

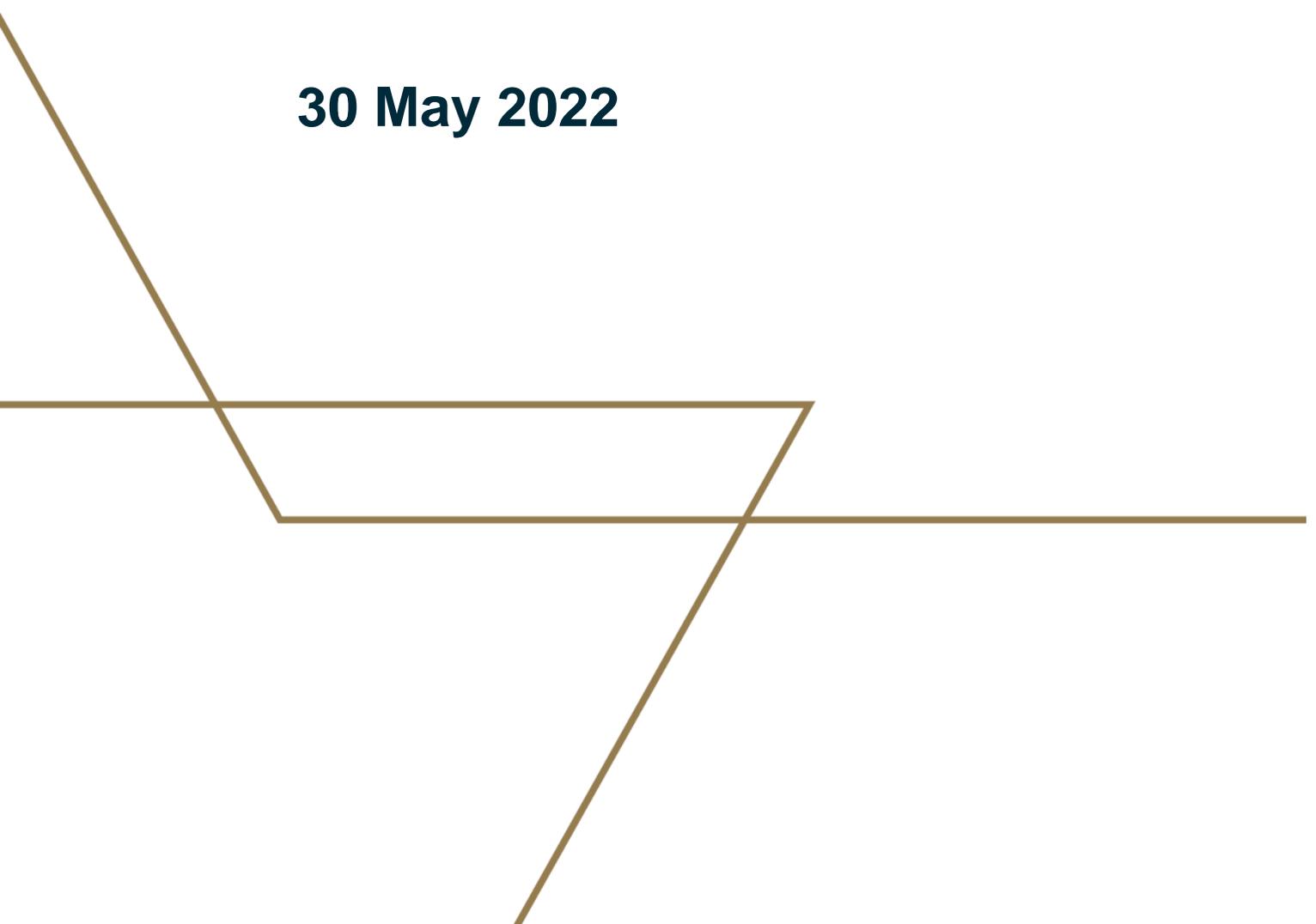


ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

*CONSULTATION PAPER
NO. 3 OF 2022*

**PROPOSED CHANGES TO
ADGM COMMERCIAL
LEGISLATION**

30 May 2022



CONTENTS

Introduction	3
Scope and approach to the proposed amendments	4
Introduction of a Commercial Licensing Renewal Obligation	5
Introduction of a Late Filing Fee Framework	7
Miscellaneous amendments	9
Proposed amendments and enactments	10

Introduction

Why are we issuing this paper?

The Abu Dhabi Global Market (“**ADGM**”) Registration Authority (“**RA**”) has issued this Consultation Paper to invite public feedback and comments on proposed amendments to a number of ADGM commercial regulations and rules, as well as the introduction of certain new rules.

The proposed amendments to the commercial regulations and rules are set out in Annexures A to G and Appendices 1 to 11, respectively, to this Consultation Paper.

Who should read this paper?

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

How to provide comments

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

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

What happens next?

The deadline for providing comments on this proposal is **24 June 2022**.

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

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

Comments to be addressed to:

Consultation Paper No. 3 of 2022
Registration Authority
Abu Dhabi Global Market Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com

Scope and approach to the proposed amendments

1. This Consultation Paper aims to explain the proposed:
 - a. amendments to the following regulations:
 - i. Commercial Licensing Regulations 2015;
 - ii. Companies Regulations 2020;
 - iii. Foundations Regulations 2017;
 - iv. Limited Liability Partnerships Regulations 2015;
 - v. Beneficial Ownership and Control Regulations 2022;
 - vi. Employment Regulations 2019; and
 - vii. Data Protection Regulations 2021,
 - b. amendments to the following rules:
 - i. Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2021;
 - ii. Commercial Licensing Regulations (Fees) Rules 2021;
 - iii. Commercial Licensing Regulations (Fines) Rules 2020;
 - iv. Companies Regulations (Fees) Rules 2021;
 - v. Limited Liability Partnerships Rules 2021;
 - vi. Employment Regulations (Engaging Non-Employees) Rules 2020;
 - vii. Data Protection Regulations (Fines) Rules 2021, and
 - c. enactment of the following subordinate fees rules:
 - i. Limited Liability Partnerships Regulations (Fees) Rules 2022;
 - ii. Foundations Regulations (Fees) Rules 2022;
 - iii. Beneficial Ownership and Control Regulations (Fees) Rules 2022; and
 - iv. Employment Regulations (Fees) Rules 2022.
2. The proposed changes include:
 - a. the introduction of a “**Commercial Licence Renewal Obligation**”;
 - b. the introduction of a “**Late Filing Fees Framework**”; and
 - c. a number of miscellaneous amendments across the ADGM commercial regulations and rules.
3. Drafts of the amended ADGM commercial regulations can be found in Annexures A to G. Drafts of the amended ADGM commercial rules and the new subordinate fees rules can be found in Appendices 1 to 11.

Introduction of a Commercial Licence Renewal Obligation and Late Renewal Fee

Current position

4. The Commercial Licensing Regulations 2015 (the “**CLR**”) impose an obligation on licensed persons to apply for a new licence annually. As a result, the CLR and the Commercial Licensing Regulations 2015 (Conditions of Licence and Branch Registration) Rules 2021 (the “**Conditions of Licence Rules**”) operate such that licensed persons are regarded as new applicants each time their licence expires and, as such, are required to produce all documents to support their application for a new licence.
5. The RA therefore is seeking to amend the current requirements, aligning them with the widely understood concept of a licence renewal.

Proposed changes

6. The RA proposes to amend the CLR and the Conditions of Licence Rules to introduce a provision for commercial licence renewal that will replace the current requirement for licensed persons to apply for a new licence annually.
7. Under the proposed amendments, a licensed person will be required, prior to the expiry of its licence, to renew its licence with the Registrar in accordance with the provisions set out at the newly inserted section 10A in the CLR. A licensed person will be able to make an application to renew its licence up to one month prior to the expiry of its licence.
8. The proposed amendments will also introduce a late renewal fee, via proposed amendments to CLR and the Commercial Licensing Regulations 2015 (Fees) Rules 2021 (the “**CLR Fees Rules**”), that is intended to operate as follows:
 - a. licensed persons will be allowed a one month grace period, such that no late renewal fee will be payable where an application is made to renew a licence within one month following its expiry, provided the renewal application is approved; and
 - b. a late renewal fee will be payable where an application is made to renew a licence more than one month following its expiry.
9. The late renewal fee will be fixed at USD 150 per month, capped at three months.

Q1: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED INTRODUCTION OF THE COMMERCIAL LICENSING RENEWAL OBLIGATION?

10. To maintain the integrity of the RA’s commercial register, the proposed amendments will also require a licensed person who does not intend to renew its licence to notify the Registrar of its intentions and the steps it proposes to take to terminate its operations, registration or incorporation (as applicable) in ADGM, within one month following the expiry of its licence. Failure to do so will be a contravention of the CLR and will attract a fine not exceeding level

3 on the standard fines scale.

Q2: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED ADDITIONAL STEPS REQUIRED WHERE A LICENSED PERSON DOES NOT INTEND TO RENEW ITS LICENCE?

Introduction of a Late Filing Fee Framework

Current position

11. ADGM commercial rules and regulations require licensed persons to file certain information with the RA within prescribed timelines to ensure that the information held by the Registrar, and reflected on the public register, is accurate and up to date. The reliability of the RA's public register contributes to investor protection, making ADGM a trusted and transparent jurisdiction to conduct business, and ensures that ADGM and the UAE adhere to international anti-money laundering standards.
12. The relevant ADGM commercial rules and regulations for these purposes include:
 - a. Companies Regulations 2020;
 - b. Limited Liability Partnerships Regulations 2015;
 - c. Limited Liability Partnerships Rules 2021;
 - d. Foundations Regulations 2017; and
 - e. Beneficial Ownership & Control Regulations 2022,(together, the "**Relevant Legislation**").
13. The Registrar is empowered under the Relevant Legislation to impose fines where filings are not submitted to it within the timeframe prescribed under the particular rule or regulation.
14. More specifically, where the prescribed timeframe for submitting a filing is not met, the person committing the contravention becomes liable for either a fixed fine or a fine up to a fixed maximum amount. The level of such fines varies according to the severity of the specific contravention (the "**Current Penalty Framework**").
15. The RA considers the Current Penalty Framework is better suited for more egregious contraventions and therefore is proposing to simplify the process for contraventions of a less serious nature to encourage timely filings.

Proposed changes

16. The RA proposes to amend the Relevant Legislation (and their subordinate fees rules) to introduce a Late Filing Fee Framework, which has been designed to:
 - a. cover the administrative cost incurred by the RA where entities do not submit filings within the prescribed timeframes;
 - b. enable the RA to approach late filings in a structured and consistent manner;
 - c. allow for the amounts charged to entities who make late filings to be proportionate to the length of the delay and, in limited circumstances, take into account the reasons provided for the delay; and

- d. incentivise entities to make filings in a timely manner.
17. The proposed Late Filing Fee Framework has been structured to accrue on a monthly basis up to a specified cap (“**Late Filing Fees**”) i.e. USD 150 per month, or part thereof, for a maximum of 3 months. The RA considers this is an effective way to incentivise entities to submit filings in a timely manner, whilst also ensuring that the amount of the Late Filing Fee is proportionate to the length of the delay in making the filing.
18. The RA proposes to implement the Late Filing Fee Framework through:
- a. amendments to the Relevant Legislation, including the repeal and re-enactment of the Companies Regulations 2020 and the Limited Liability Partnerships Rules 2021;
 - b. amendments to the following existing subordinate fees rules:
 - i. Companies Regulations (Fees) Rules 2021;
 - ii. Commercial Licensing Regulations (Fines) Rules 2020;
 - c. the enactment of the following new subordinate fees rules:
 - i. Limited Liability Partnerships Regulations (Fees) Rules 2022;
 - ii. Foundations Regulations (Fees) Rules 2022; and
 - iii. Beneficial Ownership and Control Regulations (Fees) Rules 2022.
19. Alongside the Late Filing Fees Framework, the Registrar will retain the option to impose a standalone fine for late filings. This will be achieved through inserting new provisions into each of the Companies Regulations 2020, Limited Liability Partnership Regulations 2015, Foundations Regulations 2017 and the Beneficial Ownership and Control Regulations 2022.
20. This is a discretionary power which is intended to be used by the Registrar in limited circumstances, for example in the event of continued or persistent non-compliance with filing obligations under the Relevant Legislation. For the majority of late filings, it is anticipated that only Late Filing Fees will be imposed with no additional fine. However, the retention of an option to impose a fine will provide the Registrar with further flexibility and enforcement options in circumstances where it considers this is appropriate.

Q3: DO YOU HAVE ANY CONCERNS WITH, OR FEEDBACK ON, THE PROPOSED INTRODUCTION OF THE LATE FILING FEE FRAMEWORK?

Q4: DO YOU AGREE THAT A TIERED FEE STRUCTURE IS AN APPROPRIATE STRUCTURE FOR THE LATE FILING FEE FRAMEWORK? IF NOT, PLEASE EXPLAIN WHY.

Miscellaneous amendments

21. The RA also proposes various miscellaneous amendments to its commercial regulations and rules, including the following:
 - a. removing from the Foundations Regulations 2017 and the Limited Liability Partnerships Rules 2021 those fees provisions which will be included in the newly enacted subordinate fees rules; and updating cross-references to other commercial Regulations and rules where these being repealed and re-enacted;
 - b. removing the obligation on the Registrar to place, where a company is classified as a restricted scope company, the abbreviation RSC in the name of the company. The Registrar proposes to make this optional while clarifying that such classification must be clear on the commercial licence and on the public register;
 - c. overarching review of licensing and post-licensing fees to create a more simplified fee structure;
 - d. providing for a simplified strike off process for companies and limited liability partnerships;
 - e. miscellaneous amendments to the Data Protection Regulations 2021;
 - f. amending the definition of a working day in accordance with changes introduced by the UAE government; and
 - g. amending the term 'annual return' to 'confirmation statement' for consistency and clarifying when confirmation statements are due for limited liability partnerships.

22. The RA is also incorporating various amendments to its Schedule of Fees to:
 - a. include the Late Filing Fee Framework;
 - b. accurately reflect other fees currently charged under the commercial regulations and rules; and
 - c. simplify and clarify the introductory section setting out the types of legal persons and arrangements available in ADGM.

Proposed amendments and enactments

Regulations

Annex A	<i>Proposed Beneficial Ownership and Control Regulations (Amendment No.1) 2022</i>
Annex B	<i>Proposed Companies Regulations 2022</i>
Annex C	<i>Proposed Commercial Licensing Regulations (Amendment No.1) 2022</i>
Annex D	<i>Proposed Data Protection Regulations (Amendment No. 1) 2022</i>
Annex E	<i>Proposed Employment Regulations (Amendment No.1) 2022</i>
Annex F	<i>Proposed Foundations Regulations (Amendment No.1) 2022</i>
Annex G	<i>Proposed Limited Liability Partnerships Regulations (Amendment No.1) 2022</i>

Rules

Appendix 1	<i>Proposed Beneficial Ownership and Control Regulations (Fees) Rules 2022</i>
Appendix 2	<i>Proposed Companies Regulations (Fees) Rules 2022</i>
Appendix 3	<i>Proposed Commercial Licensing Regulations (Conditions of Licence and Branch Registration) Rules 2022</i>
Appendix 4	<i>Proposed Commercial Licensing Regulations (Fees) Rules 2022</i>
Appendix 5	<i>Proposed Commercial Licensing Regulations (Fines) Rules 2022</i>
Appendix 6	<i>Proposed Data Protection Regulations (Fines) Rules 2022</i>
Appendix 7	<i>Proposed Employment Regulations (Engaging Non-Employees) Rules 2022</i>
Appendix 8	<i>Proposed Employment Regulations (Fees) Rules 2022</i>
Appendix 9	<i>Proposed Foundations Regulations (Fees) Rules 2022</i>
Appendix 10	<i>Proposed Limited Liability Partnerships Regulations (Fees) Rules 2022</i>
Appendix 11	<i>Proposed Limited Liability Partnerships Rules 2022</i>