

Requirements to disclose real beneficial ownership of companies in UAE

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Introduction

International organisations and bodies, such as the Financial Action Task Force ('FATF'), which recommends measures related to fighting anti-money laundering and to combatting the financing of terrorism ('AML/CFT'), and the Global Forum on Transparency and Exchange of Information for Tax Purposes ('Global Forum') both support the establishment of 'beneficial ownership' regimes.

A 'beneficial ownership' regime regarding the ownership of legal entities is a critical tool in combatting tax evasion, corruption, money laundering, and the financing of terrorism. It also allows law enforcement agencies to trace the ownership and control of legal entities such as corporations, and to "look through" the different corporate layers to determine who are the real (or ultimate) beneficiaries.

In the past few years, several jurisdictions around the world such as the European Union member states, Hong Kong, and Cayman Islands introduced such regimes. Also, within the UAE, some free zone jurisdictions, such as the Dubai International Finance Centre ('DIFC'), Abu Dhabi Global Market ('ADGM') and Dubai Development Authority ('DDA'), introduced beneficial ownership regimes a while ago.

As part of the UAE's shift towards greater transparency, and to be in line with global standards, the UAE Ministry of Cabinet Affairs ('Cabinet') issued Cabinet Resolution No. 58 of 2020 on the regulation of the Procedures of the Real Beneficiary' ('Resolution 58').

Resolution 58 introduced a requirement for entities in the UAE (with certain exceptions) to obtain and maintain appropriate, accurate and recent information of their real beneficiaries ('Real Beneficiaries') as well as update the authorities in this regard. This legislation introduces the beneficial ownership regime to the UAE "mainland" and free zone entities and mandates the maintenance of the relevant registers discussed below.

Exemptions from application

Resolution 58 applies to all legal persons incorporated or registered in the UAE, including its free zones, except for;

1. financial free zone entities, i.e. entities in the DIFC and ADGM, that are subject to the free zone specific legislation
2. concerning beneficiaries (i.e. ultimate beneficial owners' regime);
3. companies wholly owned by UAE federal or local governments, including the companies they wholly own; and
4. companies wholly owned by publicly listed companies that are subject

5. to transparency and disclosure requirements, already, under UAE law.

Who Is a Real Beneficiary?

Under the Resolution, the Real Beneficiary is a natural person who either has ultimate ownership, or exercises ultimate control over a legal person, directly or through a chain of ownership or control, or other indirect means. The Real Beneficiary is also the natural person on whose behalf transactions are conducted, or who exercises ultimate effective control over the legal person.

In practical terms, the Real Beneficiary is every person who ultimately owns or controls, whether directly or indirectly, whether through shares or bearer shares:

1. 25 per cent or more of the share capital; or
2. 25 per cent or more of the voting rights, of the legal person.

This could be through a chain of ownership or control, or other means such as having the right to appoint or remove the majority of the company's management.

If no natural person satisfies the above criteria, or if there are any doubts as to who satisfies them, then the Real Beneficiary would be the natural person who exercises control of the legal person through any other means. If still, one cannot identify such a natural person, then the senior manager of the legal person is the Real Beneficiary.

Register of Real Beneficiaries

Under the Resolution, each entity shall maintain a Register of Real Beneficiaries. The Register shall reference, in respect of the Real Beneficiary(ies):

1. name;
2. nationality;
3. date and place of birth;
4. residential or service address;
5. passport or identity card details;
6. basis on which that person is considered a Real Beneficiary;
7. date appointed as a Real Beneficiary; and
8. date ceased to be a Real Beneficiary.

Where the legal person identifies a person as a Real Beneficiary, it shall give them notice of this. The notice shall include the basis on which the person is identified as a Real Beneficiary, their available information, and a request to provide any missing information. If 15 days' notice pass without response, then the legal person shall give such notice. If a further 15 days passes without a response, then the legal person shall record the available information. The legal person shall update the above information in their records accordingly within 15 days of their being informed of such a change.

Register of Partners / Shareholders / Officers

Further, the Resolution makes it mandatory for all entities to which it applies, to maintain a 'Register of Partners' or 'Register of Shareholders'. The applicable register shall include:

1. number and classes of shares, and the associated voting rights;
2. date of appointment as a partner/ member;
3. for natural persons: The full name as per passport or identification card, in addition to nationality, address, place of birth, name and place of
4. work, and photocopies of the relevant identification documents;
5. for legal persons: Name, legal form and memorandum of association, registered office address, articles of association and any similar
6. documents, names and particulars of the directors of the entity; and
7. information similar to that outlined above.
8. The legal person shall have 15 days to update any changes to the information.
9. Finally, UAE entities are required to maintain Officers Register, as well.

Disclosure Timelines

The disclosure timelines are as follows:

1. legal persons currently existing in the UAE have an obligation to create those registers and share them with relevant registrar by 27 October 2020; and
2. newly incorporated legal persons will have 60 days from the date of incorporation to create and share these registers;
3. where the legal person issues shares in the name of a person or board director, the legal person shall have 15 days to disclose to the registrar the details of these shares, as well as the identities of the recipient; and
4. if the registrar requests any additional information related to the registers, the legal person is obliged to provide this information within the time period the registrar states.

Whilst some registrars have already started accepting those submissions, the others (e.g. the Department of Economic Development for onshore entities) are yet to open for submissions. At the moment, there are no stated fines for incorrect disclosure or for lack of disclosure.

Conclusion

The new UAE requirements to maintain a Register of Real Beneficiaries and to maintain and, in certain circumstances file with authorities, the details of Nominee Board Directors, Trustees, and their beneficiaries, introduce an additional element of transparency into the UAE mainland free zone economies. These are based on the FATF and Global Forum recommendations. The aim of the new legislation is to make the UAE jurisdictions, as a whole, more robust, more reliable, and operating in line with global standards. On a global level, such new requirements assist in combatting tax evasion, corruption, money laundering, and the financing of terrorism. The resolution follows other related legislation the UAE enacted in the recent past such as those concerning anti-money laundering and economic substance requirements. Combined, they demonstrate the UAE's progressive outlook and commitment to becoming and remaining one of the world's most transparent and competitive places to do business.

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