BRIEF ON THE NEW UAE CABINET DECISION NO. 58 OF 2020 ON REGULATING THE BENEFICIAL OWNER PROCEDURES

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Corporate Alert

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INTRODUCTION

On 24 August 2020, the United Arab Emirates (UAE) Cabinet issued Cabinet Decision No. 58 of 2020 on Regulating the Beneficial Owner Procedures (the Regulations) replacing Cabinet Decision No. 34 of 2020 on the Regulations of Procedures Related to Real Beneficiaries.

Unless exempt under the Regulations, companies licensed to carry on business in the UAE must maintain a register of partners or shareholders and a register of ultimate beneficial owners (UBO). The Regulations also require such companies to submit UBO information to the relevant registrar or licensing authority (Registrar).

This article provides a general overview on the Regulations. If you need further information on the issues discussed in this article, please do not hesitate to contact one of our lawyers.

OBJECTIVE OF THE REGULATIONS

The Regulations require companies licensed or registered in mainland UAE or one of the commercial free zones to create and maintain a register of their ultimate beneficial owners and to submit UBO information to the Registrar.

The objective of the Regulations is to regulate the requirement for corporate entities to maintain registers listing (i) the UBOs, (ii) the partners or shareholders of a company and (iii) where applicable, nominee directors.

EXCEPTIONS

The Regulations do not apply to companies that are directly or indirectly wholly owned by the federal or local government or their subsidiaries, as well as companies who are registered in the financial free zones in the UAE, namely the Abu Dhabi Global Market and the Dubai International Financial Centre.

ULTIMATE BENEFICIAL OWNERS

The Regulations define UBOs as:

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- Whoever owns or controls, through direct or indirect ownership, at least 25percent of the entity's shares or whoever has a voting right of at least 25 percent of the shares.
- If no UBO is identified in accordance with the above, or there is any doubt that any natural person identified as a UBO is the true UBO, the natural person who exercises control over the entity through other means will be considered as the UBO.
- If none of the conditions above are met, then a natural person who is responsible for the senior management of the entity will be considered as the UBO.

Certain information must be included in the register of UBOs. This includes without limitation, the name, nationality, place of birth, residential address, and travel ID card number (and date of issuance and expiry) of the UBO. The reason why the individual is classified as a UBO and the date on which the person became a UBO or ceased to be a UBO (if applicable) must also be provided.

The requirement to maintain a register of UBOs does not apply to entities that are owned by (i) a company listed on a recognized stock exchange that is subject to disclosure requirements that ensure sufficient transparency of its beneficial owners, or (ii) a company wholly owned by such listed company. The Regulations do not provide further information on recognized stock exchanges.

PARTNERS AND SHAREHOLDERS

For the register of partners or shareholders, a company must maintain the details of its partners or shareholders as set out in the Regulations and update such register with any change occurring within 15 days from the date of the change.

The register of partners or shareholders must include certain information, including without limitation, the number of shares held by each partner or shareholder, the voting rights attached to such shares and the date of acquisition of shares by each partner or shareholder. Information on each partner and shareholder (whether a natural or legal person) listed in the register must also be provided as set out in the Regulations.

The register of partners or shareholders must also include information on any partner or shareholder acting as a “trustor” or “nominee board member.” The Regulations define a “trustor” as a natural or legal person who transfers the management of their funds to a trustee by virtue of a deed. A “nominee board member” is defined as a natural person who acts in accordance with the instructions of another person.

DEADLINES

The filing deadline of the register of UBOs and the register of partners or shareholders of existing entities is 27 October 2020 or at the time of incorporation/registration of a new entity. The Registrar may request additional information beyond that required in the Regulations.

Any changes to the information contained in the registers must be updated and notified to the Registrar within 15 days of such change.

In regard to companies that are under dissolution or liquidation, the appointed liquidator has an obligation to provide a true copy of the updated UBO register to the Registrar within 30 days of the liquidator's appointment.

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ADDITIONAL NOTES TO CONSIDER

- If companies are found to be non-compliant with the Regulations, the UAE Ministry of Economy may impose certain administrative sanctions.
- Each register must be maintained for the life of the company, and for a period of five years from the date of its de-registration, liquidation, or dissolution.
- Every company must take reasonable measures to obtain appropriate, accurate, and up-to-date data for the registers and preserve its records from damage, loss or destruction. They must also appoint an individual point of contact (resident in the UAE) and provide the details of that contact.
- Unless provided otherwise in the Regulations or any provisions under international laws that are enforced in the UAE or under applicable UAE laws relating to anti-money laundering, the UAE Ministry of Economy and the Registrar will not disclose to any person information contained in the registers without obtaining the written consent of the UBO or the nominee board member.

HOW WE CAN HELP

Our lawyers are available to advise on all legal aspects regarding the applicability of the Regulations. Please feel free to get in touch with your usual K&L Gates contact or any of the persons whose details are set out below.

KEY CONTACTS



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