



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Compliance Agenda - June 2019

by

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We are delighted to publish the latest edition of our newsletter Compliance Agenda. It contains a round-up of all the latest legal updates of interest to Company Secretaries, Company Directors and Compliance Officers.

The Essential Guide to Ultimate Beneficial Ownership Disclosures in Ireland

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 ("2019 Regulations") were signed on 22 March 2019. The 2016 Regulations[1] that came into force on 15 November 2016 have been revoked and replaced by the 2019 Regulations. In effect, the 2019 Regulations reinstate and enhance the obligations which were contained in the 2016 Regulations.

Entities that the 2019 Regulations apply to

As with the 2016 Regulations, the 2019 Regulations apply to all "Relevant Entities", which are defined as corporate or other legal entities incorporated in the State. This definition includes private limited companies (which account for over 90% of the companies incorporated in the state) and other bodies corporate. However, an exemption exists for companies listed on a regulated market that is subject to disclosure requirements consistent with the laws of the EU or to equivalent international standards.

Definition of Beneficial Ownership

'Beneficial Ownership' is given the meaning provided by Article 3(6) (a) of the Directive[2]. The beneficial owner of a Relevant Entity is a natural person(s) who ultimately owns or has control of 25% plus one share of the equity or voting/ control rights, either directly or indirectly (a "beneficial owner").

Key Areas of the 2019 Regulations

1. Creation of the Central Register of Beneficial Ownership

On the effective date, 22 June 2019, a new Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies ("the Central Register") will be created.

A registrar will be appointed to oversee the Central Register and this is likely to be the Registrar of Companies.

2. Access to the Central Register

Access to the Central Register is provided for in a two tier approach.

Tier one access

Individuals acting on behalf of Garda Síochána, the Financial Intelligence Unit (FIU), the Criminal Assets Bureau, the Revenue Commissioners and other competent authorities will be entitled to all the information

on the register, subject to certain safeguards (that is, the request must come from an individual of or above a specified position or rank, acting on the authority of an individual of or above a specified higher rank).

Any such authority (save for the FIU) may disclose the information they receive from the Central Register to a corresponding authority in any Member State of the EU.

Tier two access

Designated Persons will have a restricted right of access to information on the Central Register. They will be entitled only to details of a beneficial owner's name, country of residence, nationality, month and year of birth and nature and extent of ownership and control.

Members of the public will be entitled to inspect those restricted items of information on the Register. Certain information such as PPS numbers will be "hashed" to keep it secure and will not be available for inspection.

Minors

Also, where a beneficial owner is a minor, the Designated Person or member of the public must demonstrate to the Registrar's satisfaction that there is a public interest in them having the requested information.

3. Mandatory reporting requirements to the Central Register and associated Deadlines

a) Initial obligations

Relevant Entities which exist prior to the effective date must submit the required beneficial owner information to the Central Register within 5 months of the effective date, ie 22 November 2019. Newly incorporated companies incorporated after the 22 June 2019 will have five months from the date of incorporation to deliver their information.

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 submitted on the initial return. Such officials include directors and the CEO of a Relevant Entity.

b) Ongoing Obligations

Upon completion of the required filing detailed above, Relevant Entities will also be required to record changes to their beneficial ownership (including to the details of the beneficial owners) on the Central Register within 14 days of such a change occurring.

4. Enhancements to the 2016 Regulations

Under the 2016 Regulations, Relevant Entities were required to obtain and maintain the following information on their beneficial owners on an internal Ultimate Beneficial Owner Register ("UBO Register").

- Name
- Date of birth
- Nationality
- Residential address
- The date each natural person was entered into the register as a beneficial owner
- The nature and extent of ownership or control
- The date when each such natural person ceased to be a beneficial owner

As an additional requirement to those introduced by the 2016 Regulations, the 2019 Regulations now require Relevant Entities to obtain their beneficial owners' PPS numbers (where the beneficial owner has been issued with one) and to submit the PPS numbers with the other required information to the Central Register.

5. Occasional Transactions with Designation Persons

If a Relevant Entity enters into an "occasional transaction"[3] with a "Designated Person" [4]or forms a

business relationship with a Designated Person then the Relevant Entity must provide the Designated Person:

- a) With details of its beneficial ownership as well as legal ownership: and
- b) On request, the information identifying all the beneficial owners of the Relevant Entity.

Having done so, they are then under an obligation to notify the Designated Person of any changes to the beneficial owners of the Relevant Entity within 14 days from the date on which the Relevant Entity became aware of any change.

6. Penalties for failure to comply with the Regulations

As under the 2016 Regulations, the Regulations stipulate that if:

- a) any details are entered incorrectly in or omitted from the Central Register, or
- b) a default is made or unnecessary delay takes place in updating the Central Register to reflect that a person has ceased to be a beneficial owner then the aggrieved person or any other interested person may apply to the High Court for the Central Register to be amended. The High Court may refuse the application or it can order for the Central Register to be amended or require the Relevant Entity to compensate the aggrieved person for any loss sustained.

The Regulations confirm that “any other interested party” means any other person who is a member or other beneficial owner of the Relevant Entity.

A Relevant Entity who breaches the Regulations may be liable to a class A fine (a fine of up to €5,000) or, on indictment, a fine not exceeding €500,000.

In addition to these fines, custodial sentences of up to 12 months can be imposed on any person who makes a statement to the Registrar which is false in a material particular, and does so knowingly or recklessly.

Where an offence is found to have been committed by a Relevant Entity under the Regulations, and is proved to have been committed with the consent or connivance of any of its officers, those officers will also be guilty of an offence.

Footnotes

[1] The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016.

[2] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015

[3] An occasional transaction is a transaction for which a Designated Person must apply customer due Diligence.

[4] A designated person for this purpose is an organisation which is required to carry out anti-money laundering due diligence on its customers or clients, such as credit institutions, banks, accountants, solicitors etc.

Compliance Statements and Reputational Risk

Section 225 of the Companies Act 2014 (“Act”) introduced a requirement on directors of the following types of Irish company to include an annual compliance statement (“Compliance Statement”) in the directors’ report accompanying the company’s financial statements for all financial years which commenced on or after 1 June 2015.

Public limited companies; and

Private companies with a balance sheet of over €12.5m and turnover of over €25m.

Reputational Risk

As failure to meet compliance obligations are one of the biggest sources of reputational risk for companies, Directors need to ensure that the required actions are taken and that the necessary supports are in place to enable them to comply with their responsibilities. It is worth noting that where the Directors of a company are unable to confirm that the requirements set out in s.225 (2) have been carried out, they will have to explain why not.

Directors Responsibilities

In the Compliance Statement, the directors must (i) acknowledge their responsibility for securing the Company's compliance with its relevant obligations and (ii) confirm, on a "comply or explain" basis, that the assurance measures have been undertaken.

Relevant Obligations

The relevant obligations are those relating to all tax laws and those company law provisions where failure to meet this is a category 1 or category 2 offence, or a serious Market Abuse or Serious Prospectus offence

Next Steps

The actions that need to be taken include:

- draw up an appropriate policy statement regarding the company's compliance with its relevant obligations;
- put in place appropriate arrangements or structures to secure material compliance with the company's relevant obligations; and
- Review these arrangements or structures during the financial year to which the Directors' Report containing the Compliance Statement relates.

We assist our clients with all aspects of compliance statements including:

- Providing training and advice to your Board of Directors on the requirements;
- Preparing the compliance statement policy;
- Helping to create and implement structures, arrangements and controls to ensure compliance with the relevant obligations; and
- Assisting with the review of your structures, arrangements and controls.

Corporate Governance Frameworks – does failing to plan mean planning to fail?

Whereas in the past little lip service was paid to corporate governance, this is now a subject that is firmly in the public's consciousness not least because of the media attention that has been given to the subject in recent months in regard to the activities of the FAI.

What is corporate governance?

Corporate governance refers to how a business is controlled and managed. Good corporate governance starts and finishes with the people who are trusted to run such businesses, namely the Board of Directors. They are expected to be independent, engaged, committed, and effective in their role applying best practice and good corporate governance in the conduct of their role.

Does your business really need a corporate governance framework?

The need for a corporate governance framework that provides the Board of Directors with the fundamentals to establish, maintain, and monitor standards and policies for ethics, business practices, and compliance that span the Company is paramount.

In practice, the Corporate Governance Framework lays down the necessary responsibilities, practices and

procedures that are the foundations of a well governed Company.

Also, because the successful implementation of good corporate governance practices depends on an approach that extends beyond simple compliance with legal requirements, the framework should provide a structure for establishing a culture of business integrity, accountability, and responsible business practices.

What benefits will a corporate governance framework bring?

Some of the key benefits for implementing a corporate governance framework include

Detailing the role and responsibilities of the Board of Directors and the responsibilities of senior management

- Holding the Board of Directors accountable
- Putting risk management as the centre of decision making and enhancing decision-making processes
- Improving strategic performance
- Reducing the cost of capital

By implementing a suitable corporate governance Framework, corporate governance is no longer simply seen as a tick the box exercise. Instead, through the practice of good corporate governance, the Board of Directors are promoting transparent and efficient monitoring and full disclosure in terms of accountability to its shareholders.

Next Steps to implementing your corporate governance framework

We assist our clients with all aspects of corporate governance including:

- Assessment of Corporate governance framework (or individual components) including policies, procedures and practices.
- Drafting and implementing corporate governance frameworks and mechanisms as prescribed by applicable regulations, requirements and standards (i.e. Corporate governance codes, company law, operational guidelines and recommendations, etc.)
- Board duties including terms of references , matters reserved and delegations of authority for Chairperson.
- Training to the Board of Directors and senior management.

The Advantages of Outsourcing your Company Secretarial and Compliance Requirements

Company Secretarial and compliance requirements are a must for every company in Ireland. Therefore, the duties and responsibilities of the company secretary are central to the company's continuation.

With the various enhancements in company law over recent years such as the New Companies Act 2014, staying on top of compliance obligations has never been more important for Company Directors. These increased obligations have resulted in all types of companies such as private and listed companies, small and large companies and even start-ups outsourcing their company secretarial and compliance requirements.

As company secretarial services providers such as our team here at LK Shields are committed to performing the duties of the company secretary solely and perform such duties effectively and in a timely manner, outsourcing your company secretarial requirements will give you a much greater opportunity to focus on what's most important in your company.

We will now take a look at some of the key advantages of outsourcing your company secretarial requirements:

Key Advantage #1

Your company benefits from the extensive experience and knowledge of skilled individuals who possess relevant qualifications and a high level of training in company secretarial and compliance.

We at LK Shields have a full team of qualified company secretaries who are the first point of contact for many of our clients on all company secretarial matters.

Key Advantage #2

Your company can be assured of reduced risk around compliance as all of the company secretarial requirements are completed in line with CRO and other regulatory deadlines.

Key Advantage #3

The public image and reputation of your company are protected from the implications of non-compliance with the many company law requirements.

As you will be aware, a company's legislative requirements is constantly changing and it is important for companies to ensure they remain in good standing at all times. By having a dedicated company secretarial contact responsible for providing updates to you, you can ensure your reputation with the relevant regulators always remains intact.

Key Advantage #4

The effectiveness and efficiency of the operations of your company benefit as employees can concentrate on core matters.

Key Advantage #5

Your company benefits from financial savings in areas around employment, office space and equipment as the outsourcing company already provide these.

Key Advantage #6

The exact company secretarial services required by you are agreed to ensure you only get the services that you actually need.

We at LK Shields recognise that Company Secretarial solutions are not one size fits all and therefore we will ensure that the services we provide you are fit for purpose both now and in the future.

Key Advantage #7

The company is saved from the costs of recruitment and training as this is the responsibility of the outsourcing company.

Key Advantage #8

You can avail of the latest company secretarial technology via your company secretarial service provider. This saves you the financial burden of installing and maintaining such software systems.

Our company secretarial team utilise the latest company secretarial technology and also work with IT providers in ensuring technology in the company secretarial sector is tailored to the needs of the many Board directors that we support.

Key Advantage #9

You can rest assured that your Board of Directors are kept abreast of all corporate governance matters by way of regular updates from your company secretarial service provider.

Key Advantage #10

There is always a company secretarial expert available to deal with ad hoc matters as they arise particularly

when your company is completing important and time sensitive transactions.

Whilst it may seem daunting to a company who have never outsourced these services before, the process of transition is quite straightforward and one which we at LK Shields do on a daily basis for our many company secretarial clients. We have also considered your concerns around confidentiality and security and would be pleased to discuss this further with you.

About LK Shields Company Secretarial & Compliance team

We are a dedicated company secretarial team forming part of a leading Irish corporate and commercial law firm with 28 partners and more than 70 legal professionals. Our clients are enterprising Irish and international businesses, financial institutions and public bodies.

Our growing company secretarial team currently consists of four qualified company secretaries, a trainee company secretary and a company secretarial administrator. Together we have considerable experience providing a complete suite of services to both domestic and international clients on:



Our team is dedicated to assisting Irish companies and their directors in discharging their statutory obligations and staying abreast of changes in Irish company law affecting a wide range of companies including public limited companies, private companies limited by shares, designated activity companies, unlimited companies, companies limited by guarantee and not for profit companies.

We recognise that Company Secretarial solutions are not one size fits all. You can be secure in the knowledge that our approach will ensure that we understand the unique needs of our clients and provide bespoke client-focused solutions in an efficient and cost effective manner.

About the Author