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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 owners" on an internal beneficial ownership register as and from **15 November 2016**.

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 their beneficial owners
- Where the beneficial owners are not known, take "all reasonable steps" to ensure the beneficial ownership information is obtained and entered on the beneficial ownership register
- Where no beneficial owners can be identified, enter the names of the senior managers (including the directors and CEO) of the relevant entity on the beneficial ownership register as the "beneficial owners".

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 relevant entity in question.

A beneficial owner is an individual who ultimately owns or controls the relevant entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the relevant entity, or through control via other means.

Background

The Regulations are the first step in the transposition of the Fourth EU Anti-Money Laundering Directive (EU 2015/849) (AMLD4), which ultimately requires each Member State to establish a central register of beneficial ownership by 26 June 2017. This central register has yet to be established in Ireland and it has recently been indicated that it is not likely to be in place until early October 2017. We understand that there will be a six month grace period from the date the register is established during which entities in scope can make their filings without incurring any penalties. For corporate entities, the central register will be operated by the Companies Registration Office.

The Regulations transpose into Irish law Article 30(1) of AMLD4, which requires corporate and other legal entities incorporated in Ireland to hold adequate, accurate and current information on their beneficial ownership on internal registers. The rationale for transposing Article 30(1) well in advance of the rest of AMLD4 was that in order for the central register of beneficial ownership to be effective from mid-June 2017, corporate entities would need to initially gather the necessary beneficial ownership data and to record this in their own internal beneficial ownership registers. It will be necessary to then submit this information to the central register once AMLD4 is fully transposed.

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 is not yet known whether Ireland will avail of this option when transposing the remaining elements of AMLD4. One of the principal aims of AMLD4 is to ensure that natural persons with significant economic interests in a relevant entity are readily identifiable for the purposes of customer due diligence to combat money laundering and terrorist financing.

Importantly, the European Commission has proposed certain amendments to AMLD4 which would impact on the operation of the central register. These proposed amendments are working their way through the European legislative process at present, and it is not yet possible to say what effect they will have until this process has concluded.

Scope

The Regulations apply to all Irish companies and other corporate bodies. Other corporate bodies would include, for example, Industrial and Provident Societies and ICAVs.

There is an exemption for companies that are listed on a regulated market (for example the Main Market of the Irish Stock Exchange) that are subject to disclosure requirements consistent with the law of the EU. This would include companies that are subject to the Transparency (Directive 2004/109/EC) Regulations 2007. In addition, companies that are subject to equivalent international standards that require disclosure of beneficial ownership information are not in scope.

As the Regulations only apply to incorporated entities, they do not affect trust structures or limited partnerships. Some trust structures will become subject to beneficial ownership requirements, but these provisions of AMLD4 have not yet been transposed into Irish law.

Definition of beneficial owner

"Beneficial owner" means any **natural person** who ultimately owns or controls the relevant entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the relevant entity or through control via other means. A shareholding of 25% plus one share or an ownership interest of more than 25% held by a natural person will be an indication of direct ownership, whereas a shareholding of 25% plus one share or an ownership interest of more than 25% held by a corporate entity(ies) under the control of a natural person(s) will be an indication of indirect ownership. Finally, control via other means may be determined in accordance with the criteria for establishing a parent/subsidiary relationship.

Key obligations

1. Every relevant 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 beneficial ownership register must also include details of:

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

It should be noted that the Regulations do not provide for a group exemption. Accordingly, each relevant entity in a group structure must establish its own beneficial ownership register, even in circumstances where the ultimate beneficial owners of all the relevant entities in the group are the same.

The Regulations are not prescriptive as to the form the beneficial ownership register must take.

2. The relevant 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 beneficial ownership 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 relevant 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 beneficial ownership 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 a relevant 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 relevant 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 relevant entity's beneficial ownership register or where the person has been given notice by the relevant 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 beneficial ownership register change.

6. If it has not been possible to identify a beneficial owner after exhausting all possible means to do so, and provided there are no grounds for suspicion by the relevant entity that a beneficial owner actually exists or where there are doubts as to the beneficial ownership, the senior managers (including the directors and CEO) of the relevant entity must be entered on the beneficial ownership register as the "beneficial owners". In such circumstances, the relevant 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 which are not subject to the Transparency Regulations, there may not be any beneficial owners who are direct or indirect shareholders because of the broad-based ownership of many such corporate entities. In such cases the directors, CEO and other senior managers of the relevant entity will need to be entered on the beneficial ownership register as the "beneficial owners".

Sanctions

Failure by a relevant 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 a relevant entity's beneficial ownership 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 beneficial ownership register.

How can William Fry help?

William Fry 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 beneficial ownership register for a relevant entity/providing advice as to the design and maintenance of the beneficial ownership 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 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.

Contact Us



Barbara Kenny

T: +353 1 639 5146

E: barbara.kenny@williamfry.com



Deirdre Mooney

T: +353 1 489 6437

E: deirdre.mooney@williamfry.com