



Dubai
International
Financial
Centre

CONSULTATION PAPER NO. 7

May 2018

**ULTIMATE BENEFICIAL OWNERSHIP
REGULATIONS**

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Why are we issuing this paper?

1. The Dubai International Financial Centre Authority (“DIFCA”) proposes to enact new Ultimate Beneficial Ownership Regulations pursuant to the proposed new DIFC Operating Law No. [*] of 2018 (the “Proposed Law”) under which commercial entities are licenced in the DIFC (DIFC Operating Law, Regulations and related legislation, Consultation Paper No 6, released simultaneously with this Consultation Paper). This Consultation Paper No. 7 of 2018 (“Consultation Paper”) seeks public comments on the proposed new Ultimate Beneficial Ownership Regulations (the “Proposed Regulations”).

Who should read this paper?

2. This Consultation Paper would be of interest to persons conducting or proposing to conduct business in the DIFC. In particular:
 - a. companies;
 - b. limited liability partnerships, limited partnerships and general partnerships;
 - c. Non Profit Incorporated Organisations (“NPIOs”);
 - d. foundations;
 - e. officers and employees of these entities such as directors, company secretaries, compliance officers, partners and senior executive officers;
 - f. shareholders and creditors of companies, partnerships, NPIOs and foundations;
 - g. liquidators registered in the DIFC;
 - h. legal advisors; and
 - i. auditors undertaking company audits.

How to provide comments

3. All comments should be provided to the person specified below:

Jacques Visser
Chief Legal Officer

DIFC Authority

Level 14, The Gate, P. O. Box 74777

Dubai, United Arab Emirates

or e-mailed to: consultation@difc.ae

4. You may choose to identify the organisation you represent in your comments.
5. DIFCA reserves the right to publish, on its website or elsewhere, any comments you provide, unless you expressly request otherwise at the time the comments are made.

What happens next?

6. The deadline for providing comments on the proposals in this Consultation Paper is 24 June 2018.
7. Once we receive your comments, we will consider if any further refinements are required to the Proposed Regulations. Once DIFCA considers the Proposed Regulations to be in a suitable form, it will be enacted as a new DIFC regulation to come in to force on a date specified and published.
8. The Proposed Regulations are in draft form only. You should not act on them until the Proposed Regulations are formally enacted. We will issue a notice on our website when this happens.

Defined terms

9. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Proposed Regulations. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

10. In recent years, there has been an increased focus by national authorities and global regulatory groups, on the importance of combatting money laundering, terrorist financing, bribery and corruption. A key component in detecting and preventing financial crime is the accessibility of information relating to corporate ultimate beneficial ownership and control ("UBO information") and other steps designed to enhance transparency and accountability both at a national level and in conjunction with other regulatory bodies globally.

11. The global trend towards transparency and accountability is demonstrated through the recent development of international initiatives in this regard. The Financial Action Task Force ("FATF") has also established globally recognised standards through various recommendations, designed to promote transparency through the application of information disclosure and record keeping obligations. These include a series of 40 recommendations on "international standards on combating money laundering and the financing of terrorism and proliferation" published by the FATF in 2012 (as amended from time to time and most recently updated in June 2017, the "[FATF Recommendations](#)") and other measures. In particular, FATF Recommendations 24 and 25 deal with transparency and identifying the beneficial ownership of legal persons and legal arrangements.
12. In the European Union ("EU"), new standards designed to implement and enforce these measures came into force by way of the Fourth Anti-Money Laundering Directive in June 2017 ("AMLD4"), prompting Member States to implement initiatives to comply with, amongst other standards, the obligation to maintain accurate and current information on the Ultimate Beneficial Owners ("UBOs") of corporate entities. Further amendments to AMLD4 have been agreed ("[AMLD5](#)") and are expected to come into effect later this year. Whilst these standards (unlike the FATF Recommendations to which the UAE has subscribed) do not bind the UAE, they have been taken into account in the development of the Proposed Regulations, although the FATF option of not having public or central registers has been preferred to the EU model.
13. Laws requiring persons to identify their beneficial owners and controllers currently exist in some financial centres, including common law jurisdictions such as the UK, Hong Kong and Singapore.
14. The Registrar of Companies, established under the Proposed Law (the "Registrar"), has taken various steps to comply with international standards for the purposes of combating financial crime. These steps include collecting UBO information on DIFC entities as part of the incorporation and registration process. The Registrar may also be under an obligation to disclose certain confidential information to UAE authorities, in order that they may in turn disclose it to regulatory and tax authorities of other jurisdictions, for the purpose of complying with UAE international treaties, or pursuant to lawful requests from UAE law enforcement officials, regulatory or tax authorities.
15. After careful consideration of the international standards, the movement by various international jurisdictions and the various legislative and regulatory regimes in those jurisdictions, the DIFCA has determined that it would be appropriate to formalise its existing UBO procedures into new regulations. The Proposed Regulations are intended to have the

effect of safeguarding and promoting DIFC's reputation as a stable and responsible financial centre, and reinforce its commitment to adhere to the highest global standards.

16. The Proposed Regulations codify the legislative and regulatory framework for collecting and retaining adequate, accurate and up-to-date UBO information on all DIFC entities on internal registers of the entities concerned, which can be accessed by the DIFC Regulatory bodies and other UAE Law Enforcement Authorities as required.
17. It is proposed that the codification of these UBO procedures in the DIFC be effected by standalone regulations enacted by the DIFCA, harmonising the approach across all DIFC registered entities, with the exception of:
 - (a) government owned entities;
 - (b) branches of foreign companies, foundations and partnerships; and
 - (c) listed companies,

which are subject to comparable supervision in their home jurisdictions (or, in the case of DIFC listed entities, by the DFSA), and those NPIOs which are outside the FATF guidelines. In this Consultation Paper, these entities are collectively referred to as "Non-Reporting Entities".

18. To facilitate transparency across the DIFC, the Proposed Regulations will apply to all DIFC entities (i.e. all legal entities incorporated or registered in the DIFC), other than Non-Reporting Entities ("DIFC Reporting Entities") and will include:
 - (a) companies incorporated or registered under the Companies Law;
 - (b) limited liability partnerships incorporated or registered under the Limited Liability Partnership Law;
 - (c) limited partnerships registered under the Limited Partnership Law;
 - (d) partnerships registered under the General Partnership Law;
 - (e) NPIOs incorporated under the Non Profit Incorporated Organisations Law; and
 - (f) foundations established under the Foundations Law.

Key features of the Proposed Regulations

19. The key features of the Proposed Regulations include the following:

- (a) formalising a requirement for production of UBO information on DIFC Reporting Entities at the point of incorporation or registration as the case may be;
 - (b) placing positive obligations on DIFC Reporting Entities to obtain and maintain up-to-date information on their UBOs at all times;
 - (c) imposing a duty on each DIFC Reporting Entity to notify the Registrar of the fact that a change in UBOs has occurred throughout its lifecycle (and, in the case of NPIOs, to confirm their entitlement to exempt status) as part of its annual reporting obligations (which are more fully discussed in Consultation Paper No 7 of 2018 relating to the proposed DIFC Operating Law, Regulations and related legislation);
 - (d) incorporating appropriate privacy protection mechanisms for UBO information; and
 - (e) imposing appropriate sanctions for non-compliance.
20. DIFC Trusts to which the Trust Law, DIFC Law No. 4 of 2018, applies are not subject to registration in the DIFC and accordingly the Proposed Regulations, which are integrated with the processes of incorporation or registration administered by the ROC, will not directly apply to them. Rather, the Trust Law imposes obligations on the trustees of DIFC Trusts to obtain information on parties associated with the trust in question, comparable to that required under the Proposed Regulations, and to make it available on request by the Registrar¹. Whilst, the formal processes of achieving the same objectives in relation to trusts as exist in relation to DIFC Reporting Entities will be different, the outcome will be substantially equivalent. In addition, as trusts almost always operate businesses and hold assets through corporate vehicles or have corporate trustees, the UBO provisions in relation to trusts will ensure that commercial activity carried on by entities ultimately owned by trustees will come within the scope of the Proposed Regulations.

Q1. Do you agree with the proposed approach on applicability of Ultimate Beneficial Ownership and Control Regulations in the DIFC?

Definition of Ultimate Beneficial Ownership of Legal Persons

21. The Proposed Regulations' definition of ultimate beneficial owner is based on:
- (a) the FATF definition of beneficial owner, and

¹

See Trust Law 2018, Articles 60(6) to (9)

(b) the AMLD5 definitions.

A number of thresholds are permissible under these definitions. The Proposed Regulations adopt the maximum amount of 25% (in relation to legal entities) which each of those definitions permits (the "Relevant Percentage"). The DIFCA understands that this matter is currently under review by the Federal authorities and a lower percentage may be specified under applicable Federal Law from time to time. .

22. The definition of UBO in the Proposed Regulations has been drafted with the specific characteristics of companies, partnerships, NPIOs and foundations in mind. In each case the definition of UBO presents mechanisms for identifying the UBOs using certain criteria. The definition contains three (3) elements as follows:

- (a) any natural person who owns or controls more than the Relevant Percentage of the shares or ownership interests;
- (b) any natural person with voting rights in excess of the Relevant Percentage in the entity concerned; or
- (c) any natural person holding the right to appoint the majority of directors of the entity concerned.

23. In addition, a natural person who has the legal right to exercise, or actually exercises, significant control or influence over the activities of a DIFC Reporting Entity will be a UBO for the purposes of the Proposed Regulations.

24. Consistent with the FATF Recommendations, the proposed Regulations also provide that in the absence of any UBO being identified by the previous tests, each member of the governing body of a DIFC Reporting Entity who is a natural person (and in the case of a governing body which is not a natural person, any natural person who is an ultimate beneficial owner of that governing body) will be deemed to be an ultimate beneficial owner.

Q2. Do you agree with the scope of the proposed definition of the Ultimate Beneficial Owners of legal persons in the DIFC?

Q3. Do you agree with the proposed 25% threshold for identifying the Ultimate Beneficial Owner?

Nominee Directors

25. The FATF Recommendations note that control can also be exercised through Nominee Directors. Accordingly the Proposed Regulations require Nominee Directors of a company to provide details of their nominee status to the company concerned.
26. The Proposed Regulations provide that a person is a Nominee Director if he is under an obligation to act in accordance with the directions, instructions or wishes of another person.

Q4. Do you agree with the scope of the proposed definition of a Nominee Director of company in the DIFC?

Obtaining and filing information

27. The obligations of DIFC Reporting Entities are set out in several sections of the Proposed Regulations, namely:
 - (a) Establishment and maintenance of the register:

The Proposed Regulations contain the prescribed requirements for creation and maintenance of the UBO registers by DIFC Reporting Entities.
 - (b) Obligation to obtain and disclose information:

A DIFC Reporting Entity will be required to keep a register of UBOs and Nominee Directors (where applicable), and be subject to a positive duty to investigate and obtain information on UBOs. Further, the Proposed Regulations prescribe an obligation on the part of a DIFC Reporting Entity to update such information within a certain timeframe when it becomes aware of a change in any of the particulars of a UBO. Upon the request of the Registrar, the DIFC Reporting Entity is required to provide the Registrar with the information on the relevant register, within the time specified by the Registrar.
 - (c) Filing obligations

It is proposed that existing DIFC Reporting Entities must provide the Registrar with the names and prescribed details of their beneficial owners within ninety (90) days of commencement of the Proposed Regulations, and update this information (as required) within 30 days of any change and confirm it through an appropriate filing with the Registrar. DIFC Reporting Entities that are incorporated or registered after the implementation of the Proposed Regulations must provide a statement of initial

ultimate beneficial owners as part of their application for incorporation or registration, which would capture all required particulars prescribed by the Proposed Regulations and establish their registers within thirty (30) days of incorporation or registration.

Q5. Do you agree with the proposed obligations to obtain and disclose information to the registrar and the extent of the proposed filing obligations?

Accessibility and Privacy

28. It is not proposed that a central UBO register be established by the Registrar. The information supplied to the Registrar will not be publicly accessible and would only be accessed by a small number of designated persons in the office of the Registrar, for the purposes of initially assessing suitability of applicants at incorporation or registration, as well as the suitability of beneficial owners of existing DIFC Reporting Entities after the enactment of the Proposed Regulations, and upon changes to this information. Accessibility guidelines implement the most stringent standards of privacy and may only be used by the Registrar as outlined in the Proposed Regulations.
29. The information retained on the UBO Registers by DIFC Reporting Entities may only be disclosed for a permitted purpose (i.e. for the prevention of illegal activities) to local and foreign law enforcement agencies, financial services regulators and tax authorities.
30. The DIFCA considers that this approach strikes the most appropriate balance between transparency and privacy - providing timely and straightforward access to information by appropriate authorities both in the DIFC and globally on the one hand, and protecting the personal data and other confidential information of legal entities and their beneficial owners from data breaches, hacking and other improper or disproportionate disclosure on the other. The DIFCA notes that nationals and other residents of the Region regard privacy as a highly rated principle and certain ultimate beneficial owners of DIFC entities or arrangements may live in unstable environments and have particular need for security of financial information.

Q6. Do you agree with the approach on accessibility to the UBO Register?

Sanctions

31. Consistently with the standard approach to the drafting of legislation in the DIFC, fines and other penalties are specified in the Proposed Law, which applies to all entities registered and licences in the DIFC, creates the office of the Registrar and defines the powers of the

Registrar. The proposed sanctions are imposed on the legal entity that fails to comply with the Proposed Regulations. If the legal entity takes all reasonable steps to discharge its obligations under the Proposed Regulations it will not commit an offence.

32. Fines not exceeding \$25,000 are proposed for contraventions under the Proposed Regulations. In addition, the Registrar will be empowered to initiate strike off procedures against DIFC Reporting Entities which do not comply with their obligations under the Proposed Regulations.

Q7. Do you agree with the proposed sanctions?

Miscellaneous

Q8. Are there any other issues arising in connection with the proposed regulations which are in your opinion not adequately or appropriately dealt with?

Legislative Proposal

33. This legislative proposal contains the following:
- (a) the Proposed Regulations (at Annex A);
 - (b) a table of comments to provide your views and comments on the consultation paper (at Annex B).