

COMPANIES REGULATIONS (AMENDMENT NO. 2) 2020

Regulations to amend the Companies Regulations 2020

Date of Enactment: [●]

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market, as amended, issued by His Highness the Ruler of the Emirate of Abu Dhabi, enacts the following Regulations.

1. Amendments to the Companies Regulations 2020

The Companies Regulations 2020 shall be amended by–

- (1) In the Table of Contents, in Part 12, insert the words “AND COMPANY SERVICE PROVIDERS” after the words “COMPANY SECRETARIES”.
- (2) In the Table of Contents, insert a new Chapter 2 of Part 12 “COMPANY SERVICE PROVIDERS” after Chapter 1 “COMPANY SECRETARIES”.
- (3) In the Table of Contents, in the heading of section 864, delete the words “not carrying on business or in operation”.
- (4) In section 154(5), insert the words “or the office of its company service provider located in Abu Dhabi Global Market.” at the end of the subsection, after the words “registered office”.
- (5) In section 156(3), insert the words “or the office of its company service provider located in Abu Dhabi Global Market.” at the end of the subsection, after the words “the company’s registered office”.
- (6) In the heading of Part 12, insert the words “AND COMPANY SERVICE PROVIDERS” after the words “COMPANY SECRETARIES”.
- (7) After Chapter 1 of Part 12, insert a new Chapter 2 of Part 12 as follows:

“CHAPTER 2

COMPANY SERVICE PROVIDERS

296A Non-Exempt Companies to have a company service provider

- (1) A company conducting a business activity of being a special purpose company or vehicle must at all times have a company service provider, subject to subsections (3) and (4).
- (2) In this Chapter -
 - (a) a company that is obliged to have a company service provider is referred to as a “non-exempt company”,

- (b) a “company service provider” is a person licensed pursuant to the Commercial Licensing Regulations 2015 to carry out the controlled activity of providing company services, as defined in Rule 7 of the Commercial Licensing Regulations 2015 (Controlled Activities) Rules 2020, and
 - (c) “business activity” has the meaning given to it in the Commercial Licensing Regulations 2015 (Controlled Activities) Rules 2020.
- (3) Notwithstanding subsection (1), a body corporate that is a wholly owned subsidiary undertaking of any of the following need not have a company service provider –
 - (a) persons exempt under the Commercial Licensing Regulations 2015 (Exemptions) Order 2020,
 - (b) an authorised person within the meaning of the Financial Services and Markets Regulations 2015,
 - (c) persons licensed or regulated by the Central Bank of the United Arab Emirates,
 - (d) a company whose shares are admitted to trading on a regulated market in the United Arab Emirates, including in Abu Dhabi Global Market, or
 - (e) a company that has demonstrated to the satisfaction of the Registrar to have –
 - (i) substantial assets, turnover and employees in the United Arab Emirates, and
 - (ii) adequate governance policies and procedures, in each case as may be specified by rules made by the Board or guidance issued by the Registrar.
- (4) Any non-exempt company incorporated in ADGM –
 - (a) prior to or on the date on which this Chapter comes into force, shall only be obliged to have a company service provider from the first day of the month starting 12 months from the date on which this Chapter comes into force, and
 - (b) after the date on which this Chapter comes into force, shall only be obliged to have a company service provider from the first day of the month starting eight months from the date on which this Chapter comes into force.
- (5) If the company fails to comply with subsection (1), a contravention of these Regulations is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person who commits the contravention referred to in subsection (5) is liable to a fine not exceeding level 7.

296B Obligations of company service provider and non-exempt company

- (1) The company service provider of a non-exempt company must maintain the records that the non-exempt company is required to keep under–
- (a) the following provisions of these Regulations–
 - (i) section 118 (register of members),
 - (ii) section 120 (list of members)
 - (iii) section 153 (register of directors)
 - (iv) section 156 (register of directors' residential addresses),
 - (v) section 215 (directors' service contracts),
 - (vi) section 223 (*directors' indemnities*),
 - (vii) section 292 (register of secretaries),
 - (viii) section 360 (records of resolutions etc),
 - (ix) section 642 (contracts relating to purchase of own shares),
 - (x) section 660 (documents relating to redemption or purchase of own shares out of capital by private company),
 - (xi) section 682 (register of debenture holders),
 - (xii) section 737 (report to members of outcome of investigation by public company into interests in its shares),
 - (xiii) section 740 (register of interests in shares disclosed to public company),
 - (xiv) section 798 (instruments creating charges),
 - (b) the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2020 and any licence granted thereunder, and
 - (c) the Beneficial Ownership and Control Regulations 2018.
- (2) A company service provider of a non-exempt company is authorised to represent the non-exempt company in its dealings with the Registrar and shall give all notices and make all filings that the non-exempt company is obliged to make to the Registrar under these Regulations, the Commercial Licensing Regulations 2015 and the Beneficial Ownership and Control Regulations 2018.
- (3) A non-exempt company must make available to its company service provider such documents and information as is required to enable the company service provider to comply with its obligations under this section.
- (4) If a non-exempt company fails to comply with subsection (3), a contravention of these Regulations is committed by–
- (a) the non-exempt company, and

- (b) every officer of the non-exempt company who is in default.
- (5) A person who commits the contravention referred to in subsection (7) is liable to a fine not exceeding level 6.

296C Duty to notify Registrar of appointment and cessation of company service provider

- (1) A non-exempt company must, within the period of 14 days from a person becoming or ceasing to be a company service provider of the non-exempt company, give notice to the Registrar of the change and of the date on which it occurred. A notice of a person ceasing to be a company service provider must either include details of the company's new company service provider or a statement that the company is no longer a non-exempt company.
- (2) Notice of a person having become a company service provider of the non-exempt company must be accompanied by that person's consent in the prescribed form to act in that capacity.
- (3) If the non-exempt company fails to comply with this section, a contravention of these Regulations is committed by–
 - (a) the non-exempt company, and
 - (b) every officer of the non-exempt company who is in default.
- (4) A person who commits the contravention referred to in subsection (3) is liable to a level 2 fine.

296D Registrar's powers

- (1) The Registrar may issue guidance about the operation of this Chapter.”
- (8) In the heading of section 864, delete the words “not carrying on business or in operation”.
- (9) After section 864(1), insert a new subsection (1A) as follows:
 - “(1A) If the Registrar has reasonable cause to believe that a company has failed to appoint a company service provider in accordance with section 296A of these Regulations, the Registrar may send to the company a communication inquiring whether:
 - (a) the company is a ‘non-exempt company’ for the purpose of section 296A of these Regulations, and
 - (b) the company has appointed a company service provider.”
- (10) In section 864(2), insert the words “under sections (1) or (1A) above,” immediately after the words “If the Registrar does not, within one month of sending the communication”.
- (11) In section 864(3), paragraph(a) shall be deleted in its entirety and replaced by the following:

“(a) receives an answer to the effect that -

- (i) the company is not carrying on business or is in operation, or
- (ii) a ‘non-exempt company’ has failed to appoint a company service provider in accordance with section 296A of these Regulations; or”.

(12) In section 999(1) insert the words "or the office of its company service provider appointed in accordance with Chapter 2 of Part 12 of these Regulations." at the end of the subsection, after the words “the company’s registered office”.

2. Short title, extent and commencement

- (1) These Regulations may be cited as the Companies Regulations (Amendment No. 2) 2020.
- (2) These Regulations shall apply in the Abu Dhabi Global Market.
- (3) These Regulations come into force on the date of their publication.