

REGISTRATION AUTHORITY - GUIDANCE

# **WAIVER REQUESTS FOR LATE FILING PENALTIES**

November 2024



## CONTENTS

INTRODUCTION .....	3
Introduction to ADGM .....	3
Guidance overview and application .....	3
WAIVER REQUESTS OF LATE FILING PENALTIES.....	4
Overview .....	4
Late filing penalties issued by the RA.....	4
Reason for waiver .....	4
Applicant to ensure complete and accurate information is provided to the RA .....	5
Requirements for consideration of all waiver request applications .....	6
Complete and accurate information provided to the RA .....	6
Application of waiver must be made within 30 days of issue of late filing penalty.....	6
PROCESS FOR WAIVER REQUEST FOR LATE FILING FEES AND FINES .....	6
Application of waiver for late fees to be made via the Online Portal.....	6
Application of waiver for fines to be made via email.....	6
Information to be provided to the RA for all waiver applications .....	7
Declaration by the applicant to the RA .....	7
Submission of waiver request .....	7
Outcome of waiver request – late filing fees and late filing fines .....	7
Failure to pay late fees or fines.....	8
Further information.....	8
DISCLAIMER .....	9

## INTRODUCTION

### Introduction to ADGM

**ADGM** is an international financial centre established pursuant to Abu Dhabi Law No. 4 of 2013 in the Emirate of Abu Dhabi, United Arab Emirates. With its own civil and commercial laws based on English common law, ADGM offers the local, regional and international business communities a world-class legal system and regulatory regime.

The Registration Authority (“**RA**”) of ADGM is the Registrar of companies within ADGM as well as the commercial and audit regulator of ADGM. The RA is responsible for the licensing, registration and incorporation of entities seeking to establish a presence in ADGM, as well as the monitoring and enforcing of ADGM’s commercial legislation and facilitating government related services.

### Guidance overview and application

This guidance is issued under section 936(2) of the Companies Regulations 2020 (“**CR 2020**”), section 28(1) of the Commercial Licensing Regulations 2015 (“**CLR 2015**”), and section 24 of the Beneficial Ownership and Control Regulations 2022 (“**BOCR 2022**”) to elaborate on the waiver requests for late filing penalties. For the purposes of this guidance CR 2020, CLR 2015 and BOCR 2022 will be collectively referred to as (“**Regulations**”).

For the purposes of this guidance, private limited companies, public limited companies, unlimited companies, limited liability partnerships and foundations, will be collectively referred to as “**company**” or “**companies**”. Similarly, director, member, partner and councillor will be referred to as an “**officer**”, unless otherwise specified.

This guidance sets out the RA’s policy and procedure on accepting, assessing and deciding waiver requests in relation to late filing fees and fines.

The imposition of fines for late filings and the determination of the amount of a fine may vary from this guidance depending on the particular facts and circumstances of an individual matter.

This guidance should be read in conjunction with ADGM’s commercial legislation, which is available from [www.adgm.com](http://www.adgm.com).

## **WAIVER REQUESTS OF LATE FILING PENALTIES**

### **Overview**

ADGM companies may request a **waiver** or **waivers** for the following two types of late filing penalties:

- Late Filing Fees: waiver request completed by submitting a request through the online portal.
- Fines: waiver request completed via email.

ADGM companies need to meet specific criteria for the RA to consider any waiver request.

### **Late filing penalties issued by the RA**

Depending on the type of filing, late filing fees and late filing fines will be issued automatically via the Online Portal which can be found [here](#).

Examples of late filings include but are not limited to:

- Change of director and/or particulars;
- Change of beneficial ownership and/or nominee directors; and
- Filing amended articles of association, statement of capital, annual accounts and reports, etc.

### **Reason for waiver**

A company may appeal against a late filing penalty, by submitting a waiver request. However, the appeal will only be successful if the company demonstrates that an error has occurred, including the late filing penalty being imposed incorrectly, or that the circumstances are exceptional.

The RA will consider a waiver request only for the following two categories:

#### **A) Errors:**

- A filing is submitted or document is uploaded to the RA via the Online Portal where there is a clear and obvious mistake inputted, for example the year '2023' instead of '2024';
- There has been a system error by ADGM's registry system; or

- An incorrect notification or instruction is received by the company directly from ADGM.

B) Exceptional Circumstances:

- Exceptional circumstances include unforeseen and catastrophic events that render a company unable to submit a filing.

Exceptional circumstances **do not** include:

- a) the company being dormant;
- b) unfamiliarity with the company's filing obligations under ADGM's commercial legislation;
- c) the company's accountant / auditor not completing the preparation of the accounts in time;
- d) the directors / authorised signatories of the company are travelling / out of the country; nor
- e) the company having financial difficulties.

Companies should take appropriate measures to ensure that its accounts are ordinarily prepared (and audited, if required) and submitted to the RA within the prescribed period.

**Applicant to ensure complete and accurate information is provided to the RA**

The applicant must ensure that in an application for a waiver, all information and declarations made are complete and accurate, including any supporting documents and statements.

Failure to provide complete and accurate information may result in a person contravening section 984 of the CR 2020 – *general false statement contravention*. A contravention of section 984 may result in a financial penalty of up to level 7 (USD 25,000).

## **Requirements for consideration of all waiver request applications**

The following requirements must be met before consideration of waiver requests:

### Complete and accurate information provided to the RA

The applicant must ensure that one of the two categories of waiver (see ‘Reasons’ above) has been met, and that complete and accurate information has been provided to the RA to support this.

### Application of waiver must be made within 30 days of issue of late filing penalty

The applicant must also ensure that any application for a waiver is made within 30 days of the issuance of the relevant notice of a late filing penalty (“**Notice**”). The Notice will be sent to the service email address of the ADGM company’s online portal user, and is available to be viewed by the ADGM company via the [Online Portal](#).

## **PROCESS FOR WAIVER REQUEST FOR LATE FILING FEES AND FINES**

Late filing fees are currently applicable to commercial licence renewals, beneficial ownership filings as well as change of director filings. All other penalties are considered fines.

The process for waiver request will depend on whether the penalty is a fee or fine.

### **Application of waiver for late fees to be made via the Online Portal**

If the applicant believes that they meet one of the categories for a waiver of a late filing fee, they may make an application via the [Online Portal](#).

### **Application of waiver for fines to be made via email**

If the applicant believes that they meet one of the categories for a waiver of a late filing fine, they may make an application via the email address [ra.enforcement@adgm.com](mailto:ra.enforcement@adgm.com)

### **Information to be provided to the RA for all waiver applications**

The applicant must provide the following information:

- a) The waiver category which the late filing fee / filing fine meets;
- b) The reason(s) the late filing fee / filing fine meets the waiver category; and
- c) Any supporting documentation.

### **Declaration by the applicant to the RA**

The applicant must declare that:

- a) The late filing fee / filing fine meets one of the acceptable reasons of waiver;
- b) The applicant acknowledges that if they do not provide complete and accurate information regarding the waiver request that they may be liable for a financial penalty of up to level 7 (USD 25,000); and
- c) The applicant acknowledges that if they do not provide complete and accurate information regarding the waiver request, and they are completing the application on behalf of an ADGM company, the ADGM company might be held liable for a financial penalty of up to level 7 (USD 25,000).

### **Submission of waiver request**

Once all applicable information has been provided, and the three above declarations have been made by the applicant, the applicant can submit the waiver request.

For waiver of late filing fines requests, if the email does not contain the required information and declarations, the waiver request will not be considered, and it will be rejected.

### **Outcome of waiver request – late filing fees and late filing fines**

The RA will consider the reasons given for the waiver request. The two outcomes are:

- The waiver request is accepted; or

- The waiver request is rejected.

If the waiver request is accepted by the RA, the late filing penalty will be cancelled.

If a company appeals a late filing penalty after paying the fee or fine and the waiver request is accepted, a credit note will be applied to any future payments due by the company. No refund will be given.

In either case, the company requesting the waiver will be notified of the outcome in writing to their registered service email address.

### **Failure to pay late fees or fines**

If a waiver request is unsuccessful and a company fails to pay any part of a late fee or fine within 30 days of date the RA rejects the waiver request, the company will be deemed to be not in good standing and the RA will restrict access to certain services on the online portal.

The RA may also apply to ADGM Courts for recovery of any part outstanding of the fee as a debt.

### **Further information**

For further information on requirements of companies responsibilities to the RA, please visit: <https://www.adgm.com/operating-in-adgm/monitoring-and-enforcement/late-filings-to-the-registrar>



## **DISCLAIMER**

This guidance is a non-binding indicative guidance and should be read together with the relevant legislation, in particular ADGM's Companies Regulations 2020, Commercial Licensing Regulations 2015 and Beneficial Ownership and Control Regulations 2022, and any other relevant regulations and enabling rules, which may change over time without notice. Information in this guidance is not to be deemed, considered, or relied upon as legal advice and should not be treated as a substitute for specific advice concerning any individual situation. Any action taken upon the information provided in this guidance is strictly at your own risk and the RA will not be liable for any losses and damages in connection with the use of or reliance on information provided in this guidance. The RA makes no representations as to the accuracy, completeness, correctness, or suitability of any information provided in this guidance.