



Anti-Money Laundering: Beneficial Ownership of Corporate Entities Regulations 2016

Introduction

With effect from November 15th 2016, Article 30(1) of The European Union Fourth Anti-Money Laundering Directive ("4AMLD") has been transposed into Irish Law.

Through the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 ("the Regulations") the Department of Finance has transposed the requirement for corporate and other legal entities incorporated in a Member State to "obtain *and hold adequate, accurate and current information on their beneficial ownership*". This requires all corporates and other legal entities to identify the natural person(s) who are their underlying beneficial owners. The early transposition of this provision in advance of the 4AMLD 26 June 2017 deadline means that corporates and other legal entities must comply with this obligation with immediate effect.

Failure by an Irish corporate or other legal entity to maintain a current beneficial ownership register is a breach of the Regulations which amounts to a criminal offence.

The objective of the early transposition of this first sub-paragraph 30(1) is to ensure that the Central Register of Beneficial Ownership "Central Register" required under Article 33(3) will be effective as early as possible after its transposition in June 2017.

"Obtain and hold adequate, accurate and current information on their beneficial ownership".

Who Must Maintain a Beneficial Ownership Register?

The requirement under Article 30(1) applies to all corporate and legal entities (including investment funds) with the exception of entities who are;

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

The Regulations do not affect express trusts governed by Irish Law. This is dealt with under Article 31 of the 4AMLD which has yet to be transposed.

Who is a Beneficial Owner?

Article 3(6)(a) of 4AMLD sets out how beneficial ownership should be determined so as to identify the persons ultimately controlling a legal entity. A beneficial owner is an individual or individuals with significant control (whether direct or indirect) over a corporate or legal entity.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person is an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), is an indication of indirect ownership

Beneficial Ownership Register

In scope entities are required to take all reasonable steps to obtain and hold the following information on their beneficial ownership register.

- Name;
- Date of birth;
- Nationality;
- Residential address; and
- A statement of the nature and extent of the interest held by the beneficial owner e.g. 30% of the ordinary shares of the Company.

The affected entities are also required to record;

- The date on which each individual was entered into the register as the beneficial owner; and
- The date on which each individual who ceased to be a beneficial owner.

Where a Beneficial Owner cannot be identified

The Regulations require all impacted entities to take "*all reasonable steps*" to obtain the information set out above. These steps involved giving notice pursuant to the Regulations to any natural person(s) the entity has reasonable cause to believe to be a beneficial owner. Once issued, the natural person(s) to whom this notice has been issued has one month to provide the necessary details. Failure by the natural person to reply or to make a false statement is a criminal offence.

Where all reasonable steps to identify the beneficial owners have been exhausted unsuccessfully, the Regulations provide that the Senior Managing Officials (includes the Director(s) and CEO) shall be deemed to be the beneficial owners.

Access to Beneficial Ownership Register

Currently, under 4AMLD information about beneficial owners maintained on the central registers must be accessible to:

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

As a result of the Panama Papers, the Fifth Anti-Money Laundering Directive now proposes to provide public access to beneficial ownership information regarding entities that engage in economic activities with a view to making a profit.

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