



8. WAIVERS AND MODIFICATIONS

8.1 Introduction

8.1.1 Part 2 chapter 2 of FSMR provides for the modification or waiver of Rules by us.

8.1.2 This chapter outlines our approach to evaluating applications to grant relief from the requirements imposed by the Rules, by either waiving or modifying the application of one or more Rules. Our powers to waive or modify the requirements imposed by ADGM legislation do not extend to regulations such as the FSMR.

8.1.3 To waive the application of a Rule is to give relief to a Person from the entire obligation contained in that Rule. A modification can either modify the way in which a Person can comply with an obligation in a Rule or can give relief from part of the obligation in a Rule. A detailed description of the process to seek a waiver or modification of the Rules may be found in Rule 8.2 of the GEN Rules.

8.2 Power to issue relief

8.2.1 We may, on the application or with the consent of a Authorised Person or Recognised Body, direct that a Rule:

- (a) does not apply to a person; or
- (b) does apply to a person but with such modifications as are set out in a notice issued by us for this purpose.

8.2.2 Waivers and modifications may only be sought by an Authorised Person or Recognised Body, or an applicant seeking such status.

8.2.3 If an application is successful, we will issue its decision by means of written Direction provided to the applicant.

8.3 Making an application

8.3.1 Prior to submitting an application to us, the applicant should contact their assigned supervisory contact to discuss the application.

8.3.2 If the applicant is not regulated by us at the time of application, contact should be made through our Supervision Division.

8.3.3 Before making an application, we expect that the applicant will carry out appropriate research on:

- (a) the intention behind the Rule in question and the regulatory outcomes that the Rule aims to achieve;



- (b) whether there are any precedents where we have previously granted relief, or not granted relief, from the Rule in question, including any conditions which may have been imposed; and
- (c) if relief has been granted in the past, the similarities and differences between the cases where relief has previously been granted and the applicant's case.

8.3.4 All applications for waivers or modifications should be made in such form as we shall prescribe.

8.3.5 The applicant will need to in its application form address the following:

- (a) set out the reasons for requesting the granting of a waiver or a modification;
- (b) explain the impact of the application of the provisions as it stands on the applicant;
- (c) attach any precedent relief supporting the application which may have been issued;
- (d) identify any risks associated with the relief being sought and how the applicant plans to mitigate such risks; and
- (e) in the case of an application to modify a Rule, propose wording for the modified Rule.

8.3.6 It is for the applicant to demonstrate a compelling case for granting relief, we do not make decisions lightly. The granting of a waiver or modification, including the specific wording of any modification and any conditions attached to the relief granted, is at our discretion and it will generally only grant relief where there is shown to be an appropriate and necessary reason for doing so.

8.3.7 On occasion, we may believe that the relief being sought by an applicant may be relevant to, and should be applied to, a number of persons (or a class of persons) similarly affected by the Rule in question. In these circumstances, instead of requiring the affected persons to individually apply for the same relief, we will publish a notice on our website and invite the relevant Persons to "consent" to the "class Waiver" or "class Modification". This is simply done by notifying us that they wish the class Waiver or class Modification apply in relation to their activities.

8.4 Considering an application

8.4.1 We will acknowledge receipt of an application for relief and may request further information, potentially including meeting with the applicant to discuss the need for the relief sought. The time taken by us to determine the application will depend upon the complexity of the issues it raises.



8.4.2 When considering each application, we assess the net regulatory benefit or detriment which would result from granting the relief sought on the conditions proposed and any risks posed by such relief. We will generally grant relief where:

- (a) it has formed the opinion that there is a net regulatory benefit; or
- (b) the regulatory detriment is minimal as the relief sought does not conflict with the policy intent of the Rule and the applicant has demonstrated that the associated risks would be adequately mitigated if relief was granted.

8.4.3 Relief will be given to overcome the disproportionate effects of Rules in exceptional cases, the anomalous effects of Rules in unique cases for which they were not created, and the unforeseen side effects of Rules.

For example, changes in international standards may result in unforeseen differences between the Rules and the new standards. While the Rules would ordinarily adapt over time to reflect such changes, an Authorised Person or Recognised Body may seek a waiver or modification of a specific Rule to accommodate the evolution of the international standard. This may also represent a scenario where we may publish a notice to be made available to other affected persons within the ADGM upon their consent. Similarly, where material changes to a Rule may make it impractical for Authorised Persons or a Recognised Body to comply immediately, a request for a temporary waiver or modification may be granted.

8.4.4 We may impose such conditions on relief as it may see fit, and a notice may specify that the relevant waiver or modification may be available for only a specified period of time, after which time it will cease to apply.

8.4.5 If we decide not to grant relief, it will give reasons for the decision. An applicant may withdraw its application for relief at any time up until notification of our decision has been given to the applicant. In doing so, the applicant should give reasons for the withdrawal of the application.

8.5 Publication of waivers and modifications

8.5.1 We will publish all Directions concerning waivers and modifications unless we are satisfied that it is inappropriate or unnecessary to do so.

8.5.2 We will publish all Directions concerning waivers and modifications in such a way that we consider appropriate for bringing the notice to the attention of:

- (a) those likely to be affected by it, such as clients of the applicant; and
- (b) others who may be likely to be affected by the same Rule and may seek a similar waiver or modification.



8.5.3 The principal method of publication of waivers and modifications Directions is by publication on our webpage. The fundamental principle behind publication is transparency. This allows any person dealing with the applicant, for example, its clients and competitors, to know to what extent the relevant provisions apply to the applicant.

8.5.4 If an applicant believes that it is inappropriate or unnecessary for us to publish the relief, or to publish it after a delay, or without disclosing the identity of the applicant, it should make this clear in its application. Decisions not to grant relief will not be published by us.

8.6 Withdrawal or variation of waivers and modifications

8.6.1 Under section 9(5) of the FSMR, we may:

- (a) revoke a Direction; or
- (b) on the application of, or with the consent of, the Person to whom it applies, vary a Direction.

8.7 Enforcement of waivers and modifications

8.7.1 If a Direction under section 9 of the FSMR states that a Rule is to apply to the applicant with modifications, then a contravention of the modified provision could lead to us taking enforcement action.

8.7.2 If relief is given subject to a condition, the relief will not apply to activities conducted in breach of the condition. Further, those activities, if in breach of the original provision, could lead to enforcement action.

8.8 Expiry and extension of current waivers and modifications

8.8.1 Where relief has been granted for a limited period of time (see paragraph 9.4.4) it is the responsibility of the Person to whom the notice applies to monitor any expiry date.

8.8.2 There is no automatic renewal process for any relief granted by us for a limited period of time.

8.8.3 It is the responsibility of the person to whom a time-limited Direction applies to notify us within a reasonable period in advance of the expiry of the Direction of their intention to apply for an extension of the relief or explain how they intend to comply with the original Rule.

8.8.4 Notification should be made through the same contact point as described above, namely either the assigned supervisory contact, the dedicated contact portal or the Supervisory Division.



8.8.5 We will consider every application for extension of the term of the Direction in the same manner as an initial application and will not necessarily grant extensions as a matter of course.