

New Obligations to provide details of Beneficial ownership of corporate entities

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The Minister for Finance has recently made new regulations¹ (the **2019 Regs**) giving effect to the EU Directive 2015/849 on anti-money laundering as amended by EU Dir 2018/843 (the **Directive**).

Overview

The 2019 Regs will require

1. private² companies formed and registered under the Companies Acts; and
2. societies registered under the Industrial and Provident Societies Acts³

to maintain a register of their beneficial owners. This new register will be in addition to the register of shareholders.

In many cases the registered holders of 100% of the shares of the company⁴ will also be the beneficial owners of 100% of the company. However, this will not always be the case – shares are often held by a nominee. From now a company will also have to have a register of its beneficial owners.

From the information on that register each company will be required to make a return to a newly created central registrar – the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies (the **RBO**).

The RBO will maintain a Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the **Central Register**). Certain third parties will have access to the Central Register as mentioned below.

What will be required to be delivered to the RBO will be:

1. the name, date of birth, nationality, and residential address of each beneficial owner of the company (together with the Personal Public Service number of each beneficial owner to whom such a number has been issued⁵);
2. a statement of the nature and the extent of the interest held, or the nature and extent of the control exercised by each such beneficial owner; and
3. the name and number of the entity as they appear on the register of companies or the register kept under the Industrial and Provident Societies Acts.

Who is a Beneficial Owner?

The 2019 Regulations adopt the definition of Beneficial Owner set out in the Directive.

A “Beneficial Owner means

any natural person(s) who ultimately owns or controls the customer⁶; or

¹ Statutory Instrument 110 of 2019

² The 2017 Regulations do not apply to publicly quoted entities subject to EU law disclosure requirements

³ Agri- business and marine business Co-ops are typically the entities registered under these Acts

⁴ In this memorandum, in the interest of readability we will refer only to “companies”, but this should be understood to also include societies

⁵ Non-Irish owners may not have a PPS number

⁶ The AML Directives are in large part directed to the activities of financial institutions hence the reference to the customer [of the financial institution]

the natural person(s) on whose behalf a transaction or activity is being conducted,

and

includes at least, in the case of corporate entities, the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interests in that company including through control via other means”.

Register to be kept by a company

All companies will be obliged to take

“all reasonable steps to obtain and hold adequate, accurate and current information in respect of its beneficial owners, specifically – the name, date of birth, nationality and residential address of each beneficial owner of it, a statement of the nature and extent of the interest held or control exercised by each such beneficial owner and (where one has issued the PPS number of each such beneficial owner”.

The register maintained by the company must also include the date on which each natural person was entered in the register as a beneficial owner of the company and the date on which each natural person has ceased to be such an owner.

Direct and Indirect Ownership

The Directive and the 2019 Regulations capture direct and indirect ownership of companies.

Echoing the Directive, the 2019 Regulations provide that beneficial owners who own 25% plus one share of the ownership or have an ownership interest of more than 25% of the company are to be regarded as having direct ownership.

If after exhausting all possible means of enquiry as to its beneficial ownership a company determines that there is no natural person who owns 25% plus one share or has an ownership interest of more than 25% then the company is obliged to regard its senior managing officials as its beneficial owners and make up its register accordingly.

Accessing a Company’s Register of Beneficial Ownership

A company will be obliged to make available its register of beneficial ownership to each of the following:

- (a) An Garda Siochana;
- (b) The Revenue Commissioners;
- (c) The Criminal Assets Bureau; and
- (d) the Central Bank and other competent authorities (as set out in the Criminal Justice Act 2010)

Accuracy of information

The 2019 Regulations impose obligations on beneficial owners to ensure that a company has sufficient information to at all times maintain its register of beneficial ownership up-to-date, accurate and complete.

Companies will be obliged to see that information in their private beneficial ownership register and the information filed with the RBO is at all times aligned and up-to-date.

Penalties

For a company: failure to properly keep and maintain a beneficial ownership register and/or to make proper returns to the RBO will constitute an offence.

For officers of a company: if a company is convicted of an offence and it is proved that the offence was committed with the consent or connivance of any director, manager, secretary or other officer then the officer will also be guilty of the same offence and punished accordingly. Officer should be aware that pleading ignorance of the obligation or the extent of compliance by the company will not be a defence.

For individuals: a company is required to obtain the required information from each natural person which it has reasonable cause to consider to be a beneficial owner of it. A person who fails to properly comply with a notice from a company served under the 2019 Regulations commits an offence

A conviction for an offence will result in a fine of €5,000 on summary conviction or a fine of up to €500,000 if conviction is on indictment.

The Central Register

The Central Register will be operational from 22 June 2019.

Companies will be obliged to file with the RBO the information on their beneficial ownership derived from their own register of beneficial ownerships.

Companies already in existence will have five months from 22 June 2019 to make their filing. Companies that are incorporated after 22 June 2019 will be obliged to make a return to the RBO within five months of their incorporation.

The Central Register of the RBO will not be available to the public generally.

With appropriate authority, a member of the Garda Síobhan, a member of FIU Ireland⁷, an officer of the Revenue Commissioners and an officer of the Criminal Assets Bureau shall have the right to inspect the Central Register. Each of the those (subject to being duly authorised) will have unrestricted access to the Central Register.

Additionally, limited access to the Central Register will be made available to credit institutions, auditors, lawyers, trust and company service providers among others who are going to engage in a commercial transaction with a company and for which purpose need to satisfy themselves as to the beneficial ownership of that company.

What should companies do?

If they have not already done so, companies should establish their own register of beneficial ownership without delay and should be ready to make their return to the RBO by no later than 22 November 2019 as a delay beyond that will leave a company open to fines.

For further information, please contact John Olden, Corporate Partner or another member of the Corporate Team at Eugene F. Collins



John Olden
Partner, Corporate
T +353 1 202 6411
E jolden@efc.ie

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⁷ Financial Intelligence Unit Ireland – a body working with the Garda Síochána