

# Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the New Regulations) continue the transposition into Irish law of certain requirements of the Fourth Anti-Money Laundering Directive, as that Directive has been amended (4AMLD).

## Entities caught by the Regulations

As with the 2016 Regulations, the New Regulations apply to all “relevant entities”, which are defined as corporate or other legal entities incorporated in the State.

This definition includes companies and other bodies corporate, although there is an exemption 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 which is again consistent with the 2016 Regulations.

Interestingly, Part 3 of the New Regulations names the central register as the Central Register of Beneficial Ownership of Companies and Industrial & Provident Societies and requires that each relevant entity filing information to the Registrar give its company number and/or society number, as the case may be.

It is not clear how relevant entities which are not companies or industrial or provident societies (for example, ICAVs) will be able to satisfy that particular requirement but we understand that separate central registers will be established for relevant entities which are not companies or societies.

## What information needs to be obtained and held by relevant entities?

Relevant entities are, as under the 2016 Regulations, required to obtain and maintain the following information on their beneficial owners on an internal beneficial ownership register (“BOR”):

- Name
- Date of birth
- Nationality, and
- Residential address

In addition the following additional information must be included on the BOR:

- The date each natural person was entered into the register as a beneficial owner, and
- The date when each such natural person ceased to be a beneficial owner



There remains an ongoing obligation on relevant entities to record changes to their beneficial ownership (including to the details of the beneficial owners) on the BOR.

As in the 2016 Regulations, where no beneficial owners can be identified (for instance, because the entity's ultimate parent is a publicly traded company, with no single individual shareholder holding or controlling more than 25%), the relevant entity is obliged to record the details of its senior managing officials on the register. Such officials include directors and the CEO of a relevant entity.

As an additional requirement to those introduced by the 2016 Regulations, relevant entities are now required to obtain their beneficial owners' PPS numbers, where the beneficial owner has been issued with one.

### Who is a beneficial owner of a relevant entity?

The New Regulations use the same definition of beneficial owner of a relevant entity as 4AMLD, being natural person(s) who ultimately (either directly or indirectly) either own or control over 25% of the equity or voting rights in the entity in question or controls the entity by other means.

Should the directors of an entity be unable to identify any beneficial owners, then they are obliged to record the particulars of the senior managing officials of the entity on the register. In practice, the directors themselves and, if he or she is not also on the board, the CEO will invariably be "senior managing officials" for these purposes.

### Further obligations relating to access to the BOR and information on the identity of the beneficial owners

In addition to their obligations as set out in the 2016 Regulations, relevant entities are obliged, on request, to provide Garda Síochána, the Criminal Assets Bureau, the Revenue Commissioners and any other "competent authority" (for instance, the Central Bank, the Financial Services Authority, the Law Society etc.) with timely access to their BOR.

The New Regulations permit competent authorities to disclose any information on a relevant entity's BOR to any corresponding competent authority of another requesting Member State.

If a relevant entity enters into an "occasional transaction" with a "designated person" or forms a business relationship with a designated person then the relevant entity must provide the designated person:

- With details of its beneficial ownership as well as legal ownership, and
- 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.

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. An occasional transaction is a transaction for which a designated person must apply customer due diligence.

### Central Register (Part 3 of the New Regulations)

The New Regulations provide for the establishment of a Central Register of Companies and Industrial and Provident Societies on 22 June 2019. Once the central register is established, companies and societies will have 5 months to submit information on their beneficial owners; companies and societies incorporated after the establishment of the central register will have 5 months from their incorporation to submit the required information.

Companies and societies will be required to submit their beneficial owners' details (name, residential address, nationality, date of birth, PPS number (if one has been issued to the beneficial owner in question) and nature and

extent of ownership or control) to the central register, together with their company number and industrial & provident society number, as the case may be.

Each PPS number will be “hashed” to keep it secure and will not be available for inspection.

## Access to the central register

Individuals acting on behalf of Garda Síochána, the Financial Intelligence Unit (FIU), the Criminal Assets Bureau, the Revenue Commissioners and other competent authorities (as defined above) will be entitled to all the information (save for PPS numbers) 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.

Designated persons (as described above) 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.

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.

## Remedies and sanctions

As under the 2016 Regulations, if:

- any details are entered incorrectly in or omitted from the BOR, or
- a default is made or unnecessary delay takes place in updating the BOR 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 BOR to be amended. The High Court may refuse the application or it can order for the BOR to be amended or require the relevant entity to compensate the aggrieved person for any loss sustained.

The New 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 New 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 New 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.

## Conclusion

Relevant entities should prepare for the establishment of the central register by ensuring that their internal beneficial ownership registers are up to date and that their beneficial owners are aware that their details will soon become centralised and open to public inspection.

While many companies and other bodies corporate will have complied with the 2016 Regulations and put in place internal beneficial ownership registers, those companies should be mindful that they now need to obtain their beneficial owners' PPS numbers, which they will need to submit to the central register after its establishment in June.

If you require any assistance in relation to the New Regulations, please contact a member of our Corporate Governance & Compliance team.

## Key Contacts



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