



CORPORATE AND COMMERCIAL

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# New Rules on Beneficial Ownership: What you need to know

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On 15 November 2016, far reaching provisions on the beneficial ownership of companies and other legal entities in Ireland came into force with immediate effect.

Previously, the identity of the beneficial owners of Irish companies and legal entities could remain largely private, but this is no longer the case.

## Headline Points

- The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (**Regulations**) are now in force so immediate action is required from directors and shareholders to ensure compliance.
- Information on beneficial ownership must now be obtained, maintained and kept up to date.
- Shareholders have obligations under the Regulations.
- Details of beneficial ownership are not currently publicly available, but this may change in the future.

## When do the Regulations come into force?

The Regulations are already in force – since 15 November 2016 – and without any transitional periods.

## Who do the Regulations apply to?

The Regulations apply to all Irish companies and other corporate bodies, including, for example, ICAVs and industrial and provident societies (**Relevant Entities**).

Companies that are listed on a regulated market and which are subject to existing disclosure requirements consistent with EU law (including companies that are subject to the Transparency Regulations 2007), are exempt from the Regulations. Additionally, companies that are subject to equivalent international standards that require disclosure of their beneficial ownership are exempt.

The Regulations only apply to incorporated entities and so do not affect trust structures or limited partnerships. However, as set out below, certain trust structures may become subject to similar beneficial ownership requirements in the future.

Beneficial owners of Relevant Entities also have obligations under the Regulations.

## What is a beneficial owner under the Regulations?

A "beneficial owner" under the Regulations means any natural person who ultimately owns or controls a Relevant Entity, through direct or indirect ownership of a sufficient percentage of the shares, voting rights or ownership interest in the Relevant Entity. A shareholding interest of 25%, plus one share, will be evidence of ultimate ownership or control. Indirect ownership will include ownership through other corporate entities.

In certain circumstances, a Relevant Entity's senior management officials may have to be listed as its beneficial owners.

### **What steps must a Relevant Entity take to ascertain beneficial ownership?**

Every Relevant Entity must take all reasonable steps to obtain and hold adequate, accurate and current information in respect of its beneficial owners.

The Regulations require Relevant Entities to serve notice on any natural person whom it has reasonable cause to believe to be a beneficial owner, and to request the necessary information, as detailed below. Any person served with such a notice is required to comply with the request for information within one month of the date of such notice.

The Relevant Entity may (but is not required) 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 any beneficial owner of that Relevant Entity. A person who has been served this type of notice must comply with the notice within one month.

### **What information must Relevant Entities obtain on beneficial ownership?**

The Regulations require Relevant Entities to ascertain the name, date of birth, nationality, address, statement of nature and extent of interest held by each beneficial owner, together with details of the date on which a person became or ceases to be a beneficial owner.

It is not stipulated how frequently that a Relevant Entity must check to see that the beneficial ownership information is "current".

### **How are beneficial ownership details to be kept by Relevant Entities?**

Relevant Entities are required to record the above information in a register of beneficial ownership (**Register**). The Regulations are not prescriptive on the form of the Register.

Unlike with a Relevant Entity's existing register of members, no statutory inspection rights apply to the Register.

A Relevant Entity must take measures to update its Register where it has reasonable cause to believe that: a person listed as a beneficial owner in its Register has ceased to be a beneficial owner; or the particulars set out in the Register are outdated.

Where this occurs, the Relevant Entity must give notice to the person concerned requiring them to confirm whether or not the suspected change has occurred; and if it has occurred, to provide the date of the change, confirm or correct the details set out in the notice and supply any details that are missing from the notice.

Where the name of a person is incorrectly entered in or omitted from a Register, or where unnecessary delay occurs in noting that a person has ceased to be a beneficial owner, an application can be made to the High Court to rectify the Register.

### **What if beneficial ownership cannot be ascertained?**

Where a Relevant Entity has taken all reasonable steps to ascertain its beneficial owner(s) but has been unable to do so, it must keep records of the actions which it took in order to try and identify its beneficial ownership.

In circumstances where a Relevant Entity is unable to ascertain its beneficial ownership or where there is any doubt that an identified individual is a beneficial owner, the Relevant Entity's senior managing officials (including its director(s) and CEO) must be inserted into the Register instead. This is the case even where such senior managing officials hold no interest (legal or beneficial) in the Relevant Entity.

## **Are obligations imposed on individuals?**

The Regulations impose certain obligations on beneficial owners.

A person who is a beneficial owner, or who ought to know that they are one, is under a duty to notify Relevant Entity that they are a beneficial owner (i) if the Relevant Entity's Register does not contain the relevant details regarding that person; or (ii) if they have not received a notice from the Relevant Entity requesting this information.

A beneficial owner's duty to notify arises where the above circumstances have continued for a period of at least one month. The individual then has one month in which to send the notice which must confirm their status (as beneficial owner), the date on which the person acquired that status and the information required under the Regulations.

There is also a duty on individuals, in certain circumstances, to notify relevant changes in beneficial ownership.

## **Do any group exemptions apply?**

The Regulations do not provide for a group exemption. Therefore, each Relevant Entity within a corporate group must establish its own Register, even where the ultimate beneficial owner of all the Relevant Entities in that group is the same.

## **What are the sanctions for noncompliance?**

Failure by a Relevant Entity to comply with any requirement of the Regulations regarding obtaining and maintaining information on beneficial ownership, creating and maintaining the Register, serving notice on individuals and confirming any change in a beneficial owner's details is a criminal offence.

A Relevant Entity that commits such an offence can be liable for a fine of up to €5,000 on conviction.

It is also a criminal offence for an individual to fail to comply with their obligations under the Regulations, to comply with the terms of any notice sent to them or makes a statement that is false in a material way, knowing or being reckless as to whether this is the case. A person that commits such an offence can be liable for a fine of up to €5,000 on conviction.

## **Will information on beneficial ownership be publicly available?**

The Regulations partially implement an EU Directive into Irish law: the Fourth Anti-Money Laundering Directive

(**MLD4**). It is considered likely that the remainder of MLD4 will be implemented into Irish law by June 2017 and that it will ultimately result in the Companies Registration Office maintaining a central register of beneficial ownership.

It is not clear what form the central register will take. At a minimum, the central register must be accessible to competent authorities, financial intelligence units and those carrying out certain forms of due diligence under MLD4 in a timely and unrestricted manner.

Whether the central register will be publicly accessible, remains to be decided. Currently, under MLD4, EU member states have discretion on the extent of accessibility of the central register.

The European Commission is currently considering a number of amendments to MLD4 (those changes are commonly referred to as MLD5). Most notable among the changes proposed by MLD5 is a proposal that information on the beneficial ownership of companies be publicly available. If adopted, these changes are likely to be implemented into Irish law, with the rest of MLD4, in June 2017.

Relevant Entities should therefore keep in mind that the new regime on beneficial ownership is likely to be subject to further amendments in the coming months.

## **What impact do the Regulations have on trusts?**

The Regulations do not have any impact on trusts. However, MLD5 proposes that the beneficial ownership of trusts also be made available to those with a legitimate interest. Therefore, if MLD5 is adopted, trustees and beneficiaries will likely be subject to similar obligations to those contained in the Regulations.

## **How we can help**

LK Shields is available to advise you on the Regulations and the steps you need to take to ensure compliance. Further developments in relation to beneficial ownership can be expected in the coming months and we will be providing regular updates.

**If you would like to know more about our services or have any queries on the matters discussed in this guide, please get in touch with any of the contacts listed or your usual contact at LK Shields.**

# About the Authors