

October 2020

New disclosure and record keeping requirements for UAE companies



On 27 August 2020, Cabinet Resolution No. 58/2020 on the Regulation of Procedures Related to Real Beneficiaries (the "Resolution") was published, which has introduced new record keeping and disclosure requirements for corporate entities and nominees in the UAE.

The objectives of the Resolution appear to stem from the UAE's anti-money laundering regime and is generally in accordance with the UAE's recent legislation to increase transparency in its business environment. It requires corporate entities, among other things, to maintain a register of real beneficiaries and file information from this register with the appropriate UAE authorities.

Executive Summary

- The Resolution increases the transparency of information pertaining to individuals who ultimately control entities, as well as trustees and nominal management members.
- Such control can be through direct or indirect ownership.
- Applies to entities that are licensed or registered onshore and in the commercial free zones.
- Requires time bound steps to be taken.

Who does this affect?

This Resolution applies to all new and existing entities licensed or registered in onshore UAE and in the commercial free zones. It does not apply to entities wholly-owned by the Federal or local government or any other companies wholly-owned by them, or to those corporate entities licensed or registered in the Dubai International Financial Centre or the Abu Dhabi Global Market. However, corporate entities licensed in these financial free zones should nevertheless take note of the disclosure requirements of this Resolution if they have shareholdings in onshore or other commercial free zone companies in the UAE.

What are the key requirements?

The Resolution sets out the information required to be provided by all corporate entities when applying for a licence or registration in onshore UAE or any of the commercial free zones. In addition, it requires corporate entities to maintain a real beneficiary register

as well as a register of partners/shareholders containing certain information (described below).

Information contained in the real beneficiary register and the register of partners/shareholders must be submitted to the relevant UAE authority by **27 October 2020** (although this date has not yet been confirmed), or for new corporate entities, 60 days from the date on which it has been licensed or registered.

Also, all corporate entities must provide the name, contact information and a passport copy or Emirates ID of a physical person residing in the UAE who is authorised to disclose the corporate entity's data and information pursuant to the UAE's anti-money laundering law and regulations.

Real beneficiaries and the real beneficiary register

According to the Resolution, real beneficiaries are individuals who own or ultimately control a corporate entity through the direct or indirect ownership of 25% or more of an entity's shares or voting rights. The Resolution also provides that such control can also arise through other means, such as by having the right to appoint or dismiss a majority of a company's managers. The Resolution sets out additional factors to consider when determining a real beneficiary; however, if ultimately no individual can be identified, the real beneficiary will be the person who oversees senior management (i.e. the person(s) having the decision making authority of an entity) and has the right to appoint or dismiss most of the Managers. This would need to be considered closely especially in cases where it is not straightforward to establish ultimate ownership

such as where a fund is a significant shareholder in a company.

The real beneficiary register must include the following information for each real beneficiary of an entity:

- the name, nationality, date and place of birth;
- the place of residence or address to which notifications can be sent;
- the Emirates ID number or passport number and its date of issuance and expiration;
- the basis for, and the date upon which, the individual became a real beneficiary; and
- if applicable, the date upon which the individual ceases to be a real beneficiary.

All corporate entities (except those that are owned by a listed company in a regulated market subject to sufficient ultimate beneficiary disclosure requirements or a subsidiary owned by the majority of such a listed company) are required to take reasonable measures to obtain appropriate, accurate and up-to-date information of their real beneficiaries, and must update the real beneficiary register within 15 days of becoming aware of any changes.

Register of partners/shareholders

Although there has generally existed a requirement for companies to maintain a register of partners/shareholders, this Resolution sets out the information that is required to be maintained by all corporate entities licensed or registered in onshore UAE and the commercial free zones. In addition, it requires that entities update their registers within 15 days of becoming aware of any changes.

The following information is required to be kept in the register of partners/shareholders:

- the number and class of shares held and the voting rights associated with such shares;
- the date on which the partner/shareholder became the owner of such shares;
- For every partner/shareholder who is a person:
 - the nationality;
 - address;
 - place of birth;
 - name and address of employer;

- a true copy of a valid Emirates ID or passport; and
- For every partner/shareholder that is a legal entity:
 - the name, legal form and a copy of its Memorandum of Association;
 - the address of the main office or headquarters of the entity, and if it is a foreign entity, the name and address of its legal representative in the UAE and the supporting documentation providing proof of such information;
 - The "statute" or any other similar documents approved by the relevant authorities concerned with the implementation of the UAE's anti-money laundering laws and regulations; and
 - the details of the person(s) who hold senior management positions.

Trustees and nominal management members

In addition to the details of partners/shareholders, corporate entities must also maintain the same information required for real beneficiaries for any **trustees or nominal management members** as part of its register of partners/shareholders.

The Resolution broadly defines a nominal management member as any physical person acting under the directives, instructions or will of another. A trustee is any person or legal entity having the rights and powers conferred upon it by a Trustor or Trust Fund.

Going forward, all nominal management members must notify and submit the required information to the corporate entity within 15 days of being appointed as a nominal member. In addition, corporate entities are required to disclose the details concerning the interests or shares and identity of the holders of any shares issued in the names of persons or management members within 15 days of such issuance to the relevant authority.

Finally, **all existing nominal management members** must notify the corporate entity and submit the relevant information for an entity's register of partners/shareholders **within 30 days of the Resolution's publication date**.

Local anti-money laundering regime and international co-operation

The Ministry of Economy will share the information and data provided by a corporate entity under the Resolution, including from the corporate entity's real beneficiary and partner/shareholder registers, with the

government entities tasked with enforcing the UAE anti-money laundering regime.

Also, the Ministry of Economy will facilitate international co-operation by allowing foreign authorities access in certain circumstances to the data from the real beneficiary register and the register of partners/shareholders.

Our analysis

A significant aspect of this Resolution is that it is the first UAE legislation outside the financial free zones that refers to the legal concepts of trusts and indirect ownership in corporate structures.

The Resolution does not only require the UAE company to disclose the ultimate beneficiary of its multi-layered corporate group (i.e. the ultimate individual shareholder of its ultimate holding entity), it also requires such UAE companies to reveal whether any other individuals hold any beneficial interests or controlling rights beyond those afforded by holding shares or office in a company (rather, by virtue of benefiting from trust or nominal arrangements). In doing so, the company should also disclose whether any of its direct shareholders or officers are acting in any trustee or nominee capacity.

The Resolution even defines a "trustee", a "trustor" and a "trust fund" (although the last two terms do not appear to be used in the Resolution).

Such reference may raise the question of whether trusts and nominee arrangements are now recognised (and have now become enforceable) under UAE law. However, we are of the view that such inference should not be made, and such an inference would go beyond the spirit and aim of the Resolution for the following main reasons:

1. The Resolution's objective is to bring the UAE's company registration process in line with international standards and further enhance the State's cooperation with its international counterparts in the common efforts of combating money laundering, terrorism and criminal financing. It does not seek to recognise or regulate a new legal concept such as equitable interests (within the English law meaning), but merely acknowledges that such type of interest exists and is recognised under the legal framework of some of its international counterparts.
2. The Resolution therefore does not go beyond establishing the UAE company's obligation to disclose and report the existence of such interests

(e.g. those of the beneficiaries of a trust or a shadow director). It does not go into the rights, duties or responsibilities of a trustee or a nominal officer, nor does it provide any guidance on how (or whether) such rights and responsibilities differ from the rights and responsibilities of the legal shareholders and managers, as set out in the UAE federal companies law and free zone company regulations.

We think it is prudent not to read too much into the Resolution and consider it only within the spirit and objective in which it was enacted: better knowing-your-client in an ever-expanding market.

Next steps

Since the deadline for disclosure is fast approaching, corporate entities should take steps to compile the necessary information to be compliant with this Resolution. In addition, those who are existing nominal management members should notify the respective corporate entities and provide them with the necessary information. Although as of this date, no additional regulations or guidance has been issued with respect to the form of disclosure that is required to be given, we will continue to monitor and update you with any new developments related to this Resolution. In any event, we would encourage companies to evaluate their position and put together the supporting documents and information that would be required to comply with the Resolution.

Should you have any questions or need assistance with navigating the requirements introduced by this Resolution, please feel free to reach out to any members of our team listed below or your usual contact at Stephenson Harwood.

Contact us



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