

**ADGM COMPANIES REGULATIONS -
REGISTRAR'S GENERAL RULES AND POWERS:
GUIDELINES (APRIL 2015)**

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This guide seeks to answer expected questions and provides information on completing the filings process. The guide is not drafted with unusual or complex transactions in mind. Specialist professional advice may be needed in those circumstances.

INTRODUCTION

The Registrar has a range of powers which are in Part 31 of Companies Regulations 2015 (the “**Companies Regulations**”). These include powers to:

- decide on the form, manner of delivery (including electronic delivery) and authentication of documents;
- amend the register in certain circumstances; and
- annotate the register in certain circumstances.

This guidance tells you what these powers are, and gives you an idea of how and when they work. They apply to all companies registered in the Abu Dhabi Global Market.

These Rules should be read alongside the more detailed Rules of the Registrar which are available on the Registrar’s website at: www.adgm.com.

If you are in any doubt about the application of these powers please email our enquiries section on rb@adgm.com or call +971 2 3338888.

Chapter 1

Powers which relate to the delivery of information

1. Form, authentication & manner of delivery of documents

Companies can deliver documents to the Registrar electronically via the Registrar's website or as paper forms. In all cases, those delivering documents must meet the Registrar's requirements on the format of the document, and the way in which it is delivered and signed; these are in addition to any other requirements set out in the Companies Regulations, or other applicable rules and laws in the Abu Dhabi Global Market.

Electronic delivery of documents

The Registrar will publish rules on electronic filing to set out requirements for the form, authentication and manner of delivery of documents by electronic means. For companies filing electronically, the formats for individual documents will be shown on the website, as is the method of authentication. Once you have completed the document you submit it directly via the website.

Delivering paper documents

For companies delivering paper documents, the Companies Regulations (Paper Form) Rules 2015 provide for the format of paper forms, setting out, for example, when prescribed forms must be used (and where they can be accessed), how to complete them (e.g. in black ink), who can sign them and how they must be delivered physically.

The rules also cover the other documents, such as annual accounts, which companies have to deliver to the Registrar.

2. Where can I see the forms and Registrar rules?

The rules and associated paper forms and electronic formats for electronic filing are all available on the Registrar website. You can also ask for a hard copy by calling the Registrar on +971 2 3338888.

3. Delivery and receipt of documents (Section 945)

A document is not delivered to the Registrar until the Registrar receives it. We have set out in the rules on paper delivery when documents are legally considered to have been delivered to the Registrar's office.

The opening hours of the Registrar's office are available on www.adgm.com.

4. What is meant by proper delivery of a document? (Section 946)

A properly delivered document is one that meets all the requirements of the Registrar's rules and the legislation under which it is delivered. Generally, the Companies Regulations set out what the content of a document should be and the rules set out the form of the document, any requirements for authentication and where it must be delivered.

In particular, a document is properly delivered when:

- it contains all the information required by the Companies Regulations;

- it meets all the requirements of the Companies Regulations and the Registrar's rules as to form, e.g. is in the right format (i.e. the right paper form or electronic format) and can be scanned or copied;
- it has been authenticated (by signature in the case of a paper form or by electronic authentication for electronic filing), and includes the company name and number where required;
- it has met any requirements for delivery, e.g. it has been sent electronically where the company has agreed with the Registrar that it will only file such documents electronically;
- it is in the English language using Roman script;
- it uses only permitted characters, being Roman script, in names and addresses;
- it meets the Registrar's requirements for certification or verification of a document as an accurate or correct copy or translation; and
- it is accompanied by the correct fee for the filing of the document.

5. What happens if my document is not properly delivered? (Section 947)

In most cases, the Registrar will reject the document and will tell you what you need to do next in order to correct it. However, the Registrar may still accept a document that does not meet the requirements for proper delivery. For example, in a large document, it may not be apparent to the Registrar that something is missing or incorrect, and he may register it without noticing.

However, he would not accept a document that was not signed or otherwise properly authenticated, where the fee was not paid, or where information was missing. Each form contains guidance on how it should be completed.

6. If the Registrar accepts a document that is not properly delivered, does it cancel out the original requirement to deliver it properly?

No. The fact that the Registrar has accepted and registered the document does not mean that the original requirement has been satisfied. As a result the obligation to file the document continues and any liabilities that arise from not doing so still apply.

The Registrar may decide to take further action after registration - for example, if a third party points out that it does not comply with the statutory obligations. In such cases the Registrar may write to the company asking them to deliver a replacement document, along with a EDF-RP01 covering form, that complies with all the requirements of proper delivery.

If the company delivers a replacement document with the appropriate EDF-RP01, the Registrar may then remove the original. If the company does not respond, the Registrar can send a notice to them giving them 14 days to file a document that complies with the requirements for proper delivery.

Chapter 2 Powers to amend the register

The Companies Regulations specify the circumstances where the register can be amended or clarified. In most cases the circumstances are very specific and the Registrar's powers are limited. This Chapter sets out the powers and the circumstances when each of the powers can be exercised.

1. What if a document contains unnecessary material? (Section 948)

Sometimes companies send the Registrar information that they did not intend to. The Companies Regulations have made provision to address this problem in some circumstances so that the Registrar may be able to remove "unnecessary material" from the register.

Section 948 of the Companies Regulations defines "unnecessary material" as material that:

- is not necessary to fulfil a statutory obligation under the Companies Regulations; and
- is not specifically authorised to be delivered to the Registrar.

The Registrar must be satisfied that the information meets both parts of that definition before he can consider whether or not it can be removed.

Often information cannot be removed as it does not meet both parts of the definition.

In cases that do not meet the definition for unnecessary material the company may consider applying to the courts to have it removed.

Where the information meets the "unnecessary material" definition, the Registrar can deal with it in different ways, depending on whether he can separate it from the rest of the document. If it is separable, the Registrar may then deal with it as explained in Question 7 below.

It is important to note that whole documents cannot be removed for containing unnecessary material as it only applies to part of the material within a document.

If the Registrar cannot easily separate the unnecessary material, the document will not meet the requirements of proper delivery. Where this is prior to a document's registration the Registrar will normally reject the document. If this is post registration the document may need to be replaced. This is explained in Question 3 below.

2. Informal correction of documents. (Section 949)

The Registrar has the power to correct informally a document which is incomplete or internally inconsistent before registering it. Informal correction is only available in respect of the registration of charges. This is because the registration of a charge has significant consequences for the company, particularly in the event of a subsequent liquidation. There are also statutory time constraints on the delivery of charges for registration.

People who wish to take advantage of this provision must first agree to being contacted and to giving the Registrar whatever instructions are needed to correct a document.

Where the Registrar receives a document that is incomplete or internally inconsistent, in order to be able to correct it informally he may ask the person who is authorised to correct it to give the appropriate instructions.

An incomplete document is most likely to have information missing from it that the Registrar can insert once he has made enquiries of and received instructions from the person who delivered it. An example might be where the prescribed details on a charge registration form do not agree with those on the charging instrument itself. For obvious reasons the Registrar will never insert a missing signature.

An internally inconsistent document is where information contained within the document is inconsistent with other information delivered as part of the filing requirement. The Registrar may ask the person who is authorised to correct it to give the appropriate instructions.

The Registrar must be satisfied that the person giving the instructions is authorised to do so. This involves setting up a password or code between the Registrar and either the person who delivered the original filing or the person who authenticated it.

Once the Registrar has corrected the document, he treats it as having been delivered when he made the correction.

3. What if I need to replace a document? (Section 950)

The Registrar may accept a replacement for a document previously delivered only if the original filed document:

- did not meet the requirements of proper delivery, (e.g. it was not signed); or
- contained unnecessary material.

The Registrar must be satisfied that the person delivering the replacement document is the person who delivered the original document or is the company to which the original relates. The replacement document must also comply with the requirements for proper delivery. If you wish to file a replacement document, you must send the replacement document accompanied by Form EDF-RP01. The Registrar needs this so that he can link the replacement document with the original.¹

In certain circumstances, the court may also order the replacement of a document.

4. What happens to the original document?

The Registrar can decide whether or not to remove the original document in these circumstances, and he will judge each case on its individual merits (see Question 7). His decision may depend on whether it serves the public interest better to leave the document on the register or to remove it.

5. What is annotation of the register? (Section 955)

The Registrar must annotate the register in certain circumstances so that searchers of the register are aware of what he has done, when and why. When annotating the register, the Registrar must annotate the register to record:

- the date an original document was delivered;

¹ Note: there is no obvious rationale for the UK failing to accommodate replacements online.

- the nature and date of a correction if he has informally corrected a document under section 949 of the Companies Regulations;
- the date of the replacement of a document and the fact that it has been replaced;
- the date and under what power he removed any material, and a description of the material;
- the nature and date of rectification of a document under section 795 of the Companies Regulations; and
- the date of the replacement of a document and the fact that it has been replaced under section 796 of the Companies Regulations.

The Registrar may also annotate the register if he considers that information on it is misleading or confusing. He may use this power, for example, where a statement of capital received from a company shows a different figure to that held by the Registrar. The Registrar may also remove an annotation if it no longer serves a useful purpose.

6. What can the Registrar do about inconsistency on the register? (Section 968)

If the Registrar considers that information in a document delivered to him appears to be inconsistent with other information on the register, he must accept it, but he can then take steps to resolve the inconsistency.

Initially, he may write to the company asking it to resolve the inconsistency by filing another document to correct the register. If they do not comply with this initial request, the Registrar has the power to issue a formal notice of inconsistency to them. This formal notice will:

- state how the information contained in the document appears to be inconsistent with other information on the register; and
- require them to deliver to the Registrar an additional document required to resolve the inconsistency within 14 days of the issue of a notice.

He may also annotate the register to show that there is an inconsistency.

If the company fails to comply with the notice, it and every officer of it who is in default, is guilty of an offence and liable, on summary conviction to a fine.

7. What can be administratively removed from the register? (Section 969)

The Registrar can administratively remove from the register:

- unnecessary material; and
- material derived from a document that has been replaced because it was not properly delivered or was replaced following of an inconsistency notice.

The Registrar cannot remove from the register anything he had to accept, or material whose registration has had legal consequences in relation to the company as regards:

- its formation;

- a change of name;
- its re-registration;
- a reduction of capital;
- a change of registered office;
- the registration of a charge; or
- its dissolution.

The Registrar also cannot administratively remove from the register a person's registered service address. Directors, secretaries and others must have such addresses.

8. Will the company be informed before any material is removed from its record?

Yes, unless the removal is at the request of the company. On or before removing any material, the Registrar will give notice to either:

- the person who delivered the material, (if he knows that person's identity, name and address); or
- the company to which the material relates (if notice cannot be given to the person who delivered the material and the identity of the company is known).

The notice must state the date it is issued; what material is to be, or has been, removed and on what grounds.

9. What is rectification of the register? (Section 970 and Companies Regulations (Applications for Striking-Off, Register Annotations and Rectifications) Rules 2015)

This is another power allowing the Registrar to remove material from the register in certain circumstances. This only relates to certain material specified in the Companies Regulations (Applications for Striking-Off, Register Annotations and Rectifications) Rules 2015, and only enables the material to be removed if it:

- derives from anything invalid or ineffective, or was done without the authority of the company; or
 is factually inaccurate or is derived from something that is factually inaccurate or forged.
- is factually inaccurate or is derived from something that is factually inaccurate or forged.

The powers are not always limited to removing false documents and can allow the Registrar to remove certain documents or information derived from them which are factually inaccurate. An example of this might include forms containing an error of fact, such as the wrong date of birth for a person.

However, due to the legal status of the registered office address, only the company itself can apply to the Registrar for rectification of a change to its registered office.

10. How do I apply?

Details about how to apply are set out in the Registrar's rules.

11. What material does the Registrar's rectification process apply to?

Details of what material the Registrar's rectification process applies to are set out in the Registrar's rules.

12. Rectification of the register under court order (Sections 971 and 972)

The Registrar must remove from the register any material:

- that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company; or
- that a court declares to be factually inaccurate, or to be derived from something factually inaccurate, or forged,

and that that the court directs to be removed from the register.

The court order must specify what the Registrar must remove from the register and indicate where on the register it is. The court can only order the removal of material whose registration had legal consequences for the company if it is satisfied that:

- the presence of the material has caused, or may cause, damage to the company; and
- the company's interest in removing the material outweighs the interest of any other person in the material continuing to appear on the register.

For a list of the material whose registration had legal consequences see Chapter 2, Question 7.

The court can direct the removal a person's registered service address for the purposes of section 1001 of the Companies Regulations.

The court may also direct that:

- the Registrar must remove any note on the register which relates to the material which is the subject of the order;
- the Registrar shall not make available for public inspection the order itself;
- the Registrar shall make no note on the register as a result of the order; and
- any such note is restricted to the matters specified by the court.

The court may only make such directions if it is satisfied that:

- the presence of the note or an unrestricted note or the availability for public inspection of the court order may cause damage to the company; and
- the company's interest in non-disclosure outweighs the interests of any other person in

disclosure.

13. Supplemental Filing - correcting inaccuracies on the register

In certain circumstances companies may be able to submit another form (known as a 'Supplemental Filing') in order to correct inaccuracies that had been submitted on a form that had been delivered previously to the Registrar under the Companies Regulations.

For example, where an incorrect date of allotment had been previously provided in a 'Return of allotment of shares' (form EDF-SC01), then a Supplemental Filing can be delivered to the Registrar restating all of the information previously provided but with the correct date of allotment.

The Supplemental Filing is placed on the register updating the register but the original form will remain there too. A 'Supplemental Filing' of a form may only be filed if the original form **had been properly delivered** and registered, and inaccuracies appear in the registered material. For each Supplemental Filing a EDF-RP07 will need to be submitted for company forms.

You can submit a 'Supplemental Filing' for the following form types:

- EDF-DS01 - Appointment of director, corporate director, secretary or corporate secretary, termination of appointment of director or secretary;
- EDF-DS02 - Change of director's, corporate director's, secretary's or corporate secretary's details;
- EDF-SC01 - Return of allotment of shares; and
- AR-AR01 - Annual Return.

Chapter 3

Other Registrar's powers

1. How long does the Registrar keep documents? (Section 957)

The originals of documents delivered to the Registrar in hard copy form may, at the sole discretion of the Registrar, be destroyed (provided the information contained in them has been recorded) or returned to the party who delivered them to the Registrar.

Where the Registrar receives a document electronically, he does not have to keep the original document, as long as the information contained in them has been recorded.

2. What about dissolved companies? (Section 958)

Once a company has been dissolved for 2 years, the Registrar may direct that records relating to it may be removed to such place as is directed by the Board, or otherwise destroyed.

3. Filing of translations (Section 981)

In some cases, companies are required to deliver translations of documents that they are delivering or have previously delivered to the Registrar.

If you are required to file a translation you must send the translation accompanied by Form EDF-VT01. The Registrar needs this so that he can link the translated version of the document with the original. If you want to see full details of the Registrar's rules regarding filing translations, please visit our website www.adgm.com.

4. Transliteration of names and addresses

Names and addresses in documents delivered to the Registrar (of both individuals and companies) must only consist of permitted characters and symbols as specified in the Schedule 1 of the Companies Regulations (Business Names) Rule 2015 and (where applicable) their lower case equivalents.

5. Certification of documents

Where a document delivered to the Registrar has to be certified as an accurate translation, or as a correct copy, the Registrar has made rules on who is able to certify documents. If you want to see full details of the Registrar rules on certification, please refer to www.adgm.com.

Chapter 4

Quality of documents

1. What happens to the documents I send to the Registrar?

We scan the documents and forms you deliver to us to produce an electronic image. We then store the original paper documents and use the electronic image as the working document.

When a customer searches a record, they see the electronic image reproduced online. So it is important not only that the original is legible, but that it can also produce a clear copy.

This Chapter sets out some guidelines to follow when preparing a document for filing with the Registrar.

2. How should I set out documents?

Documents filed electronically

Documents filed electronically must comply with the specifications set out by the Registrar in any rules on electronic filing which are released by it.

Paper documents

Generally, every paper document sent to the Registrar must state in a prominent position the registered name and number of the company. There are a few exceptions to this rule, which are set out in the published Registrar's rules.

Paper documents should be on A4 size, plain white paper with a matt finish. The text should be black, clear, legible and of uniform density. Letters and numbers must be clear and legible so that we can make an acceptable copy of the document. The following guidelines may help:

When you fill in a form please:

- use black ink or black type;
- use bold lettering (some elegant thin typefaces and pens give poor quality copies);
- don't send a carbon copy;
- don't use a dot matrix printer; and
- remember - photocopies can result in a grey shade that will not scan well.

When you complete other documents, please remember:

- the points already made relating to completing forms;
- to use A4 size paper with a good margin;
- to supply them in portrait format (that is with the shorter edge across the top); and
- to include the registered number and name on the first page.

3. Where can I find out more about this?

For further guidance on print requirements please visit our website or email your enquiry or telephone +971 2 3338888.

**Chapter 5
Further Information**

1. How do I deliver information to the Registrar?

For full details of all the ways of delivering documents to the Registrar, electronically or on paper, please refer to the Registrar's rules which appear on our website. The safest and most secure way to deliver statutory information to the Registrar, once available, will be to use our electronic filing services online. For more information and registration details please visit www.adgm.com.

If you are delivering documents by post or courier and would like a receipt, the Registrar's office will provide an acknowledgement if you enclose a copy of your covering letter with a pre-paid addressed return envelope. We will stamp the copy of your covering letter with the date of receipt and return it to you in the envelope provided.

Please note: an acknowledgement of receipt does not mean that a document has been accepted for registration with the Registrar.

Please note: the Registrar does not accept any statutory documents by fax, pdf (except for electronically filed certified copies of charge instruments) or by email.

2. Do I have to pay to file documents with the Registrar?

You do not have to pay a fee for many of the documents that you have to send to the Registrar, but some do require a fee and we will not accept them for registration without it. For full details you should refer to www.adgm.com.

3. Can I file documents in other languages?

The Companies Regulations require that you deliver documents to the Registrar in English. In very limited circumstances companies can deliver the following documents in languages other than English if the document is accompanied by a certified translation into English:

- agreements required to be forwarded to the Registrar under Chapter 3 of Part 3 of the Companies Regulations;
- documents required to be delivered under section 390(2)(f) of the Companies Regulations (company included in accounts of larger group: required to deliver copy of group accounts);
- certified copies delivered under Part 24 (company charges); and
- any other documents specified in the rules made by the Board.

4. Where do I get forms?

All statutory forms and guides are available, free of charge from the Registrar. The quickest way to get them is on our website or by telephoning + 971 2 3338888.

HOW TO CONTACT US

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