



COMPANY SECRETARIAL AND COMPLIANCE

Beneficial Ownership – Not so private anymore

by

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Regulations concerning the beneficial ownership of companies have now been in force since last November.

Previously beneficial ownership of Irish companies could remain private. Now details of beneficial ownership must be obtained and kept up to date in a register.

Who is a beneficial owner?

An individual who ultimately owns or controls a legal entity through direct or indirect ownership of 25% plus of the shares or voting rights or ownership interest in an entity.

Who do the regulations apply to?

All companies and other legal entities incorporated in Ireland must keep a beneficial ownership register. Companies listed on a regulated market or which are subject to equivalent international standards requiring disclosure of beneficial ownership are exempt.

What information must be retained in the beneficial ownership register:

The Register must contain the name, address, date of birth and nationality of the person identified as the beneficial owner. A statement of the nature and extent of their ownership and date of becoming or ceasing to be a beneficial owner must also be kept. If a company has exhausted all means of ascertaining its beneficial ownership, or where there is doubt that an individual is a beneficial owner, then the names of the senior managing officials of an entity (including directors and the CEO) must be inserted on the Register instead.

Where a relevant entity has reasonable cause to believe that a person listed on the beneficial register has ceased, or the details on the Register are out of date, it must take steps to update the information on the Register.

Who is responsible for collecting the information:

Relevant entities must take all reasonable steps to obtain and hold adequate, accurate and current information on their beneficial ownership register. They must serve notice on any natural person whom it

has reasonable cause to believe is a beneficial owner. Any person served with a notice must provide the relevant information within one month of the date of any such request.

What are the sanctions?

Failure to keep a register of beneficial ownership is a criminal offence and can result in a fine of up to €5,000. The Irish High Court has the power to order rectification of the Register and can determine disputes as to whether a party actually holds a beneficial ownership.

What's coming?

We can expect further measures to fully transpose the regulations over the coming months. This will require the establishment of a central register of beneficial ownership, which in all probability will be maintained by the Companies Registration Office.

At this stage it is not clear what form the central register will take and whether it will be publically accessible, however your company should be prepared.

About the Author