

Cabinet Decision No. 109/2023

On the Regulation of the Real Beneficiary Procedures

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Abrogates:

Cabinet Decision No. 58/2020 dated 28/08/2020

The Council of Ministers,

Pursuant to the perusal of the Constitution;

Federal Law No. 1/1972 on the Competencies of Ministries and Powers of Ministers, and its amendments;

Federal Decree-Law No. 20/2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations;

Federal Decree-Law No. 32/2021 on Commercial Companies;

Federal Decree-Law No. 37/2021 on the Commercial Register;

Cabinet Decision No. 58/2020 on the Regulation of the procedures of the Beneficial Owner; and

Based on the proposal of the Minister of Economy, and the approval of the Council of Ministers,

Has decided:

Article 1 - Definitions

In implementing the provisions of the present Decision, the following terms and expressions shall have the meanings assigned thereto, unless the context requires otherwise:

- State: The United Arab Emirates.
- Ministry: The Ministry of Economy.
- Minister: The Minister of Economy.
- Decree- Law: Federal Decree-Law No. 20/2018 on anti-money Laundering and Combating the Financing of Terrorism and the Financing of Unlawful Organisations, and its amendments.
- Implementing Regulation: Cabinet Decision No. 10/2019 on the Implementing Regulation of Federal Decree-Law No. 20 /2018 on anti-money Laundering and Combating the Financing of Terrorism and the Financing of Unlawful Organisations, and its amendments.
- Registrar: Authority having competence to supervise the trade names register for the various types of establishments registered in the State.
- Concerned Entity: The governmental entity concerned with the implementation of any provision of the Decree- Law and the Implementing Regulation.
- Beneficial Owner: The natural person who ultimately owns or exercises ultimate control over a legal person, directly or through a chain of ownership or control, or other indirect means, as well as the natural person on whose behalf transactions are conducted or who exercises ultimate effective control over a juristic person or a legal arrangement, specified in accordance with the text of Article (5) of this Decision.
- Nominal Board Member: Any natural person acting in accordance with the directions, instructions or will of another person, he is officially appointed or holds a position in the juristic personality and usually represents shareholders, members or any other relevant entity.
- Senior Management: Decision-making authority of the juristic person.
- Beneficial Owner's Record: Special register for the actual beneficiaries of the juristic person, that includes all their data.
- Register of Partners or Shareholders: Special register for the partners or the shareholders of the juristic person, that includes all their data.
- Testator: Natural or juristic person entrusting the management of their money to a Trustee by virtue of a document.
- Trustee: Natural or legal person who enjoys the rights and powers granted thereto by the Testator or the Trust Fund, according to which such person shall undertake to manage, use and dispose of the Testator's money in accordance with the conditions imposed on him by either of them.
- Trust Fund: Legal relationship whereby the Testator places funds under the control of the Trustee for the benefit of a beneficiary or for a specific purpose. Such funds shall be considered as independent from the Trustee's money, and the right to the Trustee's money shall remain in the name of the Testator or in the name of another person on behalf of the Testator.
- Supreme Committee: The higher committee supervising the national strategy on anti-money laundering and combating the Financing of terrorism.
- Complex Structure: An institutional mechanism that identifies a legal person as part of a group of different entities that are intricately linked to each other with the aim of concealing the identity of the natural person who owns or controls the legal person.
- Governmental Partner: A federal or local government that contributes or owns shares in the company.

Article 2 - Objectives of the Decision

The present Decision aims to:

- 1- Contribute to the development of the business environment and the State's capabilities and economic standing in accordance with the international requirements by regulating the minimum obligations of the Registrar and legal persons in the State, including the procedures of licensing or registration, and regulation of the Beneficial Owner's Record and the Register of Partners or Shareholders.
- 2- Develop effective and sustainable executive and regulatory mechanisms and actions for the regulation of the procedures of the Beneficial Owners

Article 3 - Scope of Implementation

1- The provisions of this decision shall apply to the Registrar and licensed legal persons in the State including the free commercial zones.

2- Exempted from the provisions of this decision:

- a- Companies wholly owned by the Federal or Local Government or any other companies wholly owned by these companies.
- b- Financial Free Zones:
- c- Governmental Partner.

Article 4 - Registration and Licensing of the Legal Person

1- The legal person, when applying for registration or a licence, shall provide the registrar with the following essential data:

- a- Name, legal form and articles of association.
- b- Address of the headquarters or the main workplace. In case the legal person is a foreigner, the name and address of their legal representative in the State shall be mentioned, and supporting documents shall be submitted as evidence to prove the aforementioned matter.
- c- The Statute or any other similar documents approved by the Concerned Entity in the State.
- d- The names of the relevant persons who hold senior management positions or managers at the legal person, who have the authority to issue decisions and their data is recorded based on the travel document or the civil card, its number, issuer and the date of its issuance and expiry.

2- A legal person may not be licensed or registered under a name that is previously registered in the State or under a name that is similar to an extent that leads to confusion.

3- A legal person shall refrain from using a name other than his registered name, and the name shall be followed by their legal form . The legal person may apply to the Registrar to change their name, and if approved, they shall be prohibited from using the cancelled name, and all their letters and documents shall clearly include their name and address in the State.

4- The legal person shall have a clear and detailed address that is registered in the State, notified to the Registrar, and used to receive all correspondence and notifications thereon.

Article 5 - Determining the Beneficial Owner

1- For the purposes of applying the provisions of this Decision, the Beneficial Owner of a legal person is whoever owns or exercises ultimate control over a legal person, through shares or stocks of direct or indirect ownership by 25% or more of the legal person's capital, or has the right to vote in it by 25% or more, including holding that ownership through a chain of ownership or control, or through control by any other means, such as the right to appoint or dismiss the majority of their Directors.

2- To specify the Beneficial Owner in accordance with Clause(1) of this Article, the risk-based approach of the Registrar shall be taken into account, especially in Complex Structures of a legal person.

3- The Beneficial Owner may be sued through any number of legal persons or any arrangements of any kind.

4- If more than one person participates in owning or controlling a percentage of the capital in the legal person, they shall all be treated as owners and controllers of this percentage.

5- If all possible means have been exhausted and no natural person with ultimate controlling ownership is identified as set out in Clause (1) of this Article or in case of a doubt that the natural person exercising control over the legal person through other means is the Beneficial Owner, then the natural person who exercises control over the legal person through other means shall be considered as the beneficial Owner.

6- If no natural person is specified as set forth in Clause (4) of this Article, the Beneficial Owner shall be deemed to be the natural person holding the position of Senior Management officer.

Article 6 - Transparency and the Beneficial Owner

1- The legal person shall take reasonable measures to obtain and maintain adequate, accurate and up-to-date data on the Beneficial Owner.

2- Legal persons licensed or registered in the State and owned by a company that is listed on a regulated market subject to disclosure requirements that impose requirements to ensure sufficient transparency for the Beneficial Owner or a majority-owned subsidiary of that listed company shall be exempt from applying the provision of Clause (1) of this Article.

Article 7 - Notifications Relating to the Beneficial Owner

1- If it appears to the legal person that there is a natural person who could be a Beneficial Owner, and their ownership details are not correctly registered in the Beneficial Owner's Record, then the legal person shall inquire about the status of that person as their Beneficial Owner. If a period of (15) Fifteen days from the date of the inquiry lapses without a response, the legal person shall notify them of that.

2- The notification referred to in Clause (1) of this Article shall include the following:

- a- Evidence of the issuance of the notification pursuant to this Decision.
- b- Details of the data related to him being a Beneficial Owner, which the legal person believes to be correct, with a request to provide the missing data required to complete the data of the Beneficial Owners' Register.
- c- Requesting the following from the addressee:
 - 1) An indication of whether or not such addressee is the Beneficial Owner of the legal person
 - 2) Confirmation or correction of any details included in the notification.
 - 3) Submission of any data missing in the notification.

3- If the addressee fails to comply with the notification within (15) fifteen days from the date of sending it, the legal person shall include the notified details in the Beneficial Owners' Register.

4- A legal person, for the purpose of determining the identity of the Beneficiary Owner, may rely on the person's response that is written on the notification, unless the legal person has reasonable grounds to suspect that the answer is misleading or incorrect, in which case the legal person shall record details of the nature of ownership of this person as Beneficial Owner and notify said person of that.

Article 8 - Beneficial Owner's Register

1- The legal person shall keep the details of each Beneficial Owner in the record of the Beneficial Owner that they create within (60) sixty days from the date of issuance of this decision or from the date of its existence, and shall update this record and include any change in it within fifteen (15) days from the date of taking knowledge thereof.

2- The Beneficial Owner's Record shall include the data of each Beneficial Owner, as follows:

- a- The full name, nationality, and date and place of birth.
- b- The place of residence or the address to which notifications are to be sent under this Decision.
- c- The number of the travel document or the identity card, as well as the country and date of issuance and expiry.
- d- The basis on which they became Beneficial Owner of the legal person, and the date on which they acquired said capacity.
- e- The date on which the Person ceased to be a Beneficial Owner of the legal person.

3- If the legal person includes the name of a natural person in the Beneficial Owner Record as Beneficial Owner and this natural person does not provide himself or with his knowledge the data and details related to him, then the legal person shall notify him within (15) fifteen days from the date of including his name.

4- Anyone with a capacity or interest may submit to the Registrar a request to correct the Beneficial Owner's record, in the case that the name of any person is included or deleted from the Beneficial Owner register without sufficient reason on the part of the Registrar.

5- A legal person may not register or enforce any document related to a change in ownership unless the transferee or his representative submits a statement that includes whether the transfer will result in a change in the legal person's Beneficial Owner, the nature of this change, and the data of the new Beneficial Owner is provided and included in the Record.

Article 9 - Nominal Members of the Administration

1- The manager or Board Member who acts as a nominal management member shall notify the legal person that he is a nominal member, and submit all the data referred to in Article (10) of this Decision within (15) fifteen days from the date of acquiring this capacity. The Nominal Board Member that has acquired this status prior to the publication of this decision shall notify the legal person of the matter within (30) thirty days from the date of its publication.

2- The nominal Board member shall notify the legal person of any change in the data referred to in Article (10) of this Decision, within (15) fifteen days from the date of making this change.

3- The nominal Board Member shall notify the legal person that he no longer has the capacity of nominal member within (15) fifteen days from the date of losing such capacity.

Article 10 - Register of Partners or Shareholders

1- A legal person shall keep the details of data of each partner or shareholder in the Register of Partners or Shareholders, and shall update this Register and include any change that occurs to it within (15) fifteen days from the date of its knowledge of it, provided that it includes the following data:

- a- The number of shares or stocks owned by each of them, their categories, and the voting rights related to them.
- b- The date of acquiring capacity as a partner or shareholder.
- c- For partners or shareholders from among natural persons: The full name according to what is mentioned in the identity card or travel document, as well as the nationality, address, place of birth, and the name and address of the employer, along with a valid true copy of the identity card or the travel document.
- d- For partners or shareholders from among legal persons: Providing the data mentioned in Clause (1) of Article (4) of this Decision.

2- A legal person who has one or more partners or shareholders, acting as a Trustee or as a nominal Board member shall have his data recorded in the Register of Partners or Shareholders.

3- The register of Partners or Shareholders shall include the data of the persons represented by each Trustee or nominal Board Member as stated in Clause (2) of Article (8) of this Decision.

Article 11 - Providing Data to the Registrar

1- The legal person shall, within (60) sixty days from the date of enforcement of this Decision or from the date of licensing and registration of the legal person, submit the data of the Beneficial Owner's Records and the Register of Partners or Shareholders to the Registrar, and take reasonable measures to save their records from damage, loss or destruction.

2- The legal person shall provide any additional data the Registrar requests within (14) Fourteen days from the date of request.

3- Subject to the legislation in force, the legal person shall submit all the data referred to in Clause (1) of Article (4) of this Decision to the Registrar when requesting incorporation, licensing, registration, renewal, modification or other cases as may be deemed as necessary for this purpose by the Registrar.

4- Each legal person shall provide the Registrar with the name of a natural person residing in the State and shall disclose to the Registrar all the data and information required by the aforementioned Law or Implementing Regulation or this Decision, as well as his address, contact details and a valid copy of his travel document or identity card.

5- No licensed or registered legal person in the State may issue stocks guarantees to their holders.

6- When issuing shares or stocks in the name of persons or Board members, the legal person shall disclose within (15) fifteen days the details of such shares or stocks and the identity of the persons and Board members to the Registrar.

7- If the legal person is in the stage of dissolution or liquidation, the liquidator shall deliver the Beneficial Owner's Record and the Register of Partners or Shareholders, if any, or a true copy thereof to the Registrar within (30) thirty days from the date of his appointment.

8- The liquidator shall keep Records and all data included in this Decision for a period of (5) five years at least from the date of dissolution or liquidation.

Article 12 - Notifications Issued by the Registrar

1- The Registrar shall notify the legal person, its employees, or its authorised agents to submit data or documents related to the Beneficial Owners or nominal members of management within the period specified in the notification.

2- The powers conferred upon the Registrar under Clause (1) of this Article shall include the following:

- a- Taking copies of the submitted documents according to the conditions that the Registrar deems appropriate.
- b- Asking the person who is required to submit data or documents, in case they are not submitted, to indicate their location, to appear at the time and place specified by the Registrar and to answer any questions related to any matters for which data is required to be submitted.

3- Attorneys and other independent legal professionals and independent statutory auditors shall be exempt from submitting any data required in the notification if obtained in the course of their assessment of the legal status of the legal person, his defence or his representation before the judiciary, or the arbitration, mediation or conciliation procedures or the provision of a legal opinion on a matter related to judicial proceedings, including advising on initiating or avoiding such proceedings or inquiring about them whether such data were obtained before, during or after judicial proceedings or in other circumstances in which they are subject to professional secrecy.

Article 13 - Obligations of the Registrar

The Registrar shall undertake to:

- 1- Preparing and issuing work forms, notifications and guidance manuals by various means related to registration and licensing procedures or organizing the procedures of the Beneficial Owner in the required form that achieves effectiveness in accordance with this Decision and relevant legislation.
- 2- Provide adequate human resources to enable him to effectively carry out his duties.
- 3- Automate the data obtained thereby and classify them in a way that facilitates reference to such data and their exchange with the concerned entities upon request.
- 4- Providing the required data regarding the National Economic Register instantaneously and providing any other data requested by the Ministry immediately.5- Provide data on the legal persons in the State and make them available to the public as follows:
 - a- Describing the different types and forms and the basic features.
 - b- Procedures for the licensing or registration.
 - c- Providing the basic data mentioned in Clause (1) of Article (4) of this Decision.
 - d- Measures for obtaining data related to the Beneficial Owner.
- 6- Maintain the basic data mentioned in Clause (1) of Article (4) of this Decision, ensure its accuracy, update it and make it available to the public.
- 7- Obtain the data of the Beneficial Owner when licensing or registering the legal person, update it, and ensure its accuracy.
- 8- Keep all records handed to him by virtue of Clause (8) of Article (11) of this Decision for a period of (5) five years from the date the legal person is cancelled through dissolution, liquidation or deletion.
- 9- Update the basic data mentioned in Clause (1) of Article (4) of this Decision, the data of the Beneficial Owner's Record, the Register of Partners or Shareholders instantaneously, based on the data provided by the legal person, provide them to the Ministry and disclose them at the request of the concerned authorities.
- 10- Applying a risk-based approach to the facilities registered with it and approved by the Ministry, in order to ensure that the legal person is not misused for the purposes of money laundering and financing of terrorism crimes through the following:
 - a- Annually Classifying and assessing potential risks related to money laundering and the financing of terrorism operations and addressing and mitigating them.
 - b- Taking the necessary measures to reduce these risks and prevent their occurrence through assessing the risks of legal persons, verifying and monitoring them.
 - c- Implementing the procedures required for risk management, and ensuring their effective implementation.

Article 14 - Establishment of the Unit of Anti-money Laundering and the Financing of Terrorism at the Registrar

1- An administrative unit shall be established at the Registrar concerned with implementing policies, procedures, and requirements for combating money laundering crimes, combating the financing of terrorism, and the financing of illegal organizations in accordance with the provisions stipulated in the Decree Law, its implementing regulations, and relevant supervisory decisions. The Unit must submit reports and developments instantaneously to the Ministry. 2- The Registrar shall issue a decision to specify the mechanism and tasks of the Unit after coordination with the Ministry.

3- This Unit shall follow in the regulatory structure the Supreme Committee at the Registrar.

Article 15 - Change of Data

1- A legal person shall keep all basic data under Article (8) of this Decision, the data of the Register of Partners or Shareholders, data of the Beneficial Owner, data of the records associated thereto and any other data or information he may be required to keep under the legislation in force, provided that they are accurate and up to date.

2- The legal person shall submit any amendment or change to the data or information under this Decision to the Registrar within (15) fifteen days from the date of the amendment or change.

Article 16 - Confidentiality of Information

1- The Ministry and the Registrar are prohibited from disclosing the data of the Beneficial Owner Record or the register of partners or shareholders and making them available to any person, unless they obtain written approval from the Beneficial Owner or the nominal management member.

2- Exempted from the provision of Clause (1) in this Article are:

- a- Disclosure obligations stipulated in this decision.

- b- What is stipulated in the international laws and agreements in force in the State, especially the provisions related to combating money laundering crimes, combating the financing of terrorism, financing illegal organizations, and exchanging information in tax matters.

Article 17 - Local and International Cooperation

1- The Ministry shall provide the basic data mentioned in Clause (1) of Article (4) of this Decision, as well as the data of the Beneficial Owner's Record and the Register of Partners or Shareholders, to the concerned entities in the State upon request.

2- The Ministry shall provide means of international cooperation concerning the basic data of the legal person, the data of the Beneficial Owner's Record and the Register of Partners or Shareholders, provided that this cooperation includes the following:

- a- Facilitating access by the competent foreign authorities to the basic data available in the records of the legal person upon request.
- b- Exchanging data and information about the partners or shareholders of the legal person.
- c- Using its powers to obtain all the data of the Beneficial Owner on behalf of the foreign counterparts.

3- The Ministry shall supervise the quality of implementation of international cooperation processes received from other countries with regard to requests to obtain basic data of legal persons and data of their Beneficial Owner, as well as the requests for international cooperation regarding knowing the whereabouts of the Beneficial Owners outside the State.

Article 18 - Administrative Penalties

In the event of a violation of the provisions of this Decision, the Registrar may impose one or more penalties from the list of administrative penalties issued by a Cabinet Decision based on the proposal of the Minister of Finance and after coordination with the Minister.

Article 19 - Grievance

1- Whoever has capacity may file a grievance with the Registrar to the Grievances Committee on the administrative penalties that were imposed in accordance with the provisions of Article (18) of this Decision within (30) thirty days from the date of notification, and may submit a request to stop the implementation of administrative penalties, and the Committee shall decide on this request within (45) forty-five working days in accordance with the procedures applied thereby.

2- The Minister shall issue a decision in coordination with the Registrar specifying the terms and conditions of grievances against the Decisions on administrative penalties before Grievances Committee with the Registrar.

Article 20 - Control Procedures

The Ministry, in accordance with the supervisory role assigned to it, in coordination with the Registrar, may establish the methods and procedures it deems necessary to supervise the extent of the Registrar's compliance with the provisions of this Decision and the decisions implementing it.

Article 21 - Compliance Reports

1- The Registrar shall submit semi-annual reports to the Minister on the extent of his compliance with the requirements of the provisions of this Decision and related legislation.

2- The Minister shall submit reports on the results of the Registrar's compliance to the Supreme Committee to Supervise the National Strategy to Combat Money Laundering and the Financing of Terrorism.

3- The Supreme Committee shall submit reports on the results of the Registrar's compliance to the Council of Ministers and/or the Executive Councils in each Emirate, as the case may be.

Article 22 - Abrogations

1- Cabinet Decision No. 58/2020 on the Regulation of the procedures of the Beneficial Owner as well as any provision that violating or conflicting with the provisions of this Decision shall be abrogated.

Article 23 - Publication and Enforcement of the Decision

The present Decision shall be published in the Official Gazette, and shall come into force from the day following the date of its publication.

Issued by us

On: 22/04/1445 H.

Corresponding to: 06/11/2023

Mohammed Bin Rashid Al Maktoum
Prime Minister

The present Decision was published in the Official Gazette of the United Arab Emirates, Issue no. 763.