Market:
  - so far as is applicable to the circumstances of the Global Market
  - subject to modification as those circumstances require
  - subject to amendment pursuant to Abu Dhabi laws or Global Market regulations
  - without regard to further English legislative medication unless adopted by the Global Market
- English common law will govern a range of matters, including contracts, tort, trusts, equitable remedies, unjust enrichment, damages, conflicts of law, security and personal property.
- Judgments of the UK Supreme Court will be binding.
- The Global Market has no criminal law jurisdiction.
- Approximately 50 English statutes (as amended by the Global Market) have been applied, subject to the same qualifications as apply in relation to English common law, as well as specific amendments as set out in the Draft Regulations. Some of these amendments are substantive.
- The Registrar and the Global Market courts will also enjoy wide investigatory powers.

### Companies Regulations

- The Companies Regulations are based on the UK Companies Act 2006, amended to reflect local requirements and – consistent with UK reform proposals and market commentary – to remove certain historic peculiarities.
- A new type of company – a restricted scope company – is introduced. This is a highly deregulated corporate form with very limited disclosure obligations. It may offer a new holding company alternative attractive to investors who are sensitive to disclosure and who prefer a regional incorporation option.
- Cell companies have been introduced – with the Draft Regulations following the Jersey legislative model in a departure from the UK Companies Act.
- Global Market companies may be wholly owned by foreigners.
- No nominal share value. The distinction between share capital and premium accounts has been deleted accordingly.
- Codification of directors' duties – the duty to avoid a conflict of interest has been deleted.
- Derivative claims have been retained as a concept but restricted to investors holding 5% of the share capital of a company.
- Schemes of arrangement will not require a majority in number of shareholders for approval.
- A registrar has been established. Certain company information is to be publically searchable, although accounts will remain private. Public companies will have the power to investigate who holds their shares.
- "Universal succession" merger framework adopted.
- Board expected to publish separate Takeover Regulations (including 90% "squeeze-out").

## Operating Regulations

- The Draft Regulations create an overall framework for operating in the Global Market and are to be supplemented by specific regulatory regimes for various sectors which are yet to be developed.
- Significantly, the categories of financial services activities in the Global Market have not yet been published and are anticipated later in 2015.
- The Draft Regulations create a Registrar and impose financial penalties for operating without adequate licences. The Registrar will have the power to terminate a licence in certain circumstances.
- The Registrar and the Global Market courts will also enjoy wide investigatory powers.

## Employment Regulations

- The Draft Employment Regulations will form the framework for the employment law applicable within the Global Market, but will be supplemented by English common law and certain English law statutes modifying common law.
- The Global Market may establish a dedicated employment tribunal system to resolve employment claims according to its own specific procedural rules but, for the time being, any such claims will be heard by the Global Market court.
- The Draft Regulations include provisions covering key areas such as working time and leave, maternity and paternity rights, non-discrimination, end of service benefit and protection of wages requirements.
- Minimum notice requirements for termination of employment contracts are specified, although longer periods may be contractually agreed.
- Specific grounds giving rise to termination for cause, when minimum notice requirements do not apply, are defined. No unfair dismissal or redundancy provisions are included.

## Real Property & Strata Title Regulations

- Distinct from the other Draft Regulations, the real property Draft Regulations adopt a codified approach and reflect a "modified torrens registration regime".
- Apply to real property on Al Maryah Island, however the exact geographical boundaries may be adjusted.
- Provisions relating to the creation of strata titles are to be introduced for the first time – a positive development for the Abu Dhabi real estate market.
- The Draft Regulations do not exempt land within the Global Market from the Abu Dhabi laws on foreign ownership of land, under which Al Maryah Island is designated an "investment zone".

## Insolvency Regulations

- Closely based on the existing English insolvency framework with some modifications.
- Permits appropriate creditor self help remedies without stifling rescue and rehabilitation options for viable businesses.
- International approach via inclusion of aspects of UNCITRAL cross border legislation.
- No specific insolvency regime for regulated financial institution as yet.
- Netting provisions, covering derivatives contracts and associated financial collateral between parties who elect for Global Market law are substantially the same as those recommended in the ISDA 2006 Model Netting Act.
- Financial collateral provisions outline the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) under English statute law, but only in the context of collateral support to derivatives transactions.

## Application of English Law Regulations

### **Doctrine of Precedent to be applied by the Global**

**Market courts:** The Global Market Court of First Instance and Court of Appeal were established as part of the Global Market pursuant to Abu Dhabi Law No. 4 of 2013, and it is anticipated that the Global Market courts will come into operation in 2015. The Draft Regulations establish a doctrine of precedent in relation to the decisions of the courts of the UK in relation to English common law or any provision of selected English statutes that is applicable in the Global Market. It is proposed that decisions of all courts of the UK must be taken into account by the Global Market courts, and the decisions of the Supreme Court of the United Kingdom are binding on the Global Market courts.

**An established and familiar model:** The wholesale incorporation of English common law and selected English statutes gives the Global Market the benefit of an established, well developed and widely recognised jurisprudence, which is expected to be viewed favourably by businesses and investors and will likely be familiar to a significant number of international practitioners and investors. It is a model that is familiar to Global Market's target anchor tenants and international regulatory lawyers. While this is a new approach in the region, it is a tested method of establishing a system of laws – a similar model has been adopted with considerable success in both Hong Kong and Singapore.

**Application in practice:** There is an inherent degree of uncertainty regarding the principles of common law or statutory provisions that will be excluded due to "the circumstances of the Global Market" and due to inconsistency with Abu Dhabi law or the laws of the Global Market. In addition, working through this application of the "modified" legislature regime and its interaction with common law rules may also create some interesting challenges. As with all new jurisdictions, there will be an initial period of development, application and market learning of Global Market law.

### Analysis: Application of English Law

- The express application of English common law and adoption of certain English statutes, rather than the codification of relevant laws, is expected to help avoid questions of interpretation experienced in other regional financial centres where codified laws differ from English common law and/or equivalent statutory provisions in England.
- The modifications to English statutes in the Schedule to the Draft Regulations are generally designed to remove or change references that would not make sense in the context of the Global Market. For example, references to English currency are changed to UAE currency. However, some changes are more nuanced and may require closer attention as they may modify the certain rights which would otherwise exist under the English law system.
- The exclusion of English common law or statutory provisions that are not "applicable to the circumstances of the Global Market" and the supremacy of Abu Dhabi laws may lead to 'creative' arguments by parties in the Global Market courts regarding the applicability of various rules of English common law. However, these questions of interpretation have been successfully dealt with by the courts in other jurisdictions that have adopted this model.
- Interpretative challenges may also be posed given the modifications to applied English statutes coupled with the requirement that the Global Market courts apply English precedents. It might be arguable that English precedents on the unmodified version of the statute are not applicable and should not be applied given "the circumstances of the Global Market". Where similar challenges are faced in other common law jurisdictions, English authorities are generally regarded as persuasive rather than binding.



## Companies Regulations

**UK Companies Act 2006:** The Draft Companies Regulations are largely based on, and significantly replicate, the UK Companies Act 2006. In line with the Global Market's approach to English common law, the Companies Act has been amended to reflect the Global Market's target market and business/strategic objectives - for example, addressing some archaic or unpopular aspects of the UK Companies Act. The Draft Companies Regulations also import certain concepts and approaches seen in a number of other common law jurisdictions – including New Zealand, Singapore and Jersey, each of which have corporate law regimes based on the historic UK model. The Companies Regulations will, however, be very familiar to a significant number of practitioners based in the region who are familiar with the English model.

**No nominal share value:** The Draft Companies Regulations have abandoned the concept of nominal share value, in line with a number of other common law jurisdictions.

**Restricted scope companies:** Restricted scope companies are a new type of company, aimed at market participants who prefer limited disclosure and lighter corporate regulation and who will not operate in regulated sectors. Restricted scope companies are not required to file accounts and are not required to audit their accounts. They must file an annual return, articles and details of their registered offices, directors and secretary, however, it is proposed that only the constitution and registered office details are to be published. Restricted scope companies may develop as a new alternative holding vehicle for certain private groups wishing to be incorporated or domiciled in the region within an FATF compliant low disclosure regime. It is also expected that they may be utilised as investment vehicles by certain market participants for whom a lower regulatory burden and a greater degree of confidentiality may be appropriate. Certain qualifications apply – restricted scope companies will only be able to be incorporated as a subsidiary of a group which files consolidated accounts or as a subsidiary of a company formed by Emiri Decree.

**Cell companies:** The Companies Regulations provide for both "protected shell companies" and "incorporated shell companies", the relevant provisions being based on Jersey law. Although protected shell companies are recognised under certain UK statutes, cell companies are not specifically provided for under the UK Companies Act 2006. Cell companies permit a "cell" – typically a pool of assets attributable to a specific set of investors – to be held (and registered) separate to other "cells" in the same company.

They are largely utilised in fund structures, and their inclusion by the Global Market may serve as the catalyst for the introduction of investment structures new to the UAE market.

**No foreign ownership restrictions:** Full foreign ownership of Global Market Companies is permitted – a development which is likely to stimulate development of business activity in and through the Global Market. Of course, entities operating in the Global Market will remain subject to certain limitations of their activities outside the Global Market under the UAE law.

**Registrar and public information:** A Registrar of Companies will be established, although full details of the power and authority of the Registrar are yet to be published by the Board. It is anticipated that a publically searchable registry will be adopted. Public companies will have the power (in addition to the disclosure requirements) to investigate who holds their shares.

**Codification of directors' duties:** The codification of directors' duties under the Companies Act has been largely replicated. The duty to avoid a possible conflict under the UK Companies Act 2006 has been replaced with a clearer and more certain duty not to act in relation to matters where there is or may be a conflict. The rules are slightly relaxed for restricted scope companies, where the requirement for members' approval requirements for transactions with directors and directors' service contracts have been disapplied.

**Derivative claims:** The statutory concept of derivative claims under the UK Companies Act 2006 has been retained. However, a 5% shareholding threshold has been applied. The relevant consultation paper noted the vulnerability of the UK regime to use by activists holding a single share and expressed a preference that the regime only be utilised by parties with significant holdings.

**Mergers, divisions, arrangements and reconstitutions:** The Draft Companies Regulations contain detailed provisions in relation to the merger, division, arrangements and reconstitutions of companies. This is expected to provide a framework in which market participants have significant flexibility and should provide a conducive environment for a broad range of transactions.

**Takeover Regulations:** Detailed regulations governing the takeover of public companies are expected to be published by the Board. These regulations are expected to include a "squeeze-out" regime.

## Analysis: Companies Regulations

- A familiar companies framework based on UK legislation is likely to ensure investor confidence in the initial phase of the Global Market and stimulate market activity. The Draft Companies Regulations have taken a "business-friendly" position on some of the less popular aspects of the UK Companies Act 2006 but retained the overall scheme and balance of the original model.
- Restricted scope companies may develop into an alternative investment structure for certain UAE investors (for example, sovereign wealth funds and ultra high net worth individuals and families) for whom confidentiality is a key consideration.
- The introduction of cell companies with specific legislative provisions based on the established model opens the door to potential new investment structures and the growth of investment funds domiciled in the Global Market.
- The removal of the uncertainty in relation to a directors' duty to avoid a conflict of interest is a welcome development of the governance regime and will provide greater certainty for directors.
- Full foreign ownership is welcomed and is expected to facilitate uptake among the investment management and broader financial services communities. Further clarity in relation to the permitted activities of such companies outside of the Global Market is needed to fully assess the ability of non-domestic investors to access the wider Abu Dhabi and domestic markets through the Global Market.



## Operating Regulations

**Scope of current draft operating regulations:** The Draft Regulations envisage separate but interlinked regulatory regimes for various non-financial sectors including accountancy services, medical practitioners, real estate developers and agents and hospitality businesses – all of which are expected to be (or already are) active and located within the Global Market. The Draft Regulations do not yet cover financial services. It is anticipated that the Global Market will issue draft regulations for financial services later in 2015.

**Underlying rules:** The Global Market expects to issue rules on a sector-by-sector basis including in relation to conduct of business, consumer protection, professional standards, maintenance of adequate financial resources, and provision of information to the Registrar. The relevant consultation paper notes that certain areas are expected to be subject to detailed regulations and others to a more light-touch regime. It is proposed that the Global Market will have the power to exempt entities from the application of the Operating Regulations.

**Enforcement and supervisory powers:** Carrying out any controlled activity without a licence will attract a fine, as will exceeding the scope of a licence or falsely claiming to have a licence or being exempt from licensing requirements. Agreements made in contravention of this prohibition would not generally be unenforceable or void, although a different position may be adopted in the financial services context. Furthermore, the Registrar may vary or cancel a licence at its own initiative where: (i) a licenced person is failing or is

likely to fail to meet the conditions of its licence; (ii) a licenced person fails to carry on licenced activities within a twelve month period; or (iii) it is desirable in the interests of the Global Market to exercise this power.

**Time period for considering licence applications:** Applications for a licence will be determined by the Registrar within one month of receipt of a completed application. If the application is incomplete when received, this period is extended to up to three months.

**Information gathering:** The Draft Regulations give the Registrar the power to require the provision of information to it and the co-operation of individuals (including the provision of documents or attendance at interview). The Global Market court may also issue a warrant authorising those executing it to enter premises, conduct a search, seize documents and use reasonable force in so doing.

**Procedural safeguards:** Where the Registrar takes a decision which could be adverse to an applicant or licenced persons (e.g. the decision to reject a licence application, to grant a licence subject to requirements or limitations or to vary or cancel a licence) then the Registrar is required to give the person concerned a warning notice, to which the person concerned has the right to respond (within a specified period). The concerned person may refer the matter to the Global Market court for a full review of the matter as to both fact and law. The Registrar will be required to publish a written policy in relation to the exercise of its enforcement powers.

### Analysis: Operating Regulations

- A detailed financial services regulatory regime has not yet been provided. Financial services are the primary focus of the Global Market and a full analysis of the potential of the Global Market to develop as a regional financial centre will turn largely on their scope and coverage. We expect the Global Market's target anchor tenants will be very focused on the financial services regulations when they are published.
- The breadth of sectors anticipated by the Draft Regulations is a welcome indicator of the Board's determination to attract a diverse range of businesses to the Global Market in order to develop it as a fully functioning financial services centre.
- It is not entirely clear how the Draft Regulations will interact with existing laws and regulations in sectors such as healthcare which are already subject to regulation 'onshore'. However, we understand that it is not the intention of the Global Market to establish detailed and highly prescriptive parallel regulatory regimes for non-financial services businesses which are already subject to adequate regulation under Abu Dhabi's existing regulatory framework.
- Transition to the new operating and licensing framework has been identified to us as a key practical matter by some Global Market tenants.



## Insolvency Regulations

**Insolvency regulations:** A comprehensive set of draft insolvency regulations have been published, closely based upon English law – the Insolvency Act 1986 and the Insolvency Rules 1986 (including the proposed updates to the Insolvency Rules which are currently undergoing a consultation process in England). A new compromise procedure based on Australian companies legislation has also been introduced. The Draft Regulations are designed to provide a comprehensive set of rules that will be well understood by the international financial and legal community, given the close ties between the Draft Regulations and existing international insolvency legislation.

**Application:** The proposed insolvency framework is intended to apply to companies incorporated in the Global Market, with certain exceptions – most notably regulated financial institutions, where the stated intention is to provide bespoke provisions at a later stage. If a charge document stated to be subject to the Global Market law confers receivership powers in relation to assets located in the Global Market, then the rules set out in the draft insolvency regulations will apply. Similarly, an overseas company may be wound up in the Global Market if it has a sufficient connection to the Global Market (for example, if assets are located in the Global Market). There is not yet a specific regime for regulated financial institutions.

**Insolvency processes:** The Draft Regulations cover administration, administrative receivership, a "deed of company arrangement" (a process based on Australian law which may be utilised by an administrator – it is procedurally similar to an English CVA) and voluntary and

compulsory liquidation. Interestingly, the draft companies regulations also include the possibility for a company (solvent or insolvent) to utilise an English style scheme of arrangement to compromise arrangements with creditors. A scheme of arrangement is a flexible cram-down process whereby a debt compromise can be agreed with the consent of a statutory majority of each class of creditors.

**Universalism:** The Draft Regulations include provisions which create a framework for cooperation in cross-border insolvencies, most notably via the inclusion of a modified form of the UNCITRAL Model Law on Cross-Border Insolvency. This is to be welcomed, given the nature of the businesses expected to operate within the Global Market.

### Analysis: Insolvency Regulations

- Modern insolvency processes such as schemes and administration are a welcome inclusion in the Draft Regulations. Due to their limited application it is unclear whether administrative receivership and the deed of company arrangement will be utilised in practice.
- The ability for a company to raise "debtor in possession" priority financing during a rescue process is not included in the Draft Regulations. This is an important additional component that could be considered.
- Whilst the scheme approval thresholds are lower than in the UK (the requirement for a majority by number of voting creditors has been removed), we note that a Chapter 11 style "cram down" feature (as used in other jurisdictions, for example Dubai's Decree 57) by which unsecured creditors can potentially bind secured creditors has not been included.
- Regulated financial institutions are not yet covered by the Draft Insolvency Regulations – this will be a key component of the Global Market legislative landscape.

## Insolvency Regulations – Netting

**Scope and application:** Although the netting provisions have been included within the Insolvency Regulations (which apply only to parties incorporated in the Global Market), Part 8 contemplates that netting provisions would apply to any derivative contract or netting agreement which is governed by Global Market law.

**Close-out netting:** The netting provisions specifically allow individual derivative transactions between two parties which are covered under a netting agreement (such as the ISDA 2002 Master Agreement) to be closed out upon a party's insolvency so that only a single net amount is payable. The types of transactions recognised by the netting provisions cover a wide-ranging scope of derivatives products, including swaps or hedges which have been structured in a Shari'a compliant manner.

**Collateral arrangements:** In order for positive netting to operate fully within a jurisdiction, netting should take into account any margin or collateral which is posted by either party to set-off against such party's owing amounts. The

Insolvency Regulations go into further depth in addressing the nature of financial collateral on terms which are a brief synopsis of the statutory position under English law (namely, simplified security-taking procedures, express recognition of rehypothecation and exemption from any mandatory moratorium of an insolvent party's assets). However, the application of these provisions appears to be limited to margin for derivative trades, rather than secured lending as a whole.

**Multi-branch netting:** The relevant consultation paper sets out the Global Market's rationale for excluding the multi-branch netting provisions from ISDA's 2006 Model Netting Act in the netting provisions. At the same time, the financial collateral provisions envisage collateral to be held within the Global Market which, in the absence of multi-branch netting provisions, would be "ring-fenced" from global close-out netting in the case of an insolvent branch of a party whose office is located outside the Global Market.

### Analysis: Insolvency Regulations – Netting

- It is unclear what the extent of the Global Market courts would be in accepting jurisdiction in relation to (i) a non-collateralised netting agreement between two non-Global Market parties (and what further nexus with the Global Market (if any) the Global Market courts would require) or (ii) a financial collateral arrangement located in the Global Market in the case of an insolvency of a non-Global Market counterparty which may conflict with that counterparty's local insolvency laws.
- Shari'a compliant derivatives often involve sales and purchases of commodities which will be located outside the Global Market in order to facilitate the swap payments. These would fall outside of the scope of Global Market law if counterparty insolvency occurs during the various stages of commodity settlements.
- Whilst we await further draft Global Market legislation on security-taking, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) under English statute law confers wider benefits (particularly in the context of secured lending) which are not exclusive to insolvency or derivatives, and may have further merit if passed by the Global Market outside of the Insolvency Regulations.
- The recent English case law over what degrees of "control" or "possession" a collateral-taker needs to demonstrate over the relevant collateral in order to benefit from the financial collateral protections has taken a unique direction from other EU Member States that have implemented the same EU Directive. It is unclear whether the Global Market will inherit the English courts' divergent stance or exercise their powers to pass overriding legislation.
- The value-add of multi-branch netting provisions to a counterparty with a branch presence in the Global Market will depend on mutual recognition by foreign insolvency regimes, as well as further clarification from the Global Market on its policy aims under the financial collateral provisions.

## Employment Regulations

**Regulatory framework:** The Draft Regulations establish an employment law system based upon a combination of jurisdiction-specific Employment Regulations and the application of English common law (and, to the extent common law is modified by statute, English law statute). Establishing Employment Regulations specific to the Global Market allows certain provisions of the Federal Labour Law which must practically have application across the UAE, such as end of service gratuity rights, to be adopted whilst tailoring the law to serve the types of institutions and employment roles anticipated in the Global Market.

**Further development expected:** The relevant consultation paper makes clear that a number of issues remain under consideration – in particular in relation to remedies for non-compliance.

**Termination:** The Employment Regulations provide minimum notice requirements which must be complied with upon termination, save for when termination is "for cause". The reasons amounting to termination for cause are defined in the Employment Regulations, providing helpful guidance to employers. The Employment Regulations do not seek to be overly prescriptive and do not mandate procedures for the dismissal process, regardless of the basis for dismissal, leaving employers the flexibility to apply their own internal policies.

### Analysis: Employment Regulations

- The Draft Employment Regulations adopt a largely employer-friendly approach, with limited provisions addressing the termination process providing welcome flexibility.
- The Global Market courts' approach to certain concepts developed from specific English law statutory rights which have not been expressly included in or excluded by the Draft Regulations, such as restrictive covenants, unfair dismissal and redundancy, will have to be developed.
- An area of interest for employers will be the outcome of consultation in respect of fixed compensation payable in the event of non-compliance with aspects of the Draft Regulations. This would be separate to a scheme governing compensation in the event of work-related injuries or death. While this may provide certainty as to potential liability in certain areas, as the relevant consultation paper currently recognises, not every breach of the Draft Regulations (such as non-discrimination requirements) would be best remedied by pre-determined monetary compensation. Further, the level of compensation will need to be carefully pitched.
- The establishment of a dedicated employment tribunal would allow disputes to be dealt with by specialists, potentially creating an efficient dispute resolution forum. If established early on, a specialised tribunal and particular procedural laws applied by it would provide useful guidance to employers from the outset. One (potentially interim) alternative approach to a dedicated employment tribunal would be a small claims court taking jurisdiction over, amongst other things, most employment related claims.

## Real Property & Strata Title Regulations

**Interaction with existing Abu Dhabi laws:** The Draft Regulations provide that freehold ownership of real property in the Global Market Area (initially Al Maryah Island) will continue to be governed by Abu Dhabi laws.

**Freehold and other interests:** Freehold ownership of land will continue to be the subject of the existing Abu Dhabi foreign ownership regime – ownership will remain limited to be UAE and GCC nationals and companies wholly owned by them. Future transfers of freehold land will still need to be registered at the Land Registration Department of the Abu Dhabi Municipality (**LRD**). Although the Draft Regulations do not govern freehold ownership interests, they anticipate that it will be possible to register freehold ownership and freehold transfer transactions in the Global Market register so long as they have first been registered at the LRD. All other interests (such as, for example, leasehold interests) in Global Market Area real property will be governed by the new regulations.

**Establishment of register and registration of interests:** The Draft Regulations provide for a register of real property to be established and maintained by an appointed Registrar. A wide range of interests may be registered, including leasehold interests (for a term of up to 99 years), mortgages, statutory charges, joint estates, life estates, future interests, easements and covenants. Failure to register an instrument which is required to be registered under the Draft Regulations (such as a lease) will not

render the instrument void, as it will continue to be enforceable between the parties, however, no real property interest will be created or transferred until the instrument is registered. If the registered owner of an interest is to be a corporate body, then such body must be properly incorporated under the Global Market Regulations. Registration of a person as owner of an interest in real property is conclusive evidence that such person is the owner of the interest and the person's title is indefeasible.

**Fees:** The initial schedule of fees and charges for registering interests in the Global Market register is not yet available, but the Draft Regulations give the Registrar the power to issue directives in relation to these fees.

**Strata title framework:** The Strata Title Regulations contain the regime for the creation of 'strata' or unit titles in respect of units within jointly-owned properties situated in the Global Market Area (e.g. a commercial office tower on Al Maryah Island). The Draft Regulations also provide for the establishment of a body corporate to be run by the owners of the units in the development, with such body corporate owning and controlling the management of the common property forming part of development. The Draft regulations are comprehensive and also include certain development related restrictions, such as the requirement for developers of strata projects to establish an escrow account to hold a proportion of the proceeds from off-plan sales as 'security' for the benefit of investors.

### Analysis: Real Property & Strata Title Regulations

- 'Foreign' ownership of Global Market land on a freehold basis continues to be prohibited.
- Developers of real estate on Al Maryah Island have historically taken musataha and usufruct rights over land, due to the 'foreign' ownership regime, amongst other reasons. It is not clear if or how such rights will 'convert' into recognised rights on the Global Market register.
- The Real Property Regulations provide a system for the 'conversion' of existing LRD freehold titles into Global Market titles, within six months of the regulations coming into force.
- Existing mortgages over Global Market real property will also need to be re-registered on the Global Market register.
- The mortgage enforcement regime under the Real Property Regulations differs from the regime in the wider UAE, whereby enforcement is by way of court mandated auction sale. A mortgagee under the Global Market regulations has certain 'self-help' remedies, although it is not clear how some of these remedies will work in the context of the 'foreign' ownership restrictions.
- The Strata Title Regulations are, from a developer's perspective, less onerous than the 'onshore' Dubai strata laws as regards the documentation requirements and disclosure obligations. Implementation of Dubai's strata laws has been slow, so the Global Market approach may be helpful in this regard.



## Conclusion

### New opportunities

The Global Market has taken major strides towards establishing a legal regime which seeks to provide flexibility and certainty and creates a business-friendly and investor-friendly environment. In particular:

- The application of English law principles in relation to contract, trusts, security, insolvency and corporate law may facilitate use of the Global Market as a jurisdiction of choice for a range of complex transactions in addition to the key asset management and other financial services businesses. Initiatives such as the refinement of directors' duties and the derivatives action regime, adoption of IRS accounting rules and adoption of sophisticated insolvency regimes (including with respect to netting) are all indicative of the Global Market's strategy and business orientation.
- Restricted scope companies could be a key area of interest for local and regional investors sensitive to disclosure - combining light regulation and disclosure obligations with a flexible corporate form in a jurisdiction which is "close to home" and which seeks to be FATF compliant. They may also develop as a locally accessible mechanism for structuring international transactions, with counterparties taking comfort from the common law and regulatory regime (including a fulsome insolvency regime) behind them.
- Similarly, the introduction of cell companies affords market participants, and particularly collective capital and investment vehicles, with new locally incorporated investment structures that allow the separation of classes of assets and investors within one corporate vehicle – and the registration of that separation.
- Global Market companies may be wholly owned by foreigners and this is anticipated to be attractive in terms of investment and business development within Global Market, in particular for the international financial services industry.

We see these as innovative steps which are well attuned to the future development of the Global Market and aligned with investor objectives.

### Initial challenges

The various modifications and qualifications to the application of English law and statute create an inevitable degree of uncertainty and will require careful consideration in practice.

We expect that the initial challenges will include:

- The interplay of adopted English law and Abu Dhabi law in the Global Market environment. Additional certainty as to the prevailing law in relation to

commercial matters will likely be welcomed by the market.

- There is currently no guidance in relation to the "circumstances of the Global Market" proviso in relation to the applicability of English common law and selected legislation. We anticipate early decisions of the Global Market courts will be critical in establishing jurisprudence on this area and will be very closely observed.
- Care should always be taken to consider and cater for those aspects of English law which do not apply. Care will need to be taken in preparing legal documents so that they do not inadvertently rely on underlying common law and legislation which is not applicable in the Global Market. For example, UK legislation addressing sovereign immunity is not adopted by the Global Market.
- Freehold ownership of land will remain subject to Abu Dhabi law. The Global Market will remain an 'investment zone' for real estate ownership purposes and will not permit freehold foreign ownership of land. Therefore, real estate development and financing transactions within the Global Market will continue to need to operate within the constraints of the foreign ownership restrictions on land.

### Further development

The Draft Regulations are an important milestone and have established an underlying framework for further development. The next steps are critical. In particular:

- **Financial services regulation:** The market is eagerly awaiting the draft regulations in relation to financial services, with particular focus on the model to be adopted and the interplay with the onshore UAE regulatory environment. Many financial services and investment management institutions are likely to defer their market entry decisions until they have clarity on the financial services regime and can start to build a business case around this.
- **Courts and jurisdiction:** The judicial system is another key area which we expect will influence development of business activity in the Global Market. The ability to "opt-in" to the Global Market jurisdiction, scope for arbitration, procedural rules and arrangements for the enforcement of Global Market judgments/arbitral awards in the UAE and beyond are matters on which we expect the market to focus.

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107182-4-941-v0.15

ME-8180-CorASTr