

Jacques Visser
Chief Legal Officer
DIFC Authority
Level 14, The Gate, P. O. Box 74777 Dubai, United Arab Emirates

15 May 2017

Dear Mr. Visser:

Re: Public Consultation on the proposed new Dubai Companies Law - Comments on enhancing Beneficial Ownership Transparency (BOT)

The Financial Transparency Coalition (FTC) is a global network of civil society organisations and experts. We work to curtail illicit financial flows through the promotion of a transparent, accountable, and sustainable financial system that works for everyone.

Our expertise lies in demonstrating how the lack of corporate ownership transparency drives money laundering, tax evasion and terror financing, among other risks, as well as in articulating effective policy solutions. We recommend that countries should collect beneficial ownership information on companies, trusts, and other legal entities that are registered within their borders, and make this information publicly available in central registers. If ownership information was available, investigators around the world, journalists, and civil society could peel back the layers of ambiguous ownership that anonymous companies create and address information asymmetry that is detrimental to the global financial system.

Please find below our submission to the Consultation on the proposed new Companies Law with comments in relation to enhancing beneficial ownership transparency. For any follow-up please contact Pooja Rangaprasad at pooja@financialtransparency.org.

Regards,



Porter McConnell
Director
Financial Transparency Coalition

Recommendations for effective disclosure of beneficial ownership of companies

Comments on proposed policy

1. All beneficial ownership information should be available in a public register for free and in an open data format

Ensuring beneficial ownership information is publicly available in a central register electronically in an open data format is the emerging international best practice that many jurisdictions are adopting. The FTC recommends that the Dubai IFC adopts this best practice model.

- It would be **in line with emerging international best practice**. After the Panama Papers leaks, several countries are now moving towards adopting public beneficial ownership registers. Public company registers are already in place in the UK, Ukraine, Estonia, Romania, and Slovenia. While the following countries have made commitments to public registries: France, Denmark, the Netherlands, South Africa, Nigeria, Afghanistan, Kenya, and Ghana. Other countries considering public registers include Ireland, Australia, New Zealand, Indonesia, Jordan, Georgia, Norway, India, Pakistan, and the remainder of the 28 EU member states. We do not believe the model adopted by Jersey represents a best practice model that should be replicated in other jurisdictions.
- It would be **the most cost effective solution for companies and public authorities**. Three separate studies, by the [UK](#) in 2002, by the [European Commission](#) in 2007 and an [update to the UK study](#) in 2013, all show that the likely economic benefits of collecting beneficial ownership information and then making it public outweigh the costs.
- It would **help build public trust**, particularly in the context of leaks such as the Panama Papers, which has led to citizens around the world questioning the integrity of existing institutions and the role of international financial centres in aiding the movement of illicit money globally.
- It would **enable low-capacity developing countries** to more easily follow the money trails of tax evasion, drug trade, bribery, human trafficking, etc. that is originating in their country.
- It would **help businesses know who they are doing business with**. A [survey](#) by professional services firm EY shows that 91% of business leaders believe that it is important to know the ultimate beneficial owners of the entities that they do business with. A [report](#) by The B Team - a global group of business leaders- made a strong business case for beneficial ownership transparency. They noted that beneficial ownership transparency benefits business by increasing competitiveness, reducing risk by knowing who you are doing business with, managing financial exposure and increasing stability.
- It would **enable investors to make responsible investment decisions** by knowing who they are dealing with and what their track record is. For this reason, global investors [managing over \\$740 billion in assets](#) are calling upon the U.S. Congress to require American companies to disclose their ultimate owners.

- It would **help banks fulfil their due diligence requirements**. A [letter](#) sent by The Clearing House - the largest Banking Association in the US - supported greater access to beneficial ownership information so as to more effectively combat money laundering and terrorist financing.
- It would **help level the playing field** allowing small businesses to be able to compete with bigger business who won't be able to hide behind anonymous companies.
- It would **help civil society organisations and journalists** detect crime, such as corruption and money laundering. Investigations by journalists and NGO into crimes such as corruption and money laundering can be vital in bringing wrongdoing to the attention of regulators and law enforcement, as has been seen with the range of investigations and legal actions taken following the Panama Papers investigations.
- It would **help prevent insecurity**. Money laundering fuels political instability around the world and supports terrorists and extremism. Making beneficial ownership information public will reduce the places around the world in which terrorists can hide their money.

2. Definition of Beneficial Ownership

A robust beneficial ownership definition is crucial to ensure that reporting is not vulnerable to abuse. It is vital that this is limited to natural persons and does not allow for legal entities, arrangements to be listed as beneficial owners, or for the senior management to be listed as beneficial owners if a beneficial owner cannot or is not identified. It should also cover those who de facto exercise control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions. All natural persons who control a legal entity through means other than solely as an employee of the entity (e.g. by having the power to appoint one or more directors), should be defined as beneficial owners of that entity.

FTC recommends a low ownership threshold for the beneficial ownership definition. FATF does not provide any recommendation but suggests as an example that anyone holding more than 25% of the shareholding in a company is a beneficial owner. This would mean that any entity owned by at least four persons can avoid this reporting requirement. The EU is currently revising its Anti-Money Laundering Directive and considering lowering this threshold. The European Parliament has [proposed](#) that the threshold should be set at 10%. Moreover, financial institutions complying with the US FATCA need to report on any American beneficial owners reaching the threshold of 10%. In other instances, such as American publicly traded companies, ownership must be disclosed to the Securities and Exchange Commission at a 5% threshold. Ghana's Companies (Amendments) Act, 2016 does not introduce any ownership threshold in their definition of beneficial ownership¹.

3. Security and Privacy Concerns

The identities of all beneficial owners should be made public by default, while on case-by-case determinations sensitive cases may be withheld for security reasons. According to a November 2016

¹ https://eiti.org/sites/default/files/documents/ghanas_eiti_beneficial_ownership_road_map.pdf; page 9

[data dive into the UK registry](#), approximately 30 beneficial owners of the 1.3 million who had made disclosures at that time have been successfully granted the right to keep their name off the register due to concerns about their safety.

Whereas competent authorities would have access to all information disclosed in the registers, the public should have access to at least:

- (a) the name of the registrable individual or registrable legal entity;
- (b) the date of birth of the registrable individual;
- (c) the nationality of the registrable individual;
- (d) the legal form of the registrable legal entity (including the law by which it is governed) and the company registration number or the equivalent in its place of incorporation or formation;
- (e) the correspondence address (excluding post office box number) of the registrable individual, and the address of the registered or principal office of the registrable legal entity;
- (f) the date when the person became a registrable individual, and the date when the legal entity became a registrable legal entity; and
- (g) the nature of the control of the registrable individual or of the registrable legal entity over the company in accordance with the specified conditions.
- (h) a unique internal identifying number for that individual, generated by the register, to allow cross-referencing against the registrable individual's beneficial ownership of other legal entities

4. Penalties

To ensure an effective out with a registry there should be significant potential penalties, such as a fine or imprisonment for non-compliance, including for one's failure to provide adequate or accurate information. Such penalties do not have to be the first response to non-compliance; however, the use of sanctions will be critical to the utility of the registry. This would be in line with the approach taken in the UK, where failure to provide information or providing false or misleading information can face a fine or up to two years imprisonment.

5. Verification

Accuracy of the data is absolutely crucial for any beneficial ownership register to be able to assist money laundering and corruption investigations, regardless of whether the register is public or private. Indeed, if the data is not published, there is less scrutiny of the data and fewer inaccuracies will be spotted.

By requiring the data to be public you increase the risks for anyone considering shielding their identity to launder money. Accompanying the register with sanctions for inaccurate or outdated information would be an additional incentive to comply with regulations. The UK has a range of sanctions for non-compliance with providing information into the register.

In addition to the state's verification of the information, stakeholders, including other companies, journalists and civil society members should be provided a channel to raise inconsistencies in the registry's data.