

New Rules on Beneficial Ownership Register – Immediate Action Required

On 15 November 2016, the Department of Finance published the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the "Regulations").

The Regulations require companies and other legal entities incorporated in Ireland to take all reasonable steps to hold adequate, accurate and current information on their beneficial ownership on an internal register of the entity as and from **15 November 2016**. The Regulations affect Irish incorporated companies (including UCITS investment companies and most AIF investment companies, special purpose vehicles (SPVs) UCITS management companies, AIFMs, fund administration and depositary companies) and ICAVs, which have "beneficial owners".

Background

The Regulations are the first step in the transposition of the Fourth EU Anti-Money Laundering Directive (EU 2015/849) (AMLD4), which requires each Member State to establish a central register of beneficial ownership by 26 June 2017. The Regulations transpose Article 30(1) of AMLD4 into Irish law. Article 30(1) requires corporate and other legal entities incorporated within Ireland to hold adequate, accurate and current information on their beneficial ownership. The rationale for transposing Article 30(1) well in advance of the rest of AMLD4 is that in order for the central register of beneficial ownership to be effective from as early a date as possible after full transposition (26 June 2017), corporate entities will need to initially gather the necessary beneficial ownership data and to record this in their own corporate beneficial ownership registers. (For more information on AMLD4, see our detailed article [here](#)).

As it stands, AMLD4 provides that the information on the central register must be accessible to the following:

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

Member States may provide for wider access to the central register and it remains to be seen whether Ireland will avail of this option when transposing the remaining elements of AMLD4. Importantly, the European Commission has proposed an amendment to AMLD4 which would require the information on the central register to be made **available to the public**. This proposed amendment is working its way through the European legislative process at present. One of the principal aims of AMLD4 is to ensure that natural persons with significant economic interests in an entity are readily identifiable for the purposes of customer due diligence to combat money laundering and terrorist financing.

Scope

In line with Article 30(1) of AMLD4 the Regulations apply to all Irish companies, (apart from those listed on a regulated market and which are subject to the Transparency (Directive 2004/109/EC) Regulations 2007, as amended ("Transparency Regulations")) and ICAVs. Listed UCITS and most listed AIF investment companies are open-ended funds and are not subject to the Transparency Regulations and thus fall within the scope of the Regulations.

As the Regulations only apply to entities incorporated in Ireland, they do not affect trust structures, limited partnerships or common contractual funds (CCFs). Some trust structures will be subject to beneficial ownership requirements, but these provisions of AMLD4 have not yet been transposed into Irish law.

Definition of beneficial owner

"Beneficial ownership" means any natural person who ultimately owns or controls the relevant entity and/or on whose behalf the entity is conducting its activity. In the case of corporate entities it relates to a natural person who directly or indirectly (e.g. through other corporate entities) holds a shareholding or ownership interest of 25% plus one share or more than a 25% ownership interest.

Key obligations

1. Every entity in scope must take **all reasonable steps** to obtain and hold adequate, accurate and current information in respect of their beneficial owners. This includes:

- Name
- Date of birth
- Nationality
- Residential address
- A statement of the nature and extent of the interest held by each beneficial owner

The Register must also include details of:

- The date on which the natural person was first added to the Register as a beneficial owner
- The date on which the natural person ceased to be a beneficial owner.

2. The entity must serve notice on any natural person whom it has reasonable cause to believe to be a beneficial owner requesting the necessary information from him/her to complete the details for the internal register (unless the information has already been provided by the natural person). A natural person served with the notice is obliged to comply with the request for information within 1 month of the date of the notice.
3. The entity may (but is not obliged to) give notice to any other person (whether or not a natural person), which it has reasonable cause to believe has knowledge of the identity of a beneficial owner, seeking information from that person as to the identity of any beneficial owner or the identity of any other person likely to have knowledge of a beneficial owner and if so, to supply details of any such person and to state whether or not the particulars are being supplied with the knowledge of such person(s). A person upon which a third-party notice is served must comply with the notice within one month from the date of the notice. Information does not have to be disclosed where the recipient of the notice can claim legal professional privilege in legal proceedings.
4. The register must be updated when there has been a relevant change in beneficial ownership, i.e. where a natural person ceases to be a beneficial owner, or there has been a change in the stated particulars. Where an entity learns of such change or has reasonable cause to believe that such a change has occurred, it must serve notice on the natural person concerned seeking updated information, unless the information has already been provided by or on behalf of the natural person.

5. Beneficial owners are obliged to notify the entity of their status as a beneficial owner where they are aware, or ought to be aware, that they are a beneficial owner. This obligation only arises where the person's particulars are not already entered on the entity's internal register or where the person has been given notice by the entity to provide particulars on beneficial ownership. It should be noted that the obligation arises independently, whether or not notice has been served on the beneficial owner. Natural persons are also obliged to notify the relevant entity if they cease to be beneficial owners or if their particulars on the internal register change.
6. If, having exhausted all possible means and provided there are no grounds for suspicion by the relevant entity as to the identity of a beneficial owner, or there are doubts as to the beneficial ownership, the senior managers (including the directors and CEO) of the entity must be entered on the internal register as the "beneficial owners". In such circumstances, the entity must also keep records of all the steps taken to ascertain the beneficial owners. It should be noted of course that in the case of some corporate entities, especially UCITS and AIF funds, there may be not be any beneficial owners who are direct or indirect shareholders because of the broad-based ownership of many such funds. In such cases the directors of the fund entity will need to be entered on the register as the "beneficial owners".

Sanctions

Failure by an entity or the recipient of a notice to comply with any of the above obligations is a criminal offence and can result in the imposition of a fine of €5,000 on summary conviction.

Where the name of a person is incorrectly entered in or omitted from an entity's Register, or where default is made or unnecessary delay takes place in noting that a person has ceased to be a beneficial owner, an application can be made to the High Court to rectify the Register.

What do I need to do now?

As the Regulations apply with effect from 15 November 2016 and there are no savers or transitional periods, entities in scope must now establish an internal register of beneficial ownership in line with the obligations set out above. The Regulations are not prescriptive as to the form the register must take.

Where the beneficial owners are not known, the requirement is to take "all reasonable steps" to ensure the beneficial ownership information is obtained and entered on the internal register.

Separately, natural persons who are beneficial owners are obliged to notify entities in which they have a beneficial interest of that interest where the required information has not already been provided to the entity in question.

How can William Fry help?

The William Fry Asset Management and Investment Funds team is available to advise you on the new obligations in relation to disclosure of beneficial ownership and the steps that need to be taken to comply with the Regulations including:

- Designing and maintaining the register for an entity/providing advice as to the design and maintenance of the register
- Advice on the approach to persons who may be, or have information about beneficial owners;
- Preparation of the various notices to be served on persons believed to be beneficial owners and third parties under the Regulations
- Advice on engagement between fund entities and administrators regarding compliance with the Regulations
- Advice to corporate entities, beneficial owners, and third party notice recipients as to their ongoing obligations under the Regulations

If you would like to know more about the services which we are offering or have any queries in relation to the matters discussed above, please contact our partners listed below or your usual contact at William Fry.

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