

# Bahrain | Disclosure of Ultimate Beneficial Owners

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## Background

The Ministry of Industry, Commerce and Tourism (MoICT) recently passed Resolution Number (83) of 2020 regarding the **Criteria, Conditions and Rules Governing the Disclosure of Ultimate Beneficial Owners (UBO Resolution)**. The MoICT has also published guidance and clarifications through FAQs as to the application of the UBO Resolution. In this edition of Tax Insights, we provide an overview of the UBO Resolution and our key observations on what businesses should be doing to comply.

### Introduction

The UBO Resolution has been introduced in the context of tackling money laundering, terrorism financing and other serious crimes such as tax evasion. An UBO is an individual who ultimately enjoys the benefit of owning an entity – the person who may not be recorded as shareholder of the company but who has actual power and authority over the company.

The MoICT is also seeking to align Bahrain with international best practice to enhance market transparency, trust and credibility.

### In-scope entities

Except for entities which are licensed by the Central Bank of Bahrain (CBB), the UBO Resolution applies to all natural and legal persons (includes branches of foreign companies) holding a Commercial Registration (Registered Person). It appears that public listed companies listed on domestic or foreign stock exchanges are also in-scope.

A CBB licensee that also undertakes non-CBB licensed activities would fall outside the scope of the UBO Resolution on the basis that the exemption is determined based on the licensing of the entity, not based on its activity.

Broadly, a Registered Person must submit to the MoICT prescribed information and documents of its UBO and has a continuing obligation to update such information immediately should there be a change of UBOs or their information.

### Definition of UBO

As per Article 3 of the UBO Resolution, any natural person who satisfies any of the following conditions will qualify as a UBO with respect to any registered person:

1. Owning or controlling, directly or indirectly, 10% or more of the Registered Person's capital or voting rights;

2. Having the ability to make or influence decisions of the Registered Person either directly or through other means such as personal communications or through participation in the financing of the project, a family relationship, any contract, arrangement or understandings, or through a hierarchical entity (in the ownership chain of legal entities);
3. Contributing towards the financing of the business of the Registered Entity or its assets or benefiting from the Registered Person's transactions;
4. Having effective ultimate control of the Registered Person through a series of ownership or other control instruments other than direct control;
5. Having direct or indirect control over the operations of the Registered Person, whether through a management agreement, power of attorney or similar instrument;
6. Where the Registered Person is an entity owned by another entity, then the UBO is the natural person who is the ultimate owner of the ownership chain or who has effective control over it; and/or
7. Exercising control through management positions within the Registered Person in such a way as affects the strategic decisions or influences the general direction of the Registered Person.

Based on the FAQs, the MoICT has clarified the following with respect to an UBO:

- Only a natural person shall qualify as a UBO;
- The same natural person(s) may be the UBO(s) for more than one Registered Person;
- Anyone can qualify as a UBO irrespective of age and nationality;

- A Registered Person may have more than one UBO in which case the relevant information must be submitted to the MoICT with respect to each UBO.

### Substance over form

The disclosure of the UBO of an entity requires a substance over form approach. It is not sufficient for entities to just consider the legal ownership of the entity and apply the definition under paragraph 1 of Article 3. Some entities in Bahrain may have a 'nominee' shareholder - a person who allows their name to be used for the purpose of recording legal ownership and enters into a side agreement with the beneficial owner to confirm they will act on behalf of the beneficial owner. A nominee is usually paid a fee for this service or may even receive a share of profit. Nominees provide an added layer of anonymity for the UBO. Trustee arrangements will also need to be carefully examined to trace through to the beneficial owners.

Entities must step through each of the paragraphs under Article 3 so the correct substance over form disclosure on UBOs can be made.

### UBO information

The UBO Resolution prescribes a specific list of information and documents which are to be submitted by a Registered Person to the MoICT with respect to each UBO:

- Full name;
- Passport Number and copy passport;
- Identification Card Number and copy of Identification Card Number;
- Country of tax residence and Tax Identification Number in the country of tax residence of the UBO (if applicable); and
- Residential address, email and contact phone number.

Where a UBO has multiple tax residences, guidance from the authorities may need to be sought in terms of reporting of such information.

### Timeline for submission of UBO information

The requirement for disclosing the UBO information was introduced by the MoICT in June

2018. However, it was not being strictly enforced.

With the passing of the UBO Resolution the disclosure requirement is now being enforced. Although, the UBO Resolution has not stipulated a deadline, Registered Persons should submit the information to the MoICT without delay, failing which sanctions may be imposed.

For a new commercial registration application, the required UBO information and documents will need to be submitted to the MoICT along with the application for commercial registration.

In all cases the information and documents are to be uploaded onto the Sijilat portal of the MoICT.

Once submitted to the MoICT, the UBO information and documents shall be valid for one year, with a requirement to confirm (or update) the information and documents annually (or earlier if there is a change in the UBO or their information).

### Penalties for non-compliance

Where a Registered Person fails to provide the MoICT with required information and documents of the UBO or provides false or incorrect information or documents, the MoICT can:

- Suspend the commercial registration of a Registered Person.
- Impose an administrative fine not exceeding BD1,000 per day for a first offence.
- BD2,000 per day for subsequent offences committed within three years from the date of the previous notice of non-compliance issued.
- Strike the Registered Person from the commercial register.

In all cases, the total fines shall not exceed BD100,000.

The introduction of Economic Substance Regulations, Common Reporting Standards and now the UBO Resolution require Bahrain businesses to be diligent and ensure that the information provided to the relevant regulatory authorities is consistent and under no circumstances incorrect.

Incorrect or inconsistent information may lead to significant penalties.

## What businesses should do?

- Review their corporate structure and identify the UBOs in accordance to the definition of UBO as per Article 3 of the UBO Resolution.
- Businesses must look beyond the share register of the ultimate parent company and adopt a “substance over form” approach.
- Review internal procedures and processes to collect, store, update and file UBO information and ensure that UBO information is correct, complete and up-to-date.
- Ensure timely filing (or update) of the UBO information.

## How KPMG can help?

- Conduct an assessment to determine who the UBOs are for a Registered Person.
- Provide guidance on the duties and obligations of a Registered Person on how to comply with the provisions of the UBO Resolution.
- Assist a Registered Person with completing, submitting and updating the UBO information.

Our team can also assist with other corporate advisory matters such as drafting of memorandum and articles of association, formation of an entity, liquidations, corporate structuring and restructuring, corporate governance, share capital management and inheritance issues in family businesses.

This is for general information only and is not intended to address the circumstances of any particular scenario. Please seek professional advice in relation to your particular circumstances.

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