



**Guidance on
Waivers and Modifications of the provisions of the
Legislation Administered by the Registrar of
Companies**

Contents

Introduction.....	3
The Registrar of Companies' power to grant waivers	3
Basis for granting a waiver or modification.....	3
Waiver or modification considerations	3
Renewals or extensions	4
Varying and withdrawals of waiver or modification	4
How to apply for a waiver or modification?	4
How we process waiver and modification applications?.....	4
Publication	5
<i>Disclaimer</i>	5

Introduction

This Guidance provides information on procedures for applications to grant waivers or modifications of the provisions of the Legislation Administered by the Registrar of Companies.

It also sets out the basis for which the Registrar of Companies grants a waiver or modification of provisions of the Legislation Administered by the Registrar to AIFC Participants or AIFC Potential Participants.

A **waiver** means AIFC Participant or AIFC Potential Participant does not have to comply with a provision.

A **modification** allows AIFC Participant or AIFC Potential Participant to comply with a provision amended to fit particular circumstances.

The Registrar of Companies' power to grant waivers

The Registrar has the power to grant waivers and modifications of the provisions of the Legislation Administered by the Registrar of Companies under section 195 of the AIFC Companies Regulations.

The Registrar of Companies may, by Written notice, provide that 1 or more relevant provisions of the Legislation Administered by the Registrar:

- (a) do not apply to AIFC Participant or AIFC Potential Participant (i.e. grants a waiver); or
- (b) apply to the Person with the modifications stated in the notice (i.e. grants a modification).

The notice may be given subject to conditions.

Basis for granting a waiver or modification

The application for waiver or modification shall demonstrate the following reasons why it should be granted from:

- (a) *a legal perspective*. For example, why is the waiver or modification required as a matter of law?
- (b) *a commercial perspective*. For example, why is it not commercially feasible to comply with the existing provision?

Please note that a mere inconvenience is not the basis for granting a waiver or modification.

Waiver or modification considerations

Applications are not automatically granted. The Registrar of Companies individually assesses all applications on its merits.

A waiver or modification is granted only if applicant could demonstrate exceptional reasons and circumstances. Thus, the Registrar of Companies will only grant a waiver or modification where:

- 1) Regulation/rule, if applied as it is, acts as obstacle to legitimate business needs; or
- 2) Regulation/rule, if applied as it is, does not fulfil its regulatory intent (i.e. provide the protection or benefit it is supposed to provide); or

- 3) Applicant can demonstrate that cost of compliance outweighs the regulatory benefit. Any applicant who claims to be particularly affected by compliance costs will need to explain why the effect of the regulation/rule in their circumstances is anomalous.

If the Registrar of Companies decides to grant a waiver or modification, conditions may be attached.

A waiver or modification will not apply retrospectively.

Renewals or extensions

If AIFC Participant wishes to renew or extend an existing waiver it will need to submit a new application, detailing again how the request demonstrates legal or commercial necessity.

Varying and withdrawals of waiver or modification

Once the Registrar of Companies has granted a waiver or modification, it may vary it on its own initiative, or on the application of the AIFC Participant or AIFC Potential Participant.

The Registrar of Companies may withdraw a waiver or modification at any time. In deciding whether to withdraw a waiver or modification, the Registrar of Companies will consider whether the conditions and circumstances for granting the waiver or modification are no longer satisfied, and whether the waiver or modification is otherwise no longer appropriate.

How to apply for a waiver or modification?

If AIFC Participant or AIFC Potential Participant wishes to submit a waiver or modification application to the Registrar of Companies, please complete the Waivers or Modification form (*Annex 1*) and send it to:

registration@afsa.kz - for AIFC Potential Participants

post-registration@afsa.kz - for AIFC Participants

It may save time if you can reference a waiver or modification the Registrar of Companies has already granted to other AIFC Participants.

Refer to AFSA Register of granted Waivers and Modifications at <https://afsa.aifc.kz/legal-framework/register-of-waivers-and-modifications/>.

How we process waiver and modification applications?

All received applications will be acknowledged. The Office of the Registrar of Companies will ask for further information to support the decision if needed.

If a waiver or modification is approved, the Registrar of Companies will issue a Written notice. This will set out how the provision(s) has been waived or modified, who the Written notice covers and the period of its validity. Conditions, if any, will also be set out in the Written notice.

Most waivers and modifications are granted for a set period then cease to apply. At that stage, a new application is required.

An application submitted for approval may be refused. If the Registrar of Companies refuses an application the reason(s) for refusal will be provided in a Written notice. You are welcome to resubmit your application, containing all the relevant information, at any time.

Publication

The Registrar of Companies will publish details of all approved waivers and modifications, as well as Written notices unless the Registrar of Companies considers it inappropriate or unnecessary.

Disclaimer

This is only a guide and should be read together with the relevant legislation, in particular, AIFC Companies Regulations, AIFC Companies Rules and any other relevant regulations and enabling rules (which may change over time without notification).

The information in this Guidance is general and non-binding.

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.

Further advice from a specialist professional may be required.

Waivers or Modifications form

This form must be submitted by applicants for incorporation/registration or AIFC Participants who are seeking a waiver or modification to the AIFC Regulations and Rules in relation to the requirements they must meet in their role as an AIFC Participant.

To assist you¹ in completing forms we may occasionally make reference to various Regulations and Rules, sections, or chapters of the various modules which make up the AIFC Regulations and Rules. However, these references are provided only as a guide and are not an exhaustive list of the Regulations and Rules that may be applicable to your situation. It is your responsibility to research any Regulations and Rules that might be pertinent to your application.

Do not leave any response-cells empty. If it is more appropriate to answer certain questions in an attachment then indicate in the cell that that is the case. The use of acronyms shall be avoided. If you do need to use acronyms then they must be defined.

As a matter of good practice, and to avoid any confusion, words and terms that are defined in GLO should have their first letter in upper-case.

Ensure that that you are using the latest version of this application form. AFSA will only accept out-of-date forms if they are submitted within one month of the latest version available on our website.

You are advised to retain a copy of the form and all relevant attachments for the records.

If your firm is already incorporated/registered you should first contact your case officer to discuss your application for a waiver or modification.

¹ The terms “you” and “your” as used throughout are not implied in the personal sense, but rather refer to the applicant. The terms “we” and “our” refer to the AFSA.

1. Declaration by the applicant

1.1 I declare that, to the best of my knowledge and belief, having made due inquiry, the information given in this form, the supplements and documents attached, as well as any applicable supporting documents, is complete and correct. I understand that it is a contravention of the Section 200 of the AIFC Companies Regulations to make a statement, or give information, to the Registrar (whether orally, in a Document or in any other way) that is false or misleading in a material particular, or give a Document to the Registrar that is false or misleading in a material particular, or conceal information or a Document if the concealment is likely to mislead or deceive the Registrar.

1.2 I declare my understanding that the AFSA may request more detailed information (including but not limited to, personal educational, employment and financial information) should it be deemed necessary to adequately assess the fitness and propriety of the firm or any person connected to the firm. I consent to the AFSA contacting any previous employers, educational institutions, professional organisations or any other organisation, to verify any information contained in this form.

1.3 I confirm that I have the authority to make this application, to declare as specified above and sign this form for, or on behalf of, the applicant. I also confirm that I have authority to give the consent specified above.

1.4 I understand that any personal data provided to the AFSA will be used to discharge its regulatory functions under the AIFC Data Protection Regulations, and other relevant legislation and may be disclosed to third parties for those purposes.

1.5 I confirm that all documents submitted as part of this application, whether physical or electronic, become property of the AFSA.

Signature of Authorised Signatory

Date

Enter the name and position or title of the above signed Authorised Signatory of the applicant:

--

2. Waivers or modifications

AFSA will place certain expectations on the applicant firm or the AIFC Participant that is applying for a waiver or modification to AIFC Regulations and Rules. To facilitate your success in being granted a waiver or modification to the AIFC Regulations and Rules you will have to present your arguments very clearly.

In the first instance, we expect that the applicant will carry out appropriate research on each of the following areas:

- ✓ The intention behind the provisions in question and the regulatory outcomes that the provisions aim to achieve;
- ✓ Whether there is any precedent relief which may have been issued that supports this application, whether that be in the AIFC or any other regulatory jurisdiction; and
- ✓ The risks associated with the relief being sought and how you plan to mitigate such risks.

In this application you must:

- ✓ Present your reasons for requesting the granting of a waiver or a modification;
- ✓ Explain the impact to your firm and its clients to being granted the waiver or modification; and
- ✓ In the case of an application to modify a provision, propose wording for the modification.

3. General information about the applicant

3.1.	Name of the applicant firm or of the AIFC Participant	
3.2.	The applicant firm's or AIFC Participant's application contact person	
3.3.	Position or title of contact person	
3.4.	Contact telephone number	
3.5.	Contact e-mail address	
3.6.	Contact address	

4. Specifics of the waiver or modification sought

4.1. If you are applying for a variation of an existing waiver or modification provide the details to the previous waiver or modification:

4.2. State the specific Regulations or Rules to which this application pertains to:

4.3. Are you applying for the Regulations/Rules to be waived completely?

4.4. Are you applying for a modification of the Regulation/Rule? If so, provide the draft wording to the Regulation/Rule of the modification being sought:

4.5. Provide details of any special requirements:

4.6. Describe the desired outcome of the proposed waiver or modification:

5. The applicant's research and reasons for the waiver or modification

5.1. Confirm that you have researched any previous waivers and modifications published by the AFSA. If you have determined that your application is based on precedent, then provide details of that relevant waiver or modification:

5.2. Confirm that you have researched any previous waivers and modifications published by other regulators that are similar in scope to the waiver or modification that you are seeking. If you have determined that your application is based on precedent from other jurisdictions, then provide details of that relevant waiver or modification:

5.3. Provide a succinct explanation of why your firm requires this waiver or modification:

5.4. Provide a succinct explanation of the impact the current relevant Regulation or Rule has on your firm:

5.5. Why do you believe that compliance with the existing Regulation or Rule is disproportionate given your firm's circumstances?

5.6. Identify all risks² that a waiver or modification to the Regulation or Rule, if granted, might create:

5.7. Describe how you propose to mitigate the risks identified in above and if there should be any conditions included with your waiver or modification request:

² For example, any potential risks to your clients or to your compliance to AIFC Rules or to the AFSA's ability to regulate your activities.

6. Submitting your application to the AFSA

Return the completed application form to either your current assigned AFSA case officer or attach it with your other documents if you are seeking incorporation/registration.