

inBrief



Ultimate Beneficial Ownership Regulations

By Abdus Samad and Kanan Kasuya | 21 April 2019

The DIFC Authority has issued the Ultimate Beneficial Ownership (UBO) Regulations, which took effect on 12 November 2018 (the **Regulations**).

The Regulations require entities currently registered with, or to be registered with, the DIFC Authority to keep and maintain a UBO Register and (if applicable) a Register of Nominee Directors, setting out the details of the UBO and Nominee Directors respectively.

In this inBrief, we highlight the key items that DIFC entities need to be aware of in creating and maintaining their UBO Register and Register of Nominee Directors and in issuing the associated notifications to the DIFC Registrar of Companies.

Who are the Nominee Director and the UBO?

For the purposes of the Regulations, a Nominee Director is a director who is obligated to act in accordance with the directions and instructions of another person.

An ultimate beneficial owner is a natural person who:

- in relation to a DIFC company, owns or controls directly or indirectly:
 - o 25% of shares, ownership interests or voting rights in the DIFC entity; or
 - o has the right to appoint or remove the majority of the directors of the DIFC entity.
- in relation to a DIFC partnership, exercises significant control over the activities of the partnership;
- in relation to a DIFC foundation, exercises significant control over the council of the foundation; and
- in relation to a DIFC non-profit incorporated organisation, exercises significant control over the board.

If, after applying the foregoing rules, no natural person can be identified as an ultimate beneficial owner of the DIFC entity,

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anyone who exercises significant control over the DIFC entity (or its governing body) shall be required to be notified as an ultimate beneficial owner of the DIFC entity. If there is no such person, then members of the governing body of the DIFC entity shall be required to be notified as ultimate beneficial owners of the DIFC entity.

Obligation of DIFC entities

The obligations of the DIFC entities vary slightly depending on when they were registered with the DIFC Authority.

- DIFC entities registered prior to 12 November 2018 were required to establish a UBO Register and Register of Nominee Directors, and notify the details of the Nominee Directors and the ultimate beneficial owner to the DIFC Authority through the DIFC portal by 12 February 2019 (the DIFC Authority granted an additional penalty free grace period of 30 days, meaning that the final deadline for compliance was 14 March 2019).
- DIFC entities registered after 12 November 2018 were also required to comply with the deadline of 14 March 2019 to establish a UBO Register. For the Register of Nominee Directors, the deadline is 30 days of the later of the registration date of the DIFC entity or the Nominee Director becoming a director of the DIFC entity.
- Entities in the process of being registered with the DIFC Authority are required to establish a UBO Register 30 days following the date of registration with the DIFC Authority.

The latter two categories of entities need not notify the DIFC Authority of the UBO details, as they are deemed to have provided such details as part of the registration process.

Changes to the UBO Register

DIFC entities must record any changes to the UBO Register and Register of Nominee Directors, and notify the DIFC Authority of the same through the DIFC Portal, within 30 days of becoming aware of such change.

Penalties

Failing to keep and maintain the UBO Register and the Register of Nominee Directors will result in a fine of USD 25,000. If the DIFC entity fails to comply with any requirement, or notice issued, under the Regulations, the DIFC Registrar may strike the DIFC entity off the Public Register.

Exempt Entities

The Regulations set out DIFC entities that are exempt from keeping and maintaining a UBO Register and Register of Nominee Directors. These are DIFC entities that:

- have their securities listed or traded on an exchange recognised by the DIFC Authority;
- or regulated by the DFSA or any other financial services regulator recognised by the DIFC Authority;
- constitute a company, foundation or partnership which the DIFC Authority recognises as being subject to equivalent international standards with adequate transparency of ownership information in its home jurisdiction;
- are a non-profit incorporated organisation which does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes;
- are wholly owned by a government or governmental agency of the UAE and any other jurisdiction which the DIFC Authority may determine from time to time; or
- are established under UAE law to perform governmental functions.

DIFC entities that fall under one of the abovementioned categories will be required to request a formal

exemption.

Partially Exempt DIFC Entities

Additionally, the Regulations set out the requirements for a partially exempt DIFC entity, which is a DIFC entity that is at least 25% owned by a corporate person that falls under one of the abovementioned categories (**Exempt Owner**). Such DIFC entity is subject to the obligations set out in Section 4, however with respect to the Exempt Owner, instead of tracing the ownership details of the Exempt Owner, the details of the Exempt Owner are inserted in the UBO Register instead. ■

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