



Deloitte Boardroom programme  
Technical Update – roles and responsibilities of  
directors



# Today's presenters:



Colm McDonnell  
Partner  
Deloitte Ireland

Colm is a partner in the Risk Advisory business in Ireland with over 30 years professional services experience.

He is the lead partner on a number of key clients, is the Boardroom Programme sponsor and is the COO for Risk Advisory within North South Europe (NSE).



Jeanette Champion (ICSA)  
Corporate Administration Services  
Department

Jeanette Champion is one of the lead managers within Corporate Administration Services performing a full range of company secretarial services for a wide range of clients which include local, national, international and multi-national corporations.

Jeanette has responsibility for annual compliance for more than 300 companies in both Ireland and overseas, with experience in dealing with both large and complex organisation groups as well as smaller private businesses.

Jeanette has been involved in developing governance frameworks for Public Sector clients and reviews in SMEs. She regularly provides board training, evaluations and company law updates to clients.

# Agenda

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Topic	Presenter
Welcome	Colm McDonnell
Overview of Companies Act 2014	Jeanette Champion
Company Enforcement Authority (CEA)	
Beneficial ownership Register	
Final reflections and close	Colm McDonnell

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# Companies Act 2014 Overview

# The design of the Companies Act 2014

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The Companies Act 2014 was signed into law by President Michael D. Higgins in December 2014 to regulate companies under Irish Law

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The Act modernised the law relating to registered Companies:

- how they are formed
- how they are administered
- how they are to be wound up and dissolved
- how shareholders and creditors are protected
- the criminalisation of certain acts and omissions by companies and others

The Act is confined to company law and does not address matters relating to:

- the rights and protections of employees of companies
- the taxation and residence of companies and their directors
- the accounting standards
- the regulation of commercial contracts consumer protection
- Data protection & GDPR
- the management of apartment buildings, etc.
- Environmental regulations



# Why is it important to me?

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Every person who plans to serve on a board of directors should familiarise themselves with the legal responsibilities and obligations attached to that position before accepting the appointment

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In today's business environment, which demands more and more transparency, disclosure and good governance, organisations need board members with the expertise and knowledge of the company's obligations under the Act and their personal duties and role as company directors.

To fulfil your responsibilities effectively and steer the company towards a sustainable future, board members should adopt sound, ethical and good governance and financial management policies.

There should be clarity over;

- the responsibilities of the directors
- the responsibilities of management
- The authority/power of members





## Company Constitution

# The Company Constitution

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The Constitution is a formal document that sets out the rules governing a company. It also defines the relationship between the company, shareholders/members and directors of the company.

As long as the company's Constitution does not conflict with the Companies Act 2014 or any subsequent amendments, it represents a binding agreement between the company and its shareholders and officers.

A constitution should be filed with the Companies Registration Office on incorporation and when a new Constitution is adopted, or a change has been made, a resolution of shareholders/members must be passed, and a copy filed with the Companies Registration Office for it to take effect.

*“Act in accordance with the company’s constitution and exercise powers only for lawful purposes”*



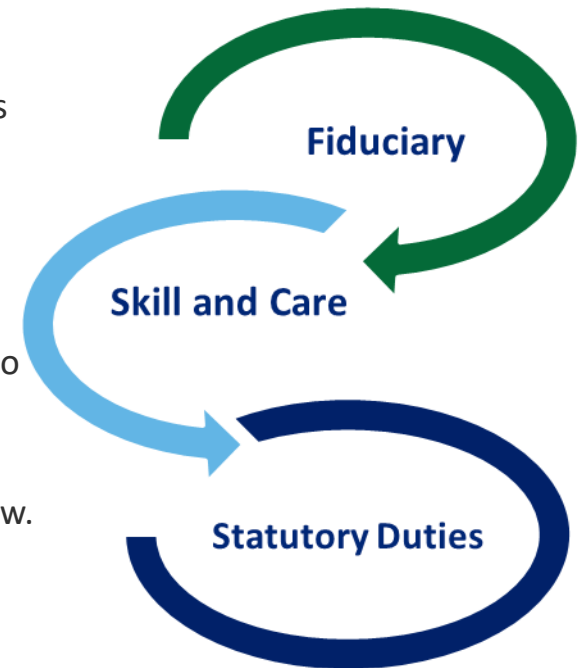


## Company Directors

# Company Directors

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- Person appointed, usually by the members to manage the company on their behalf.
- Defined as “...any person occupying the position of director by whatever name called..”
- Shadow directors – now defined as “a person in accordance with whose directions or instructions the directors of a company are accustomed to act”.
- De facto directors – now defined as persons who occupy the position of a director although not formally appointed as such are de facto directors. Note – you will not be a de facto director merely by giving advice to the company or its directors in a professional capacity
- Alternate directors - a person who is appointed to attend a board meeting in the place of another director who is unable to attend
- Directors do have the power to delegate their duties to others but they are still obliged to monitor and review the work performed by that person or committee to ensure it complies with their instructions and company law.
- Duties of directors are codified in Part 5 of Companies Act 2014.
- Main provisions around company directors are set out in Chapters 1-4 of Parts 4 and 5.



## S.228 Codified Duties of Directors



Act in good faith in what the director considers to be the company's interests



Act honestly and responsibly in the company's affairs



Act in accordance with the company's constitution and exercise powers only for lawful purposes



Not to use company property for own or others' use unless approved by the members or by the constitution



Not agree to restrict the director's power to exercise an independent judgement unless permitted by the constitution or entered into in the company interests



Avoid conflicts of interest



Exercise care, skill and diligence



Have regard to the interests of the members in addition to the duties set out in section 224 (duty to have regard for the interests of employees)

# Principal Duties of Directors imposed by Companies Act 2014

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- As a company officer under the Companies Act to **ensure compliance with the act.**
- To prepare a **directors' compliance statement.**
- To ensure that the company **secretary is suitably qualified** and has the necessary resources to carry out their duties.
- To **disclose certain personal information** including date of birth, residential address, details of other directorships worldwide over the past five years, shareholding greater than one per cent of the company or related companies.
- To **disclosure any interests in substantial transactions** with the company.
- To **maintain adequate accounting records.**
- To prepare **financial statements** which **give a true and fair view** of the affairs of the company.
- To have an annual **audit** performed (**unless exempt**).
- To **maintain** certain **registers** and other documents.
- To cause **minutes** to be maintained in books.
- To ***file documentation*** with the registrar of companies.
- To convene general meetings of the company, both annual and where requested by the members.



# Statutory Duties of Directors

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- Signing the certification that accompanies the Reports and financial statements that are being filed with the Annual Return at the Companies Registration Office (Section 347(2)(b), Companies Act 2014).
- The signing of the Annual Return together with the company secretary (section 343 (4) Companies Act 2014)
- Submitting and verifying a statement of affairs in the event that that company goes into receivership (Section 431 (2) Companies Act 2014).
- Countersigning their name to any documents that require the seal to be affixed - (often a second director will suffice or a director and the company secretary). (section 43(2)(11) Companies Act 2014)
- Signing the relevant CRO forms



# The Companies (Corporate Enforcement Authority) Act 2021

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- Signed into law on 22 December 2021 and commenced in 2022.
- The primary purpose of the Act is to transform the Office of the Director of Corporate Enforcement into a statutory and independent agency (Corporate Enforcement Authority or “CEA”) with additional resources to investigate and prosecute “white-collar crime”.

## **Leo Varadkar’s statement on the establishment of CEA:**

*“Today is a really important day for corporate enforcement in Ireland. The Corporate Enforcement Authority is now officially established. We’re giving it real teeth, making sure it has the autonomy and resources to thoroughly investigate suspected wrongdoing, such as fraudulent trading and larger, more complex company law breaches. We’re increasing staffing levels by nearly 50%, including doubling the number of Gardaí. The Authority’s budget has also been increased by almost 30%.”*



# European Union (Preventive Restructuring) Regulations 2022

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- The purpose of the Preventive Restructuring Directive (“PRD”) is to ensure that, across the EU, there are restructuring frameworks in place to assist viable businesses that are in financial difficulty to continue to operate.
- Certain of the consequential amendments to the Companies Act 2014 relate to the duties and responsibilities that directors of companies have in circumstances of financial difficulty and/or insolvency.
- Under section 281 of the Companies Act 2014, every company is required to keep adequate accounting records. Ensuring that a company complies with this obligation is the legal responsibility of the company’s directors.
- In addition, those accounting records should be kept on a continuous and consistent basis, i.e., the
- entries should be made in a timely manner and should be consistent from one period to the next.

# Directors' duties in situations of financial difficulty

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- In addition, consideration should also be taken to the challenging environment within which companies are currently operating, e.g:
  - increasing interest rates,
  - significant currency fluctuations,
  - supply chain challenges,
  - energy pricing/supply constraints and
  - uncertainty in the UK's economic outlook
- It would be responsible of directors to incorporate consideration of these matters into the review and assessment of current and future likely profitability, cash generation and capacity to discharge debts etc. as they fall due.
- It is recommended that directors of companies to whom the PRD applies should carefully consider seeking professional advice at the earliest appropriate opportunity.

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# Inability to Pay Debts – Section 570 Companies Act 2014

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- Section 570 of the 2014 Act provides that a company shall be deemed to be unable to pay its debts
- a) if:
  - i. a creditor who is owed more than €50,000 has served a demand for payment (in writing) on the company, and
  - ii. the company has, for 21 days after the service of that demand, failed to pay the amount owed (or secure or compound for it to the reasonable satisfaction of the creditor), or
- b) if:
  - i. two or more creditors who are owed, in aggregate, more than €50,000 have served a demand for payment (in writing) on the company, and
  - ii. the company has, for 21 days after the service of that demand, failed to pay the amount owed (or secure or compound for it to the reasonable satisfaction of each of the creditors), or
- c) any judgement or order of any court in favour of a creditor is returned unsatisfied in whole or in part, or
- d) if it is proved to the satisfaction of a court that the company is unable to pay its debts.

# Early Warning Tools – Section 271 Companies Act 2014

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- Two key steps that the directors can take to ensure that they are aware, on an going basis, of the company’s financial position are to ensure that:
  - adequate accounting records are maintained (which, as outlined earlier, is a legal requirement); and
  - management accounts are prepared and considered by the directors on a regular basis.

The above steps can be supplemented by the regular production of budgets and cashflow forecasts, which, if prepared having regard to realistic assumptions, will provide the directors with information on whether it is operating within budget and whether its future cashflows are likely to be sufficient to meets its obligations.



# Breach of Duties

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Two Directors can be penalised for breaching their statutory duties and may be made personally liable for some or all of a company's debts.

In certain circumstances, company directors can also be held criminally liable for breaches of company law. It is, therefore, imperative that directors are aware of their duties and obligations under company law.

Breach of a director's fiduciary duty shall not in itself affect the validity or the enforceability of any contract or other transaction, by any person, other than by the director who acts in breach of his or her duty.

## Liability to account and indemnify

- When directors act in breach of their duties, they shall be liable to do either or both of the following:
  - Account to the company for any gain made directly or indirectly or
  - Indemnify the company for any loss or damage resulting from the breach



# Examples of corporate enforcements 2022 / 2023

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**8th July 2022:** Man arrested in Carlow facing three charges of Providing False Information contrary to Section 876 of the Companies Act 2014. The charges follow an investigation by the CEA into Dublin Distillers & Co Teoranta relating to the filing of false B1 Annual Returns with the Companies Registration Office.

**12th September 2022:** Woman charged with one charge of fraudulent trading, one charge of breaching obligations to keep accounting records and one charge of furnishing a false/misleading document.

**20th October 2022:** man convicted of 7 company law offences and ordered to pay €30,000 in compensation. The charges follow an investigation by the CEA in relation to the unauthorised and unlawful use of an Auditor's Registration Number in the submission of annual returns to the CRO.

**30th January 2023:** The Corporate Enforcement Authority (CEA) has commenced an investigation into Altada, the technology firm, over allegations of company law and fraud offences.

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# Statutory records to be maintained

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- Register of members
- Register of Directors and Secretary
- Register of Beneficial Ownership
- Register of Directors Interests (s.231)
- Register of Directors Interests in Shares
- Register of charges
- Minute Book

## **Other Registers – good practice**

- Register of allotments
- Register of transfers
- Register of sealings





## Offenses

# Categories of Offences

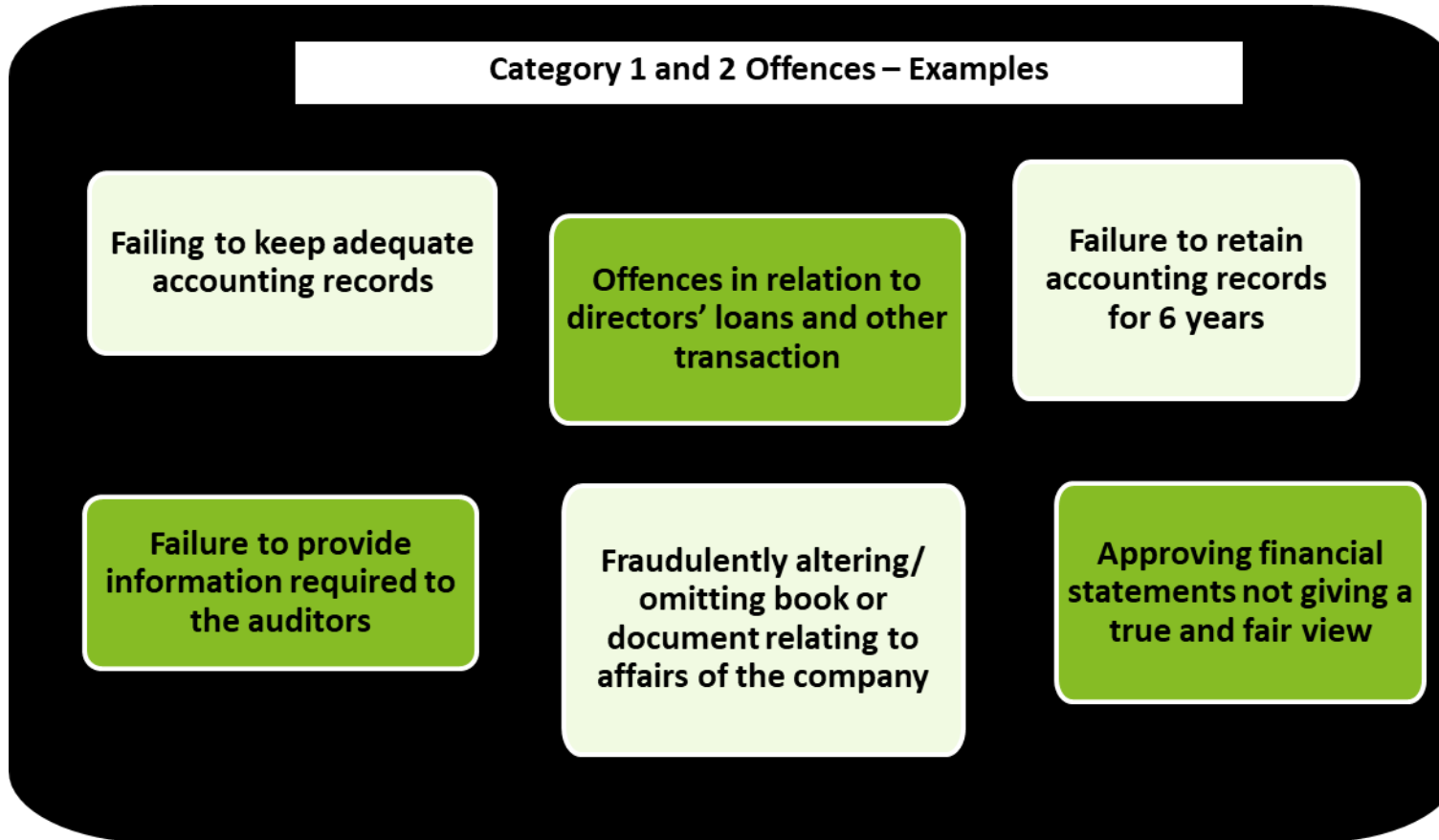
Offences can be put into 4 categories – Category 1 the most serious

Category 1	<ul style="list-style-type: none"><li>• <b>On Summary Conviction</b> - class A fine*/12 months imprisonment <b>OR both</b></li><li>• <b>On Indictment</b> - fine not exceeding €500,000/10 years imprisonment <b>OR both</b></li></ul>
Category 2	<ul style="list-style-type: none"><li>• <b>On Summary Conviction</b> - class A fine*/12 months imprisonment <b>OR both</b></li><li>• <b>On Indictment</b> - fine not exceeding €50,000/5 years imprisonment <b>OR both</b></li></ul>
Category 3	<ul style="list-style-type: none"><li>• <b>On Summary Conviction</b> - class A fine*/6 months imprisonment <b>OR both</b></li></ul>
Category 4	<ul style="list-style-type: none"><li>• <b>On Summary Conviction</b> - class A fine*</li></ul>

*\*Class A fine is defined in the Fines Act 2010 as greater than €4,000 but less than €5,000 for offences committed from 1997 onwards*

# Examples of Offences

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**Company  
Secretary**

# Company Secretary

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## Requirements for company secretary under Companies Act 2014

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- Appointment of company secretary is made by the directors – term, remuneration and conditions of appointment as the directors think fit
- Directors duty to ensure that the company secretary has the necessary skills and resources to discharge their duties as required by the Act
- Company secretary may be a corporate entity Undischarged bankrupt / person disqualified under the Companies Act cannot act as director.
- Undischarged bankrupt / person disqualified under the Companies Act cannot act as secretary
- Must be over the age of 18

# Statutory Duties of Company Secretary

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- Signing the certification with one of directors that accompanies the Reports and financial statements that are being filed with the Annual Return at the Companies Registration Office.
- The signing of the Annual Return together with a company director
- Submitting and verifying a statement of affairs in the event that that company goes into receivership
- Countersigning their name to any documents that require the seal to be affixed - (often two directors will suffice or a director and the company secretary).
- Signing the relevant CRO forms.

## **Duty of Disclosure**

- Name
  - Residential address
  - Date of birth
  - Interests in shares/debentures
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# Administrative duties of Company Secretary

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- Co-ordinating the meetings of the Board of Directors and Committees of Directors.
- Summoning a meeting of the directors on the requisition of the Chairman or by a director.
- The organisation of the Annual General Meeting and other shareholder meetings.
- Maintenance of the Register of Members and all other statutory registers.
- Other administrative duties as delegated by the Board of Directors.
- Ensuring documentation is sent to the Companies Registration Office in a timely manner.
- Publishing legal notices.
- Attend meetings of the Directors and shareholders and taking the minutes.
- Be aware of contents of Constitution and any other agreements the company may be a party too.
- Advisor to the board and main point of contact for newly appointed directors.
- Custody of the seal
- Ensure that letter head of the Company is correct.
- Ensure that the company's name is displayed correctly on signage and websites.

# PAYE Modernisation – Company Secretary

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- In scope – companies registered for payroll taxes (effective from 1 January 2019)
- Section 987(2) of the Taxes Consolidation Act 1997 states:
- “Where the person mentioned in subsection (1) (being a person who fails to comply with the PAYE regulations) is a body of persons, the secretary of the body shall be liable to a separate penalty of €3,000”
- This penalty can be applied in respect of each such failure
- Where the position of company secretary is held by an individual, companies may wish to remove this risk from the Company Secretary – possible solutions, corporate secretary in the form of a dormant limited liability entity



## Beneficial Ownership of Corporate Entities

# European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019

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European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 were signed on 22 March 2019 and came into force at that time

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- It is applicable for all Irish-registered corporate entities.
- Article 30(1) of the EU's Fourth Anti-Money Laundering Directive (4AMLD) requires all EU Member States to put into national law provisions requiring corporate and legal entities to obtain and hold adequate, accurate and current information on their beneficial owner(s) in their own internal beneficial ownership register.
- Article 30(3) of 4AMLD requires that the information referred to above be held in a central register in each Member State.
- There is a varying degree of access to third parties and the public, plus increased sanctions for non-compliance.

# Key features of the 2019 Regulations

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- Corporate entities, Industrial and Provident Societies and ICAVs incorporated in Ireland (“the relevant entity”) are required to:
  - Obtain and hold information in respect of their beneficial owners including the nature and extent of control exercised by those beneficial owners.
  - Information is required to be maintained on an internal beneficial ownership register
  - PPS numbers of each beneficial owner, where a PPS number has been issued must be obtained and provided to the Registrar upon filing – PPS numbers will be recorded by the Registrar but will not be disclosed to any authority
  - Where no beneficial owner exists or cannot be identified – details of the senior managing officials of the relevant entity must be entered on the internal beneficial ownership register
  - Filing obligation with the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (“Central Register”)



# European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019

## Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (CRBO)

### Information to be provided to the Central Register via online portal in respect of each beneficial owner/SMO:

- Forename and Surname
- Residential address
- Date of Birth
- PPS Number
- Nationality
- Country of Residence
- Statement of the nature & extent of interest held
- Statement of the nature & extent of control exercised
- Date of entry as beneficial owner
- Date of cessation as beneficial owner

*The forename & surname entered in the CRBO Portal must match the legally registered name of the natural person, i.e. the name as registered on the PPSN with the Department of Employment Affairs and Social Protection.*

### Maintaining the CRBO

- Information contained on the internal register must be aligned with the information filed with the CRBO.
- The relevant entity must deliver any changes in the entity's beneficial ownership information to the Registrar within 14 days of the relevant changes
- No filing fee with respect to any filings with the CRBO

### Access to the CRBO

#### Unrestricted Access

Authorised members of

- the Garda Síochána
- the Financial Intelligence Unit (FIU) Ireland
- the Revenue Commissioners
- the Criminal Assets Bureau (CAB)
- the Central Bank of Ireland
- the Department of Justice & Equality
- the Property Services Regulatory Authority (PSRA)
- the Law Society of Ireland
- the General Council of the Bar of Ireland
- The designated accountancy bodies
- an inspector appointed by the Director of Corporate Enforcement under section 764(1) of the Companies Act 2014

#### Restricted Access

- the general public, and
- designated persons required by Part 4 of the 2010 Criminal Justice (Money Laundering and Terrorist Financing) Act to conduct customer due diligence tests (e.g. financial institutions, accountants, auditors, tax advisers, legal professionals and dealers in expensive goods such as houses, cars, jewellery, etc.)

# European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019

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## Penalties for non-compliance

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Every relevant entity is legally obliged under Regulation 5 of SI 110/2019 to maintain an “adequate, accurate and current” register of beneficial owners, and any relevant entity that fails to comply with this requirement commits an offence and shall be liable to:-

- on summary conviction, to a Class A fine, or
- on conviction on indictment, to a fine not exceeding €500,000.

Where an in-scope relevant entity is convicted of an offence related to the CRBO, individual officers of the relevant entity can be held liable in addition to the relevant entity.

Prosecution under the 2019 Regulations can be brought either by the Registrar or the DPP.





Questions ?



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