



In the know

New requirements for the disclosure of Beneficial Ownership of Corporate Entities by individuals

There is a new requirement for all Irish Entities to create and maintain a Beneficial Ownership Register from 15 November 2016. This briefing provides a summary of these new requirements.

Background

The Financial Action Task Force (“**FATF**”) and European policymakers have been working ensure transparency of ownership of corporate structures. This resulted in the EU Fourth Anti-Money Laundering Directive (“**AMLD4**”) which requires EU Member States to keep central registers of information on the ultimate beneficial owners of legal entities.

There is already a proposal for a Fifth Anti-Money Laundering Directive currently being drafted in Brussels.

AMLD4 is due for transposition into Irish law on 26 June 2017. However, in advance of that date, certain provisions regarding disclosure of beneficial ownership by individuals of corporates and other legal entities was transposed into Irish law by the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 on the 15th November 2016 (the “**Regulations**”).

What is required?

The Regulations require that from 15 November 2016, all Irish corporates and other legal entities incorporated in Ireland must hold “adequate, accurate and current” information on their beneficial owners. The requirement applies to all Irish entities with two exceptions:

- (i) Listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU, or
- (ii) Subject to equivalent international standards which ensure adequate transparency of ownership information.

What is the Beneficial Ownership Register?

A beneficial ownership register is a register which is required to contain certain information in respect of the entity’s beneficial owners, including:

- (a) the name, date of birth, nationality and residential addresses of each of the entity’s beneficial owner(s)
- (b) a statement of the nature and extent of the interest held by each such beneficial owner
- (c) the date on which each individual was entered into the register as a beneficial owner of the entity
- (d) the date on which each individual ceased to be such an owner

Who are beneficial owners?

A beneficial owner is any individual (natural person) who is the ultimate beneficial owner, or controls the entity either directly or indirectly. A shareholding of greater than 25% or an ownership interest of more than 25% is an indication of direct ownership.

What happens if the Entity cannot identify the beneficial owners?

Where an entity cannot, having exhausted ‘all possible means’ identify the person who ultimately owns or controls it or if there is any doubt as to whether an individual so identified is its beneficial owner, the entity must enter details of its senior managing officials in its beneficial ownership register. The steps taken by the entity in identifying its beneficial owners must be retained.

The next steps in compiling a beneficial ownership register are:

1. The entity should send a notice ("**Regulation 6 Notice**") containing the particulars of the beneficial owner and their interests to any individual that the entity believes is a beneficial owner
2. The beneficial owner must confirm the particulars set out in the Regulation 6 Notice and supply any missing information. The beneficial owner has one month from the date of the notice to comply and provide the information
3. An entity may also give notice to any other person if it has reasonable cause to believe that that person knows the identity of any individual who is a beneficial owner of the entity or any person likely to have that knowledge ("**Regulation 8 Notice**").

Once the beneficial ownership register has been compiled there are additional requirements to keep it up to date:

4. Where the entity has reasonable cause to believe that a relevant change has occurred it must give notice to the individual concerned ("**Regulation 10 Notice**") requiring the addressee to confirm whether or not the change concerned has occurred, and if it has occurred, to state the date of the change, and confirm or correct the particulars included in the notice and supply any that are missing from the notice.
 - Further to this the beneficial owner also has a duty to inform the relevant entity if they cease to be a beneficial owner
 - If an individual is the beneficial owner but has not received a notice from the relevant entity they have the duty to inform the relevant entity of such

What are the consequences of not compiling a beneficial ownership register?

It is an offence for an entity to fail to keep and maintain a beneficial ownership register as required by the Regulations. It is also an offence for an entity to fail to send a Regulation 6 Notice and/or a Regulation 10 Notice if necessary. If in breach they will be liable on summary conviction to a class A fine (not exceeding €5,000).

It is also an offence if the beneficial owner either a) fails to comply with the Regulation 6, 8 or 10 notices or b) makes a statement that is false in a material particular, knowing or being reckless as to whether this is the case. Any person that commits such an offence is liable on summary conviction to a class A fine (not exceeding €5,000).

Is the Beneficial Ownership Register a public register?

Currently the individual beneficial ownership registers required by the Regulation are not required to be made available to the public. However once AMLD4 is fully transposed, Ireland, in addition to all EU member states will be required to establish central registers of beneficial ownership information in relation to the corporate and other legal entities in scope and which must be in place by June 2017. This Central Register is likely to be maintained by the Companies Registration Office in Ireland. These Central Registers must be accessible to:

- (i) Competent authorities and financial intelligence units
- (ii) Certain entities (including investment funds and banks), when carrying out customer due diligence measures
- (iii) Those who can demonstrate a "legitimate interest" in the information

The information on the Central Register must be kept current, but how it will be maintained is currently unclear. Under the UK's beneficial ownership reporting regime which was implemented earlier this year, companies are required to update the information at the Registry of Companies once a year. However, it remains to be seen whether this will meet the AMLD4 requirements.

The current draft of the Fifth Anti-Money Laundering Directive contains a controversial proposal that the registers be publicly accessible, but the access may be subject to online registration and payment of an administrative fee. In exceptional circumstances, Member States can provide for an exemption from such public access, for example where it would expose the beneficial owner to the risk of fraud, blackmail, kidnapping, violence or intimidation or where the beneficial owner is a minor or otherwise incapable.

What's next?

The immediate priority for entities will be to establish an internal register of beneficial owners and to then take steps to populate that register. For companies with simple ownership structures, this should be straightforward. However, for companies with complex ownership structures, groups which include foreign entities and for private equity backed companies, this may not be the case.

Companies with beneficial owners who are not registered shareholders may also wish to give them advance notice that their details will soon have to be made available on a publicly accessible register.

Eversheds Company Secretarial team can assist you in establishing your beneficial ownership register.

Key contacts

For more information, please contact:



Fiona Mahon

Head of Company Secretarial

+353 1 6644 214

fionamahon@eversheds.ie



Audrey McGrath

Company Secretarial

+353 1 6644 985

audreymcgrath@eversheds.ie