

Beneficial Ownership of Corporate Entities - The New Rules

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the “**2019 Regulations**”) were signed on 22 March 2019. They revoke the existing European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the “**2016 Regulations**”), which required corporate entities to keep information relating to their beneficial ownership on an internal register. This requirement continues under the 2019 Regulations, along with significant new rules about beneficial ownership information being kept in a central register and made available to the public, State authorities and financial institutions.

The 2019 Regulations transpose into Irish law Article 30 of the Fourth EU Anti-Money Laundering Directive (**AMLD4**), as amended by the Fifth EU Anti-Money Laundering Directive (**AMLD5**).

In short, the 2019 Regulations:

1. Require corporate entities incorporated in Ireland (apart from listed companies subject to transparency rules), including ICAVs and Industrial and Provident Societies (a “**relevant entity**”) to obtain and hold information in respect of their beneficial owners, including the nature and extent of the control exercised by those beneficial owners. This information must be kept on an **internal beneficial ownership register**. There is now a requirement to obtain the **PPS numbers** of beneficial owners, where available. Where a beneficial owner does not exist or cannot be identified, the details of the “**senior managing officials**” of the relevant entity must instead be entered on the internal register. These rules apply from 22 March 2019.
2. Require relevant entities to **provide beneficial ownership information on request to certain authorities** (including the Revenue Commissioners, the Gardaí, State competent authorities etc.). The information must also be provided to “designated persons” (i.e. persons or firms who are obliged to carry out anti-money laundering checks) when entering into a business relationship, or carrying out certain one-off transactions with those “designated persons”. This is a new requirement and came into effect from 22 March 2019.

3. Establish a **Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies** (the “**RBO**”) and require relevant entities to transmit beneficial ownership information to the RBO. This is a new requirement. The RBO began accepting filings on 29 July 2019. Existing relevant entities have until 22 November 2019 to submit their beneficial ownership information to the RBO. Entities incorporated after 22 June 2019 will have 5 months from the date of incorporation to make the required filings.
4. Identify the persons who can **access the information held in the RBO**. The important point here is that most of the information on the RBO will be accessible to the general public.
5. Provide for the reporting by competent authorities and “designated persons” of **discrepancies** on the RBO.
6. Create **offences** for breaches of the rules. There is the possibility of conviction on indictment and a €500,000 fine for certain breaches now, representing a significant increase from the maximum fine of €5,000 under the 2016 Regulations.

What do I need to do now?

- If your relevant entity does not already have an internal beneficial ownership register, you must take steps to establish one. Where necessary, issue notices to persons believed to be beneficial owners of the relevant entity or to persons believed to have information about the beneficial owners.

- If your relevant entity already has an internal beneficial ownership register, ensure that it is up to date. Be aware of the requirement to now gather the PPS numbers of beneficial owners and also to include the name and registered number of the relevant entity on the register.

- Be aware of the requirement to allow competent authorities to have access to the internal register on request.

- Consider whether beneficial ownership information needs to be disclosed to designated persons when entering into certain business relationships or transactions where the designated person is obliged to carry out anti-money laundering checks.

- Be in a position to submit all beneficial ownership information to the new RBO by 22 November 2019 at the latest.

Scope

The 2019 Regulations apply to “**relevant entities**” which includes all Irish companies, in addition to other corporate bodies such as 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 (now Euronext Dublin)) that are subject to disclosure requirements consistent with the law of the EU. This includes 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 with the 2016 Regulations, the 2019 Regulations do not provide for a group exemption. Accordingly, each company in a group structure must establish its own beneficial ownership register, even if they all have the same ultimate beneficial owner(s).

Definition of beneficial owner

The definition of “**beneficial owner**” is taken from Article 3(6)(a) of AMLD4. It means “*the **natural person(s)** who ultimately own(s) or control(s) a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means.*” AMLD4 states that “control via other means” may be determined, amongst other things, in accordance with the criteria for establishing a parent/subsidiary relationship, such as a company having a majority of the voting rights in another company.

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, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural persons(s), will be an **indication of indirect** ownership.

Key obligations: internal beneficial ownership register

The 2019 Regulations carry over the obligations from the 2016 Regulations with regard to relevant entities maintaining an internal beneficial ownership register, with some modifications. These rules with regard to the internal register are in force from **22 March 2019**.

1. Every relevant entity 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, or the control exercised, by each beneficial owner
 - The Personal Public Services (PPS) number (if any) of each beneficial owner.

The requirement to collect PPS numbers is new. The PPS number must not be entered on the internal register of the relevant entity and must not be disclosed to any person, including competent authorities and designated persons. The only manner in which the PPS number is to be disclosed is when making a filing to the RBO as explained below.

The internal register must also include details of:

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

The 2019 Regulations are not prescriptive as to the form the internal register must take, but the information must be “associated” with the name and registered number of the relevant entity in question.

2. The relevant entity **must** serve notice on any natural person whom it has reasonable cause to believe to be a beneficial owner of it 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). The recipient has one month to comply with the request.
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 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). The recipient has one month to comply with the request. Information does not have to be disclosed where the recipient of the notice can claim legal professional privilege in legal proceedings.
4. The internal register **must** be updated when there has been a change in beneficial ownership details, 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. The recipient has one month to comply with the request.
5. Beneficial owners are **obliged** to notify the relevant entity of their status as a beneficial owner where, for a period of at least one month:
 - they are aware, or ought to be aware, that they are a beneficial owner of the relevant entity;
 - the person’s particulars are not already entered on the relevant entity’s internal register; and
 - the person has not been given notice by the relevant entity to provide particulars on beneficial ownership.

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 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 of the relevant entity, the names of the **senior managing officials (SMO)** (which term *includes* the directors and CEO of the entity) of the relevant entity must be entered on the internal register as the “beneficial owners”. The date of birth, nationality and residential address of the SMOs must be included, in addition to a statement of the nature and extent of the control exercised by them.

Where the relevant entity is resorting to inserting the name of an SMO on the internal register, it must keep records of all the steps it has taken to ascertain the beneficial owners.

Access to internal register

New provisions allowing certain persons to have access to the information on the internal register of a relevant entity are in force from 22 March 2019. As mentioned above, the PPS numbers of beneficial owners must not be disclosed when providing access to the internal register.

Firstly, a relevant entity must provide any member of the Garda Síochána, the Revenue Commissioners, any State competent authority, the Criminal Assets Bureau or any inspector appointed under the Companies Act 2014 with timely access, on request, to its internal beneficial ownership register.

Secondly, where a relevant entity enters into certain business transactions or relationships with a “**designated person**” (this term is set out in anti-money laundering legislation and includes banks, legal professionals, accountants and trust and company service providers (amongst others)), the entity must:

- i. Provide, in addition to information about its legal ownership, information on its beneficial ownership when the designated person is carrying out customer due diligence;
- ii. On request from the designated person, provide information identifying all the beneficial owners of the relevant entity; and
- iii. Notify the designated person of any change to its internal register that occurs which is relevant to the occasional transaction in question or that occurs during the course of the business relationship, and the date on which the change occurred. This must be done within 14 days of the date on which the relevant entity became aware of the change.

The Central Register (RBO)

Part 3 of the 2019 Regulations establishes the RBO, which began accepting filings on 29 July 2019 after a slight delay.

A Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies (the “**Registrar**”) has been appointed with responsibility for the RBO.

What must be submitted?

The information contained on the internal beneficial ownership register of a relevant entity must be filed with the Registrar and kept up to date. Companies will have 14 days from the date they were obliged to update their internal register to submit these updates to the RBO.

The PPS numbers of beneficial owners must also be submitted, but the 2019 Regulations stipulate that the Registrar must not disclose these PPS numbers and only an encrypted or ‘hashed’ version of the number will be stored by the Registrar.

Beneficial owners who do not have a PPS number will be obliged to submit a Declaration as to Verification of Identity containing their name, date of birth, nationality and address. The beneficial owner must solemnly declare this information to be correct and true and have this Declaration verified, witnessed and signed. The RBO will announce further details about this process in due course.

The information on the RBO will be deleted 10 years after the dissolution of the relevant entity.

When?

All entities in scope that are in existence before 22 June 2019 must make their filings by **22 November 2019**. A relevant entity that comes into existence after 22 June 2019 will have 5 months from the date of its incorporation to submit its beneficial ownership information to the RBO.

Who?

An officer or employee of a relevant entity may file the information. It may also be filed by a third party known as a “**presenter**” (for example, a provider of corporate secretarial services). The name, address, phone number and email address of any officer, employee or presenter must be stated on the filing, in addition to the capacity in which that person is acting.

How?

The information must be submitted by way of online filing on the RBO website.

Access to the RBO

Certain personnel within the following persons/bodies have **unrestricted access** to the information held on the RBO:

- Garda Síochána
- Financial Intelligence Unit Ireland
- Revenue Commissioners
- Criminal Assets Bureau
- Central Bank of Ireland
- Department of Justice and Equality
- Property Services Regulatory Authority
- Law Society of Ireland
- General Council of the Bar of Ireland
- Designated accountancy bodies

In addition, an inspector appointed under the Companies Act 2014 has unrestricted access to the RBO.

The following have **restricted access** to the information held on the RBO:

- Designated persons (i) entering into occasional transactions or business relationships with a relevant entity or (ii) taking customer due diligence measures with regard to a relevant entity
- Members of the public.

Persons with restricted access will be able to view the following beneficial ownership information:

- Name
- Month and year of birth
- Country of residence
- Nationality
- Nature and extent of interest held or control exercised.

The difference between unrestricted access and restricted access is that persons with restricted access will not be able to view the full date of birth or residential address of the beneficial owner. In addition, they may have to pay an administrative fee to view the beneficial ownership information. For persons with restricted access, there will be no right of access to information in relation to a minor who is a beneficial owner, unless the designated person or member of public can explain (to the satisfaction of the Registrar) why it is in the public interest that the information regarding the minor be disclosed to them.

Reporting of discrepancies on the RBO

Where a designated person or State authority (i.e. Garda Síochána, Revenue Commissioners, Criminal Assets Bureau etc.) forms the opinion that there is a discrepancy between the information on the internal register of a relevant entity and the information on the RBO, then that person or body is obliged to inform the Registrar of that opinion in a timely manner, giving details of the discrepancy in question.

If the Registrar considers it appropriate to do so, details of the discrepancy can be entered on the RBO and the entity concerned will be informed of this happening. The relevant entity then has an opportunity to dispute the reporting of the discrepancy or to amend the beneficial ownership information on the RBO.

Sanctions

There are a variety of sanctions for breach of the different obligations under the 2019 Regulations. Most importantly, failure by an entity in scope to maintain an internal beneficial ownership register and/or to file beneficial ownership information with the RBO can result in a maximum fine of up to €500,000.

Where the name of a person is incorrectly entered in or omitted from a relevant entity's internal 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 by any person aggrieved or any other interested party. Any other interested party is a reference to a member of the relevant entity and any other person who is a beneficial owner of the relevant entity. The High Court may order the payment of compensation by the relevant entity for any loss sustained by any party aggrieved.

How can William Fry help?

William Fry is available to advise you on the obligations in relation to disclosure of beneficial ownership and the steps that need to be taken to comply with the 2019 Regulations.



Key contacts

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.



Adam Synnott
Partner,
Corporate

+353 1 639 5108
adam.synnott@williamfry.com



Barbara Kenny
Partner,
Corporate

+353 1 639 5146
barbara.kenny@williamfry.com



Patricia Taylor
Partner, Asset Management &
Investment Funds

+353 1 639 5222
patricia.taylor@williamfry.com



Deirdre Mooney
Head of
Company Secretarial

+353 1 489 6437
deirdre.mooney@williamfry.com

Contributed by:
Aoife Kavanagh

Knowledge Lawyer (Corporate)
+353 1 639 5306
aoife.kavanagh@williamfry.com



WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

T: +353 1 639 5000 E: info@williamfry.com

williamfry.com