Legal Persons Vulnerability

The unique legal status of legal persons lends itself to complex schemes designed to conceal the true beneficial owners, and in many respects, concealing the real reason for holding assets and conducting related transactions. The FATF specifically says under R24 that countries should assess the ML/TF risks associated with all types of legal person created in the country.

The table below presents the various types of legal persons in the whole of UAE, the **number of business entities incorporated/licensed**, the **characteristics that could be exploited** to facilitate crime and conceal beneficial ownership, and the **assessed inherent risk level** in the context of the UAE.

Methodology Used:

The risk assessment was based on both international experience[1] and UAE officials' knowledge.

The UAE greatly leveraged the FATF/Egmont paper on Concealment of Beneficial Ownership which used typologies and cases around the world. Furthermore, the assessment of the legal persons vulnerability was done with the participation of all relevant authorities including LEAs and PP, which could share their experience and expertise. The UAE also used the information gathered through the NRA process in relation to legal persons.

Points considered:

- Can there be a UBO? (for example, in a sole proprietorship, there is one owner, who is a natural person, so there is no UBO).
- Can the owner/UBO exercise control over the company?
- Is structure of ownership complex? (for example, with chains of ownership including trusts across multiple countries)
- Can it be a shell company?
- Place of establishment (in major regional and global trade and financial centers and low-tax jurisdictions)

Ratings Used

Three-level risk ratings were used: Low, Medium and High.

The ratings were agreed on a consensus basis by UAE officials from relevant competent authorities during workshops in September and October 2018. This assessment will inform the risk-based approach of all company registrars and the Ministry of Economy in the UAE.

The table below highlights each company and why it was considered high or medium or low risk.

[1] Including http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf.

Trusts.

Also, please take note of some assessor questions and comments of MDNCI:

1. **There is no explanation supporting the ranking for some types of companies: what were the vulnerabilities identified for Joint Limited Company (JLC), Private Company Limited by Shares and , Limited Special Purpose Company (in FFZ)?**

Commented [SM1]: MDNCI

Commented [J&R2R1]: We cannot answer that. UAE authorities made the determination of the ratings based on their knowledge of the types of companies and their understanding of the possible concealment of the BO etc. During the workshops, this was all the information and rationale we could gather and no one provided anything else after.

They can probably just say 'same reasons as for ...'

For now, you can say to be prpvded by the onsite

2. **Please expand on whether the UAE identified specific risks related to:**

i) LP and LA operating in the commercial free zones (CFZs)?
ii) Trusts and Waqfs? (as page 22 of IO5 suggests[2], but there's nothing in the NRA)

UAE Response:

Commented [J&R3]: Risks related to Trusts and Waqfs were not assessed per se nor are they required to be assessed by the FATF Standards.

As noted above, the UAE recognizes the high level of inherent vulnerability of trusts for ML/TF and where allowed (in the 2 FFZs), has put proper controls in place. See R 25.

[2] "The UAE authorities recognize the inherently high ML/TF vulnerability of Awqaf, like for trusts"

3. How is the misuse of LP effectively addressed when nearly ¾ of the companies are classified as High-Risk (97,5 % in CFZs - mostly LLCs) ? Are there subdivision into business sectors? Does it imply enhanced due diligence for FIs and DNFBPs?

Commented [SM4]: MDNCI

Commented [J&R5R4]: The assessors just want to know how CFZ implement their own RBA, to mitigate the inherent risks identified for legal persons etc, and in particular, if almost all of their companies are Highly vulnerable. How are we supposed to know more than competent authorities? ;-)

We suggest you simply say that CFZ RoC will answer this during the onsite. See also the various measures put in place under R 24.

As for FIs and DNFBPs, they have to do their own risk assessment and apply proper controls etc. see R10 and IO4.

Number of legal persons, ML/TF vulnerability characteristics and assessed risk levels by type of company in the UAE

Type of Company[3]	# of Incorporated /Licensed[4] businesses (June 2018)	Vulnerability Characteristics from UBO concealment	Assessed Risk Level
1. Cooperative (Federal Law (13) of 1976)	11	No UBO. Owned by 'members'	Low
2. Foundation / NPO / Association (in FFZ)	5	Hybrid construct. No owner or shareholder and managed independently by Board. Inherently founder cannot exert control	Low
3. General Partnership (in FFZ)	2	Ownership and control exercised by all partners specified in contract.	Medium
4. Limited Partnership (in FFZ)	9	Ownership and control exercised by all partners specified in contract. No legal segregation between natural and legal persons.	Medium
5. Limited Liability Partnership (LLP) (in FFZ)	20	Limited partners have certain degree of anonymity by acting solely as investing partner still due to limited liability, they have limited control over partnership.	Medium
6. Non-Incorporated Business/Sole Establishment (Federal Law (18) of 1981)	93,871	No separate legal entity. Natural person owner is also manager. No UBO	Low
Company – general	-	***Separate legal entity. More vulnerability when: 1) complex structure with chains of ownership including trusts across multiple countries; 2) use formal (contractual) or informal nominee shareholders or***	High

[3] Does not include Non-Profit Organisations (NPOs). Some types of company might also need to be updated once all relevant laws are provided and nomenclatures are harmonised for the whole of UAE.

[4] Some numbers provided might still require clarifications and updates.

Type of Company[3]	# of Incorporated /Licensed[4] businesses (June 2018)	Vulnerability Characteristics from UBO concealment	Assessed Risk Level
		directors where nominator identity undisclosed; 3) use of intermediaries (also vulnerable) in company formation; 4) could be shelf (dormant), shell (no activity) or front companies (often in customer service sector); 5) when established in major regional and global trade and financial centers and low-tax jurisdictions	
7. Limited Liability Company (LLC) (Article 9 of Federal Law (2) and in various Free Zones)	267,930	Hybrid construct. Governing rules determined by contract with high degree of freedom in determining ownership and control among members, and exploiting nominees	High
8. Joint Liability Company (Article 9 of Federal Law (2))	1,266		High
9. Simple Partner Company (Article 9 of Federal Law (2))	2,094	Single owner. Local ownership	Medium
10. Private Joint Stock Company (Article 9 of Federal Law (2))	184	Some degree of transparency but not as much as publicly-listed company	Medium
11. Public Joint Stock Company (Article 9 of Federal Law (2))	740	Stock exchanges rules provide high degree of transparency	Low
12. Private Company Limited by Shares (LTD) (in FFZ)	1,301		High

Type of Company[3]	# of Incorporated /Licensed[4] businesses (June 2018)	Vulnerability Characteristics from UBO concealment	Assessed Risk Level
13. Private Company Limited by Guarantee (in FFZ)	6		High
14. Limited Investment Companies (in FFZ)	14		High
15. Protected Cell Company (in FFZ)	3		High
16. Restricted Scope Company (in FFZ)	56	Scope is restricted	Medium
17. Limited Supra Natural Company (in FFZ)	1		High
18. Limited Special Purpose Company (in FFZ)	200		High
19. Branches of UAE Companies	18	UBO of local companies easier to identify	Medium
20. Branches of Foreign Companies	6,743	Foreign ownership makes UBO more difficult to identify	High
21. Offshore Companies	1,245	Offshore ownership structure makes UBO more difficult to identify	High
Grand Total	***377,698***		