

New law requires companies to identify beneficial owners

On 15 November 2016, The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the “Regulations”) were published. These Regulations affect all Irish companies (including companies limited by guarantee) and other bodies corporate (a “Relevant Entity”) and requires them to obtain and maintain accurate information in respect of their beneficial owners and to put a beneficial ownership register in place.

The Regulations derive from the Fourth Anti-Money Laundering Directive (“4AMLD”) which is currently due to be transposed into Irish legislation in June 2017. The main aim of 4AMLD is to ensure that individuals with significant interests in a company can be easily identified for the purposes of customer due diligence to guard against money laundering.

Exclusions

The Regulations do not apply to a company or entity that is listed on a regulated market and subject to disclosure requirements consistent with EU law or subject to equivalent international standards that ensure adequate transparency of ownership information.

What is a Beneficial Owner?

Under the Regulations, a beneficial owner is an individual who ultimately owns or controls, through direct or indirect ownership, over 25% of the share capital or voting rights of a company or who has the ability to exercise dominant influence or control over a company.

What are the obligations?

Every Relevant Entity must:

- Create a register of their beneficial owners. Such register must include the name, date of birth, nationality and residential address of each beneficial owner, the date on which the individual was entered into the register as a beneficial owner, the date on which the individual ceased to be a beneficial owner and a statement of the nature and extent of the interest of each beneficial owner

- Take “all reasonable steps” to identify the individuals who are the beneficial owners
- Keep records of the actions taken to identify the beneficial owners

Creating and maintaining a beneficial ownership register

- The Relevant Entity should prepare and issue a notice to each individual whom it believes is a beneficial owner requesting the information required under the Regulations. Each individual has one month from the date of the notice to confirm whether he or she is a beneficial owner and if they are a beneficial owner, they must confirm that the details in the notice are correct.
- Failure to comply with the notice within the one-month window is a criminal offence and on summary conviction, can result in the imposition of a fine of €5,000.
- The Relevant Entity may also serve a notice on any individual who is believed to be aware of the identity of other individuals who may be beneficial owners. The failure of the individual to respond to this notice within one month is an offence which can result in the imposition of a fine of €5,000.
- Once the register has been established, where there is reasonable cause to believe that there has been a change in the details of a beneficial owner on the register or that an individual has ceased to be a beneficial owner, a notice should be prepared and sent to the individual concerned. The individual should confirm that the change is correct within one month of receiving the notice.

What happens if a Relevant Entity cannot identify its beneficial owners?

If the Relevant Entity, having followed the steps above, has not been able to establish the identity of the beneficial owner(s) or if there is any doubt as to whether an individual so identified is indeed a beneficial owner, then it must enter the details of one or more individuals who are its senior management officials (defined as the board of directors and a chief executive officer) on the beneficial ownership register. The Relevant Entity must document and record all steps used to establish the identity of its beneficial owners.

Access to the Register

4AMLD requires each member state to create a centralised register by June 2017.

When the central register has been established, it must be accessible by competent authorities, entities who conduct customer due diligence and any person or organisation who can demonstrate a legitimate interest in the information. It is not yet clear whether the public will be able to access the central register or which government department will hold the register. However, it is likely to come under the remit of the Companies Registration Office.

Next steps and how can we help?

In advance of the creation of the centralised register in June 2017, Relevant Entities will need to gather the necessary beneficial ownership data and to record this in their own beneficial ownership registers.

If you would like guidance in creating and populating the beneficial ownership register, or require further assistance in understanding your obligations, please contact [Roseanna O'Hanlon](#) or [Catherine Falvey](#).

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