



FINANCIAL SERVICES

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# Taking Ownership – New rules for Irish companies

by **Richard Curran**

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Last week saw the introduction of a new law on corporate transparency which has significant implications for Irish based companies and corporate type entities (companies).

## Introduction

The new law entitled the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the “**Regulations**”) came into effect on 15th November.

Irish companies are now required to maintain a register with details of their beneficial owners. Previously companies were only required to maintain a register of their direct shareholders. In a lot of cases existing shareholder registers show shares of a Company “A” being held by a Company “B”. The shares in Company “B” may be held by a Company “C” and so on.

By creating a complex web of corporate ownership the people who ultimately own and control corporate entities can be difficult to identify. The new legislation will force directors of Irish based companies to investigate and identify those natural persons who own and control their companies and maintain that information on a register.

The Regulations represent a first step in Ireland's transposition of the EU's Fourth Anti-Money Laundering Directive (“**AMLD4**”).

AMLD4 aims to increase the transparency of corporate ownership in order to combat money laundering (“**ML**”), terrorist financing (“**TF**”) and tax evasion.

## So, who then exactly is a beneficial owner?

In short, beneficial owners are those persons who are ultimately entitled to the profits of corporate ownership. For the purposes of the Regulations, broadly speaking, a beneficial owner is any person owning or controlling an interest of 25% or more in a company (be that be way of shares or by another method of control).

The Regulations require company directors to drill down into the company's ownership structure until they find a natural person, not a corporate or other body, who holds an interest at the level set out above.

Before now there was no requirement to keep a register of these persons. Previously the concept of “beneficial owner” was confined to anti-money laundering legislation which requires certain types of businesses (such as banks and financial institutions, accountants and lawyers) to identify the beneficial owners of their corporate clients before doing business with them. By refocusing that obligation on the companies themselves, legislators believe this will greatly assist with corporate transparency thereby allowing those who deal with those companies to be confident they are not dealing with criminals.

The Beneficial Ownership Register will need to set out a significant level of information. It should include the beneficial owners; name, date of birth, nationality, address, details of the extent of a person's interest in a company and the date a person was entered or removed from the register.

## **Compiling beneficial ownership information**

Companies are required by the Regulations to take all reasonable steps to obtain and hold accurate and current information on their beneficial owner(s).

A company may serve notice on any person who it has reasonable cause to believe is a beneficial owner, requiring that person to provide, within one month, information to include on its register.

If necessary, companies may serve a notice on any person who it has reasonable cause to believe knows the identity of the beneficial owner, or any person who is likely to have that knowledge. A recipient of such a notice is required to provide the information requested within one month.

Failure to comply with the Regulations is an offence and those in breach can be summarily convicted and fined (Max €5,000).

## **Exemptions**

The Regulations do not apply to companies already subject to disclosure requirements by virtue of their being listed on a regulated market in Ireland or the EU or where they are subject to equivalent international standards on transparency of ownership disclosure.

Equally, companies may not have a disclosable beneficial owner i.e. a company might not have any shareholder who exceeds the relevant levels of control, voting rights or shareholding percentage prescribed by the Regulations. In that case a company will be required to enter the names and details of the directors and the CEO on the register.

## **Public Registers**

The importance of the Regulations is connected to the next steps in the process of implementing AMLD4 and the push on at EU level to make the beneficial ownership of companies publically available (which has not been the case up to now in most EU jurisdictions).

As part of bringing AMD4 into Irish law a new central register of corporate beneficial ownership will be created in Ireland. The information held by Irish companies will be stored in this central public register. This central register will be accessible by regulatory authorities and those persons obliged to carry out ML/TF due diligence checks.

The Government held a public consultation earlier this year on the extent to which a central Irish register of beneficial ownership should be accessible by the public. The result of that consultation has not yet been published but ultimately the matter may be forced at EU level with an amendment to AMLD4 expected to include a requirement that registers be capable of public inspection.

Making these registers available to the public has attracted some controversy due to privacy and confidentiality concerns. A publicly accessible register of trusts in France was ruled unconstitutional in a recent decision of the French Constitutional Council. It was argued in that case that the registry disproportionately infringed the right to privacy protected under the French constitution. The judgment of the Constitutional Council ultimately held that both the public nature of the register and the register itself fell foul of constitutional privacy protections.

Similar challenges may await publicly accessible registers in other EU jurisdictions.

## **Impact of the new Regulations**

Directors of Irish companies will need to take steps to establish a beneficial ownership register and then populate it with the relevant information.

We expect most Boards will look to their company secretaries to establish the new register and then if necessary, issue the notices contemplated by the Regulations where information is not readily available.

Directors will then need to consider what processes they will need to put in place to make sure information is kept up to date. Entities in specific industry sectors may find the requirements more of a challenge e.g. corporate fund vehicles whose beneficial owners change frequently.

Full transposition of AMLD4 expected mid-2017. We will need to wait for the draft transposing legislation to see how all the requirements on beneficial ownership will knit together.

*This article first appeared in the Irish Independent on 21 November 2016.*

**For further information on this topic, please contact our [Corporate and Commercial team](#).**

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