



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

The Essential Guide to Ultimate Beneficial Ownership Disclosures in Ireland

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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 The 2016 Regulations^[1] that came into force on 15 November 2016 have been revoked and replaced by the 2019 Regulations.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.

Our Services

Our Company Secretarial team can assist you with the following:

- Understand your obligations under the Regulations
- Provision of advice and training to your organisation
- Review and enhance your internal Register of Beneficial Ownership
- Assist with your initial and ongoing filing obligations to the Central Register

Should you wish to discuss our services further or engage us to assist with the various obligations, please do not hesitate to contact a member of our team.

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.

About the Author