



## GUIDANCE NO. 2 OF 2019

## EXEMPT ENTITIES UNDER THE ULTIMATE BENEFICIAL OWNERSHIP REGULATIONS 2018

**1. Introduction**

- 1.1 This guidance is issued by the DIFC Registrar of Companies (“Registrar”) pursuant to Article 7(3)(a)(iii) of the Operating Law, DIFC Law No. 7 of 2018 (the “Operating Law”) in respect to exemptions under Regulation 2 of the Ultimate Beneficial Ownership Regulations 2018 (the “UBO Regulations”).
- 1.2 This guidance is indicative only and is subject to the discretion of the Registrar in accordance with the provisions of applicable law.
- 1.3 A term that is not defined in this Guidance, has the same meaning it has under the Operating Law or the UBO Regulations, as applicable.

**2. Exempt Entities**

- 2.1 Regulation 2.1 of the UBO Regulations, prescribes the DIFC entities that are exempt from these regulations. An exempt entity:
- (a) has its securities listed or traded on a Recognised Exchange;
  - (b) is regulated by a Recognised Financial Services Regulator;
  - (c) is a Recognised Company, Recognised Foundation or Recognised Partnership, which satisfies the Registrar that it is subject to equivalent international standards, which ensure adequate transparency of ownership information in its home jurisdiction;
  - (d) is a Non Profit Incorporated Organisation which does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes;
  - (e) is wholly owned by a government or government agency of a Relevant Jurisdiction; or
  - (f) is established under a law of the United Arab Emirates to perform governmental functions.

**3. Recognised Exchanges and Recognised Financial Services Regulators**

- 3.1 For the purpose of Regulation 2.1(a) and (b) of the UBO Regulations, the Registrar has determined that a “Recognised Exchange” and a “Recognised Financial Services Regulator” is any stock exchange or financial services regulator, as the case may be, from the following jurisdictions:
- (1) Australia
  - (2) Austria
  - (3) Bahrain
  - (4) Belgium
  - (5) Canada
  - (6) Denmark

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- (7) Finland
- (8) France
- (9) Germany
- (10) Greece
- (11) Guernsey
- (12) Hong Kong
- (13) Iceland
- (14) India
- (15) Ireland
- (16) Isle of Man
- (17) Italy
- (18) Japan
- (19) Jersey
- (20) Luxemburg
- (21) Malta
- (22) Netherlands
- (23) New Zealand
- (24) Norway
- (25) Portugal
- (26) Singapore
- (27) South Africa
- (28) South Korea
- (29) Spain
- (30) Sweden
- (31) Switzerland
- (32) United Arab Emirates
- (33) United Kingdom
- (34) United States of America

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3.2 Accordingly, a DIFC entity that has its securities listed or traded on a stock exchange in one of the jurisdictions listed in point 3.1 above is exempt from the UBO Regulations on the basis that it is sufficiently regulated in respect of its beneficial owners, by virtue of being a listed entity on a Recognised Exchange.

3.3 Similarly, a DIFC entity that is regulated by a financial services regulator from one of the jurisdictions listed in point 3.1 above, is exempt from the UBO Regulations on the basis that it is regulated by a Recognised Financial Services Regulator, in respect of its ultimate beneficial owners.

#### **4. Recognised Entities**

4.1 For the purpose of Regulation 2.1(c) of the UBO Regulations, the Registrar has determined that as yet, no other jurisdiction will be recognised as applying equivalent standards of regulation as those applicable in the DIFC.

4.2 As a result, no Recognised Company, Recognised Foundation or Recognised Partnership will be considered to be exempt from the requirements of the UBO Regulations, pursuant to Regulation 2.1(c).

#### **5. Non Profit Incorporated Organisations**

5.1 A Non Profit Incorporated Organisation incorporated in the DIFC that seeks to be eligible for the exemption under Regulation 2.1(d) is required to provide an undertaking signed by its Founding Members, stating that it does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes.

5.2 Such a Non Profit Incorporated Organisation will also need to submit the declaration referred to in point 5.1 above on an annual basis as part of its Confirmation Statement, in order to continue to be eligible for the exemption under Regulation 2.1(d). Should the NPIO fail to do so, it will no longer be eligible for the exemption and will be required to comply with Regulations 3-6 of the UBO Regulations and notify the Registrar of its beneficial owners. Failure to do so will result in fines of up to US\$25,000 per contravention.

#### **6. Government and Government agencies from Relevant Jurisdictions**

6.1 For the purpose of Regulation 2.1(e) of the UBO Regulations, the Registrar has determined that the jurisdiction listed in point 3.1 above, along with China and the Kingdom of Saudi Arabia have been designated as a “Relevant Jurisdiction”.

6.2 Registered Persons that are wholly owned by a government or government agency of any country other than those referred to in point 6.1, which seek to be eligible for the exemption in Regulation 2.1(e) by being recognised as a “Relevant Jurisdiction”, are invited to make submissions to this effect to the Registrar.

6.3 Should the Registrar determine (at his absolute discretion) that based on such submissions, any additional government or government agency should be recognised as a “Relevant Jurisdiction” for the purposes of Regulation 2.1(e) of the UBO regulations, such recognition shall be published on the “ROC section” of the DIFC website on an ad-hoc basis.

#### **7. Partial Exemption under Regulation 2.2**

7.1 A Registered Person is partially exempt from the UBO Regulations under Regulation 2.2, where it is beneficially owned or controlled (directly or indirectly) at least 25% by a person that:

- (1) has its securities listed or traded on a stock exchange in one of the jurisdictions listed in point 3.1 above;

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- (2) is regulated by a financial services regulator from one of the jurisdictions listed in point 3.1 above;
- (3) is a Non Profit Incorporated Organisation incorporated in the DIFC that meets the criteria in point 5 above;
- (4) is wholly owned by a government or a governmental agency of the United Arab Emirates or a Relevant Jurisdiction that has been recognised by the Registrar in accordance with point 6.2 above; or
- (5) is established under a law of the United Arab Emirates to perform governmental functions.

7.2 Where a Registered Person is able to identify a beneficial owner that meets the criteria in point 7.1 above, the Registered Person is required to list the relevant information set out in Regulation 2.2(b) on its own Beneficial Ownership Register and also notify the Registrar of this information through the DIFC Client Portal, in respect of that beneficial owner. Failure to do so will result in fines of up to US\$25,000 per contravention.

7.3 By way of example, if a beneficial owner of a DIFC entity is listed on the Australian Stock Exchange (a Recognised Exchange in accordance with Point 3.1 above) and has an ownership interest of 25% in the DIFC entity, the DIFC entity must record the information specified in Regulations 2.2(b)(i) – (iii) and (iv)(A) of the UBO Regulations in respect of that beneficial owner, in its own private Beneficial Ownership Register and on the DIFC Client Portal.

In addition, the DIFC entity will still need to identify any natural person that has an ownership interest of at least 25% in the DIFC entity or who exercises control over the DIFC entity in accordance with Regulation 3.1. The DIFC entity must comply with Regulations 3-6 of the UBO Regulations in relation to any such beneficial owners and record their UBO Particulars in its own Beneficial Ownership Register and on the DIFC Client Portal.

## 8. Frequently Asked Questions (FAQs) and Answers

The answers below are indicative in nature, are not binding on the Registrar and in no way constitutes legal advice. The Registrar has absolute discretion to deviate from the answers provided below.

8.1 Q1: Which entities are exempt under the UBO Regulations and to what extent?

A1: Regulation 2.1 completely exempts a Registered Person (as defined in the Operating Law, and further clarified in this Guidance) from complying with the UBO Regulations if the Registered Person meets one of the criteria set out in Regulation 2.1: ie publically listed, regulated entity, wholly government owned or created under UAE law. However these exempt entities may still need to take some action to designate themselves as an exempt entity (please refer to point 8.3 and 8.4 below for further information).

Where Regulation 2.2 applies, the Registered Person is only partially exempt from the UBO Regulations. They will still need to maintain a UBO register and comply with all the requirements in Regulations 3-6. However the level of inquiry is reduced for a UBO that meets the criteria set out in Regulation 2.2 - where a Registered Person is owned or controlled at least 25% by a 'person' (note this is not restricted to a "Registered Person") who meets the criteria set out in Regulation 2.1(a) – (f) (as further clarified by this Guidance). In such cases, the Registered Person must list the information set out in Regulation 2.2(b) (as applicable to that 'person') in its UBO Register. Note that Regulations 3-6 still apply to all other UBO's that the Registered Entity may have, that meet the threshold set out in the UBO Regulations.

For example, if a Beneficial Owner of the Registered Entity is regulated by a 'recognised' Financial Services Regulator', then the Registered Entity must enter the information specified in Regulations 2.2 (b)(i)-(iii) and (iv)(B) with respect to that UBO only. It will still need to comply with Regulations 3-6

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and make full inquiries with respect to any other UBO's it may have that meet the ownership and control threshold set out in the UBO Regulations

8.2 Q2: Do exempt entities need to maintain a UBO Register?

A2: A DIFC entity that falls within Regulation 2.1 (please refer to 8.1 above for further detail) is completely exempt from the UBO Regulations and is not required to maintain a UBO register under the UBO Regulations. Where Regulation 2.2 applies (please refer to 8.1 above for further detail), the DIFC entity is only partially exempt and must maintain a UBO Register and record the applicable information in Regulation 2.2(b) in the Register and on the DIFC Client Portal. Any other UBO that owns at least 25% or controls the entity must also be recorded on the DIFC entity's own private UBO register and recorded with the Registrar on the DIFC Client Portal.

8.3 Q3: Are DFSA regulated entities exempt from DIFC UBO Regulations?

A3: Financial institutions and fund vehicles licensed or registered by the DFSA are exempt entities under Regulation 2.1 and are not required to take any action in relation to the UBO Regulations. However they are still required to comply with any DFSA requirements as well as any other UBO related requirements that may be applicable to them.

Designated Non-Financial Business or Profession (DNFBP's) are required to comply with the UBO Regulations.

8.4 Q4: Do DIFC entities that fall within Regulation 2.1 need to take any action in relation to the UBO Regulations?

A4: Exempt Entities that fall within point 8.3 above are not required to take any action in relation to the UBO Regulations. All other entities that fall within Regulation 2.1 are required to log onto the DIFC Client Portal and select the 'Update, Add or Remove UBO' service request to classify themselves as an exempt entity.

Dated: 19 February 2019

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