



FINANCIAL SERVICES

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# New Rules on Beneficial Ownership: Key Considerations for Fund Boards and Irish Fund Administrators

by **Daragh O'Malley, Damien Barnaville**

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The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the Regulations) came into force on 15 November 2016.

An analysis of the key provisions of the Regulations can be found [here](#).

In summary, the Regulations require companies and other legal entities incorporated in Ireland to maintain an internal register with adequate, accurate and current information on their beneficial owners.

The Regulations therefore apply to both UCITS and AIFs which are incorporated as investment companies or ICAVs, with the exception of investment companies or ICAVs that are listed on a regulated market and are subject to the Transparency (Directive 2004/109/EC) Regulations 2007 (the Transparency Regulations). This exemption will therefore apply to closed-ended listed funds but not to open-ended listed funds.

This article discusses some of the questions that arise in relation to the impact of the Regulations on Irish corporate type fund structures.

## **Who should maintain the beneficial ownership register on behalf of a corporate fund?**

The board of directors of an Irish fund, while having overall responsibility for ensuring that the fund complies with the provisions of the Criminal Justice Money Laundering and Terrorist Financing) Act 2010 typically delegate certain duties to the fund's Administrator. In many cases, the fund's Administrator will also act as transfer agent and registrar for the fund and accordingly maintains the fund's share register.

Under the terms of the Administration Agreement between an Irish fund and an Administrator, the Administrator is often required to perform customer due diligence (CDD) on the investors in the fund as part of the subscription process. This involves identifying and verifying the identity of the fund's shareholders, and in some cases, the identification of beneficial owners.

Given that the Administrator of a fund is the entity that is performing CDD on the participating shareholders in the fund, there may be an expectation from fund boards that Administrators who are performing the registrar and transfer agency role for the fund will create and maintain the fund's beneficial ownership register. This obligation would be in

addition to an Administrator's current obligation to maintain a register of shareholders in a fund which will only list the registered holders of the shares who are not necessarily the beneficial owners. In many cases, nominee companies will be listed as the registered holder of the shares.

While the obligation to create and maintain the beneficial ownership register for the fund falls clearly on the board of directors of the fund, it would be prudent for directors of affected Irish funds to raise this point for discussion with their fund Administrators to determine who is best placed to create and maintain the beneficial ownership register for the fund.

The requirement for a fund which is in scope of the Regulations to have a beneficial ownership register in place applies from 15 November 2016 and therefore fund boards should consider this matter if they have not already done so. It is also a requirement that the beneficial ownership information is held in a centralised register by 26 June 2017, such date being the deadline for the implementation of the fourth AML Directive (AML4) (EU 2015/849) into Irish law.

It remains to be seen whether information on the centralised register will be made available to the public. As matters stand, AML4 gives discretion to each member state in relation to who is entitled to view the relevant shareholding information on the centralised register. Significantly, however, the European Commission has proposed an amendment to AML4 which, if passed, would require the information to be made available to the public. If such information is to be made available to the public, this may raise some concerns for certain shareholders as the ability for shareholders to keep their economic interests in an entity private has always been viewed as attractive.

### **Should existing Administration Agreements be updated to reflect the additional obligations on Administrators to maintain the Beneficial Ownership Register?**

If the Administrator of an Irish fund agrees to create and/or maintain the beneficial ownership register on behalf of a fund, existing Administration Agreements may need to be updated to contractually provide for this obligation.

Under the Regulations, an entity is obliged to take "all reasonable steps" to obtain and hold adequate, accurate and current information in respect of its beneficial owners. In order to comply with this requirement, an entity must prepare various statutory notices to be served on persons believed to be beneficial owners and also on third parties in certain cases. An entity must also take measures to update its beneficial ownership register where it has reasonable cause to believe that there has been a relevant change to the register. If these tasks are to be delegated to Administrators, this will create new and potentially significant obligations for them.

Currently, many fund Administrators are adopting a wait and see approach before taking any firm stance regarding their role in assisting corporate funds in the preparation and maintenance of a beneficial ownership register.

### **Industry Response to the Regulations**

In the absence of any guidelines to assist the funds industry in relation to the implementation and interpretation of the Regulations, there exists some uncertainty at present regarding the next steps for fund boards to take regarding the preparation of the beneficial ownership register.

In an attempt to obtain greater clarity, Irish Funds, the representative body for the Irish funds industry, is currently seeking to obtain guidance from the Department of Finance on how certain provisions of the Regulations will operate in practice.

## **Next Steps**

Fund boards need to take steps to create their beneficial ownership register and to comply with the Regulations.

Administrators will need to consider whether the creation and maintenance of the beneficial ownership register is a service that they wish to deliver. If they do wish to deliver this service, they will need to ensure they have the necessary systems and procedures in place to do so.

The publication of any further commentary or guidance on the Regulations from the Department of Finance will be viewed as very welcome.

If you would like to discuss any matters in relation to the requirements of the Regulations, please contact Daragh O'Malley at [domalley@lkshields.ie](mailto:domalley@lkshields.ie), Damien Barnaville at [dbarnaville@lkshields.ie](mailto:dbarnaville@lkshields.ie) or your usual LK Shields contact.

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