



# Reinforcing business transparency

An insight into the filing requirements relating to beneficial ownership introduced by the United Arab Emirates by Danielle Lobo and Saurbh Kothari of Afridi & Angell

**O**n August 24, 2020, the UAE issued Cabinet Resolution 58 of 2020 on Regulating the Procedures of the Real Beneficiary (the Resolution).

The Resolution, amongst other things, aims to establish a legal framework for identifying and recording details of real beneficiaries of entities licensed to conduct business in the UAE.

The Resolution is an additional step towards the UAE's efforts in combating money laundering, the financing of terrorism and illegal organisations. Many countries around the world have enacted similar legislation regarding real beneficiaries. Even prior to issuance of the Resolution, many licensing authorities in the UAE had already started requesting information about the ultimate beneficial ownership of entities licensed by them. However, the Resolution now requires a more streamlined and uniform approach to the information that must be maintained.

The Resolution was published in the Official Gazette on August 27, 2020 and came into force the following day. The Resolution has introduced a filing requirement which is discussed further below.

## APPLICABILITY OF THE RESOLUTION

The Resolution applies to registrars of companies (including the Dubai

Department of Economic Development, Jebel Ali Free Zone Authority and the Dubai Development Authority) (each a Registrar) and entities licensed and/or registered in the UAE (including within the commercial free zones of the UAE). However, companies directly or indirectly wholly owned by the federal or state governments and companies licensed in the Dubai International Financial Centre or the Abu Dhabi Global Market free zone shall be exempted from the provisions of the Resolution.

## REAL BENEFICIARY

A real beneficiary of an entity is someone:

- a) who ultimately owns that entity through direct or indirect ownership of shares representing 25 per cent or more interest in the capital of such an entity; or
- b) who has voting control of 25 per cent or more of the capital of such an entity by exercising control over such an entity (by for example, having a right to appoint or remove the majority of the entity's directors/managers).

If it is not possible to identify the real beneficiary (i.e. a natural person) of an entity, then the natural person who exercises control over the entity shall be considered as the real beneficiary.

## OBLIGATIONS OF UAE ENTITIES

Entities in the UAE are required to take

reasonable measures to obtain proper, accurate and updated information relating to their real beneficiary(ies) and maintain a register of real beneficiaries containing such information. The deadline to create this register of real beneficiaries ended within 60 days from the date the Resolution was published (i.e. on October 27, 2020).

The Resolution does however state that the obligation to obtain and maintain accurate and up to date information in respect of real beneficiaries shall not extend to those entities that are owned by a listed company in a regulated market which is subject to sufficient ultimate beneficial disclosure requirements or any affiliates which are majority owned by such listed company.

The register of real beneficiaries shall include at least the following information on each real beneficiary:

- a) full name, nationality, date and place of birth;
- b) place of residence or address for communication;
- c) passport or identity card details;
- d) the basis on which the identified real beneficiary became a real beneficiary and the date of acquiring such capacity; and
- e) the date on which a person ceases to be a real beneficiary.

If an entity discovers that a person who might be a real beneficiary and his beneficial ownership was not registered in the register of real beneficiaries, then such an entity is required to enquire about the status of such a person by following the process laid down in the Resolution. The Resolution further provides for the process required to be followed in case a party (not mentioned as a real beneficiary of an entity) requires amendment (i.e. inclusion of its name) to the register of real beneficiaries.

The Resolution also provides that an entity must not register or execute any documentation in connection with the transfer of its shares unless the transferee provides information confirming whether such transfer will result in the change of the real beneficiary of the entity and the nature of such change.

All entities are also required to maintain the details of its partners/shareholders in a register of partners or shareholders.

Any change in the register of real beneficiaries and the register of partners or shareholders (together the Registers) must

be notified to the relevant Registrar within 15 days from the date of such change.

#### SHARING OF INFORMATION WITH THE REGISTRAR

Within 60 days from the date of publication of the Resolution, each entity must have provided the Registers to the relevant Registrar. The Resolution also provides for certain timelines required to be followed by the entity in case of any change in the Registers. Note that each Registrar has been given broad powers to request additional documents and information regarding the Registers and the real beneficiaries.

If an entity is in the process of liquidation, the Resolution also obliges the appointed liquidator to submit the Registers (or a true copy thereof) to the Registrar within 30 days of its appointment.

It should also be noted that under the Resolution, the entity, the management of the entity or the liquidator must maintain the Registers for at least five years from the date of the dissolution and liquidation of the entity.

#### CONFIDENTIALITY

The Resolution requires authorities not to disclose information in the Registers to any person without the consent of the real beneficiary(ies). However, this will not prohibit an authority from sharing information required pursuant to international laws and agreements entered into by the UAE.

The Resolution, provided implemented effectively, will improve the transparency and wider availability of uniform information relating to entities incorporated in the UAE and will bring the UAE closer towards more established and regulated jurisdictions of the world. 🇦🇪



The Resolution also provides that an entity must not register or execute any documentation in connection with the transfer of its shares unless the transferee provides information confirming whether such transfer will result in the change of the real beneficiary of the entity and the nature of such change.”



Text by:

1. DANIELLE LOBO, partner, Afridi & Angell
2. SAURBH KOTHARI, senior associate, Afridi & Angell