

New Beneficial Ownership Regulations affecting corporate entities: What you need to know

As reported in our earlier bulletin published on 28 March, (available [here](#)) the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the 2019 Regulations) came into force on 22 March 2019, with the exception of Part 3 which will come into force on 22 June 2019.

Part 3 concerns the obligation on companies and other bodies corporate to file beneficial ownership information in a proposed new Central Register of Beneficial Ownership.

The 2019 Regulations revoke the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the 2016 Regulations) and bring Ireland's beneficial ownership rules for corporates in line with the Fourth Anti-Money Laundering Directive (4MLD), as amended by the Fifth Anti-Money Laundering Directive (5MLD).

Summary of Key Provisions

Part 2 of the 2019 Regulations, requiring Irish corporates to compile a beneficial ownership register, largely restates the provisions of the 2016 Regulations.

In particular, there is no change in the definition of "beneficial owner", or in the steps which must be taken by companies and other bodies corporate that are within the scope of the regulations (known as "relevant entities"), in order to identify their beneficial owners. For a summary of these obligations, please see our earlier bulletin on the 2016 Regulations, available [here](#).

New requirements imposed by the 2019 Regulations include the following:

- **Nature and extent of control information:** Relevant entities must now include, in their registers of beneficial ownership, a statement "of the nature and extent of control exercised"

by each beneficial owner, in circumstances where the beneficial owner does not have an ownership interest in the relevant entity, but instead exercises control over it. A similar statement must be entered in the register where the relevant entity is obliged to enter the names of its senior managing officials in circumstances where no natural person has been identified as its beneficial owner. This change reflects the fact that a person may still be a beneficial owner of a relevant entity for the purposes of the 2019 Regulations where such control is exercised, e.g. through the exercise of dominant influence or the power to appoint senior management, even though the person does not have a significant shareholding in the relevant entity.

- **PPS numbers:** There is a new obligation to obtain and hold the PPS (personal public service) number of each beneficial owner to whom such a number has been issued. The PPS number is not required to, and should not, be included in the beneficial ownership register.
- Relevant entities must provide these PPS numbers, as well as other information, to the "Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies" (the Registrar, discussed further below) for the purpose of verifying the beneficial ownership information. Relevant entities are under an obligation not to disclose PPS numbers for any purpose of Part 2 of the 2019 Regulations.

- **Name and CRO number requirements:** There is also a new requirement imposed on relevant entities for the information regarding beneficial ownership (not including PPS numbers) to be “associated” with the relevant entity’s name and number as contained on the register maintained by the Registrar;
- **Inspection rights:** Relevant entities must provide any member of An Garda Síochána, the Revenue Commissioners, a competent authority¹, the Criminal Assets Bureau or an inspector appointed under the Companies Act 2014, with timely access, on request, to its beneficial ownership register.
- **Disclosure of beneficial ownership information:** In addition, each of the above persons and bodies, other than an inspector appointed under the Companies Act, may disclose the information in any beneficial ownership register to any corresponding competent authority in another EU Member State.
- **Provision of information to designated persons:** Relevant entities must also provide a “designated person”² with beneficial ownership information, where the entity enters into an occasional transaction, or forms a business relationship with that designated person; thus triggering the taking by the designated person of customer due diligence (CDD) measures under the CJA 2010.
- **Notification of changes to designated persons:** The relevant entity must notify the designated person of any change to its beneficial ownership register which is relevant to the occasional transaction, or that occurs during the course of the business relationship, within 14 days of the date on which the relevant entity becomes aware of the change. The relevant entity must also, on request from the designated person, provide information identifying all of its beneficial owners.

Significantly increased penalties for non-compliance

There has been a very significant increase in the penalties which can be imposed for breach of the obligations imposed under the 2019 Regulations, including the requirement originally imposed on relevant entities under the 2016 Regulations (and restated in the 2019 Regulations) to take all reasonable steps to obtain and hold adequate, accurate and current information about a relevant

entity’s beneficial owners, as well as the new obligations summarised above. Under the 2016 Regulations, the maximum penalty was a class A fine (a fine not exceeding €5,000). However, the 2019 Regulations now provide that, in addition to being liable on summary conviction to a class A fine, a relevant entity may also be liable, on conviction on indictment, to a fine not exceeding €500,000.

There has also been an increase in the penalties for failure to comply with notices given under the regulations. Under the 2016 Regulations, any failure to comply with the notice, or, in purported compliance with the notice, making a statement that was false in a material particular, knowing it to be so false or being reckless as to whether it is so false, was punishable on summary conviction by a class A fine (a fine not exceeding €5,000). Under the 2019 Regulations, these offences are now punishable either by a class A fine or imprisonment for a term not exceeding 12 months, or both.

In addition, a failure by a relevant entity to keep and maintain the beneficial ownership register under the 2019 Regulations, containing the information required to be kept in it, will be an offence, but whereas the penalty under the 2016 Regulations for the equivalent offence was a class A fine, under the 2019 Regulations the relevant entity will be liable to a class A fine on summary conviction, or, on conviction on indictment, to a fine not exceeding €500,000.

Central Register of Beneficial Ownership

- The most significant addition to the beneficial ownership requirements is contained in Part 3 of the 2019 Regulations, which will come into operation on 22 June 2019, and which will establish the “Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies” (the **Central Register**).
- The Central Register will be maintained by the “Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies” (the **Registrar**). The Registrar of Companies is expected to be appointed to this role. The Central Register will begin to accept online filings from 22 June 2019. Information may only be delivered to the Registrar by electronic means, in compliance with the Registrar’s requirements.

¹ A “competent authority” is defined in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended (CJA 2010) and includes the Central Bank of Ireland, the Law Society and other prescribed authorities.

² A “designated person” is defined by the CJA 2010, and includes a bank or financial institution, an insurance company, an auditor, a solicitor carrying out certain services, an external accountant and a tax adviser.

- Any relevant entity that is in existence **before** 22 June 2019 shall deliver the following information to the Registrar by **22 November 2019**, while those which come into existence **on or after** 22 June 2019 must do so within 5 months of incorporation:
 - a. the name, date of birth, nationality and residential address of each beneficial owner of the entity;
 - b. a statement of the nature and extent of the interest held, or the nature and extent of control exercised by, each such beneficial owner;
 - c. the name and number of the entity as they appear on the register kept under the Companies Act 2014 (or, as the case may be, the register kept under the Industrial and Provident Societies Acts); and
 - d. the PPS number of each beneficial owner to whom such a number has been assigned, or such information as may be determined by the Registrar.
 - The Registrar is under an obligation not to disclose PPS numbers, and to store a “hashed version” of these numbers to prevent them from being identified.
 - The Registrar is also obliged to delete from the Central Register information entered in relation to a relevant entity if the relevant entity has been dissolved for 10 years.
 - The 2019 Regulations also impose a “follow up obligation” on relevant entities to keep information in their own beneficial ownership registers and in the Central Register aligned and up to date. In this regard, the relevant entity must, where necessary, update the information in its own beneficial ownership register and then supply the same information to the Registrar within 14 days from the date on which it is required to update its own register.
 - There are additional requirements for the provision of information to the Registrar, where the notification obligations of relevant entities are discharged by officers, employees of other persons acting on their behalf.
- ownership register “*come to the knowledge*” of a designated person, and the designated person “*forms the opinion that there is a discrepancy*” between (i) these particulars and (ii) the information in the Central Register, the designated person “*shall deliver, in a timely manner*” notice of that opinion to the Registrar.
- As well as a reporting requirement, this imposes an onerous obligation on a designated person to consult the Central Register in every instance where it is performing CDD on the relevant entity, and to verify that the information held in the Central Register matches that provided to the designated person by the relevant entity.
 - On receipt of a notice from a designated person, the Registrar shall serve a notice on the relevant entity concerned, requesting either a submission as to why the opinion of the designated person is not well founded, or alternatively, such amended particulars as are required to resolve the discrepancy.
 - It is also worth noting that it is within the Registrar’s discretion whether or not to impose fees on designated persons (and members of the public) for access to the Central Register, which could have cost implications for designated persons.

Access to beneficial ownership information in the Central Register

Access by state authorities

A wide range of persons are granted the right to inspect the Central Register. Access for these persons is free of charge and unrestricted, but is limited to persons conducting specific roles or holding specified positions of authority, and who have also been appropriately authorised. Those with such a right of access include members of the Garda Síochána not below the rank of inspector engaged in the prevention, detection or investigation of money laundering or terrorist financing, officers of the Revenue Commissioners holding the position of higher executive officer or above, and senior officers of the Criminal Assets Bureau. Upon an access request being made, the Registrar must provide access “in a timely manner” and is prohibited from alerting any relevant entity concerned to the fact of such access having been either requested or facilitated.

Reporting of discrepancies by designated persons

- Where any of the particulars required to be contained in the entity’s beneficial

Designated persons and members of the public also have restricted rights of access to beneficial ownership information held in the Central Register. These rights are summarised below.

Access by designated persons

- Designated persons have a right of access to the name, month and year of birth, country of residence and nationality of each beneficial owner, and a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner.
- This access is only permissible when a relevant entity enters into an occasional transaction, or forms a business relationship with a designated person, or when a designated person is conducting CDD measures in accordance with the CJA 2010 in relation to a relevant entity.
- The information obtained by a designated person by the above means shall not be relied upon exclusively to fulfil the designated person's CDD duties.

Access by members of the public

- A "member of the public" will have the right to inspect certain information in the Central Register; namely the name, month and year of birth, country of residence and nationality of each beneficial owner, and a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner.
- This wider access was introduced by 5MLD with the aim of enhancing public scrutiny and helping to prevent the misuse of legal entities for money laundering and terrorist financing purposes. The expression "member of the public" is not however defined in the 2019 Regulations, nor is any class of persons specifically excluded.
- The only specified exemption to the granting of access concerns information relating to a minor who is a beneficial owner of a relevant entity. In such a case, a written summary of the grounds on which a designated person, or a member of the public, considers it is in the public interest that the information be disclosed, must be provided to the Registrar, who shall determine if "substantial grounds"

exist for the information to be disclosed.

There is no right in the 2019 Regulations for the minor to be notified that such a written summary has been submitted, or to dispute or correct a summary if it is considered to be incorrect in any respect.

- Member States have some limited flexibility under 5MLD as to how public access may be controlled, such as through the imposition of fees or registration requirements. For example, members of the public in Belgium have to identify themselves through electronic identification methods, before obtaining access to that country's register.
- Other permitted exemptions to access under 5MLD include where there is "disproportionate" risk of fraud, kidnapping, blackmail, harassment, violence or intimidation. In Luxembourg, a relevant entity and its beneficial owners have the right to request that their identity is not publicly disclosed under certain conditions. The requesting party must justify that it would be exposed to a risk, fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or if it is a minor or otherwise incapable.

Other than the ability of the Registrar to impose fees on designated persons and members of the public for access to the Central Register, Ireland has decided not to introduce any such controls or exemptions from public access in the 2019 Regulations, but it is possible that we may see these being imposed by way of further legislation, in due course.

Relevance of Data Protection Act 2018

The 2019 Regulations specify that the Data Protection Act 2018 shall apply to the access afforded to a designated person or any member of the public "in respect of the information in the Central Register that relates to a relevant entity", but precisely how the Data Protection Act will interact with the 2019 Regulations, or how data protection rights or obligations will be respected and implemented by the Registrar, is unclear. It is to be hoped that the Registrar will develop and publish its data policy in this respect, prior to 22 June 2019, when the provisions of Part 3 of the 2019 Regulations will come into force. Specific advice should be obtained in any case where such rights of access may arise.

Additional offences relating to the Central Register

It is an offence to fail to deliver beneficial ownership information to the Registrar for inclusion in the Central Register (including where a follow-up obligation arises to deliver information where there are any changes in that information). In the event of a breach, the relevant entity is liable on summary conviction to a class A fine, or on conviction on indictment, to a fine not exceeding €500,000. It is also an offence, subject to similar penalties, where a relevant entity fails to comply with any requests for delivery of information served by the Registrar.

Where the offence is committed by a body corporate and has proved to be so committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate or a person purporting to act in such capacity, that individual, as well as the body corporate, is guilty of an offence.

The Regulations further provide that if a person makes a statement that is false in a material particular, knowing it to be false or being reckless as to whether it is or not, he or she will commit an offence and the maximum penalty in such a situation is a fine not exceeding €500,000, or imprisonment for a term not exceeding 12 months, or both.

Connection of Central register with other EU Central Registers

The Regulations impose an obligation on the Registrar to arrange for the connection of the Central Register with central registers in other EU Member States, as provided for by Article 30(1) of 4MLD (as amended by 5MLD).

Practical Implications and key timelines

Suggested steps and timelines for in-scope companies and bodies corporate are as follows:

- Take immediate steps to obtain and hold the PPS numbers of each beneficial owner to whom such a number has been issued. Where no such number has been issued, however, there is no obligation under the 2019 Regulations to acquire it;
- Update the beneficial ownership register to include a statement of the nature and extent of the control exercised by each beneficial owner;
- Update template beneficial ownership notices (e.g. the notice to be served by the relevant entity on persons believed to be their beneficial owners) to reflect a change in the numbering of (and the title of) the 2019 Regulations;
- Update procedures to provide for granting access (upon request) to members of An Garda Síochána, the Revenue Commissioners and other regulators to the beneficial ownership register;
- Review data protection policies and procedures as well as notices to data subjects (which include beneficial owners) in the light of the 2019 Regulations to ensure compliance with data protection law and update as necessary;
- Review AML/CTF policies and procedures to ensure compliance with the 2019 Regulations and update as necessary;
- Update procedures to ensure compliance with the new obligations (effective immediately) on relevant entities to provide beneficial ownership information to designated persons when entering into certain transactions and business relationships with such persons in which CDD measures must be applied under the CJA 2010, and to notify such designated persons of changes to its beneficial ownership register of which the relevant entity becomes aware, within 14 days;
- Those designated persons need to plan for compliance with the additional, onerous obligations imposed on them in relation to the reporting of discrepancies to the Registrar (from the time of the establishment of the Central Register);
- In-scope companies and bodies corporate in existence before 22 June 2019 need to ensure that they will have the necessary beneficial ownership information (including

PPS numbers, where issued) ready for delivery to the Registrar by **22 November 2019**, while those that come into existence after 22 June 2019 must deliver this information within **5 months of incorporation** and all information in their beneficial ownership registers and in the Central Register must thereafter be kept aligned and up to date; and

- All beneficial ownership information on the

Central Register will become accessible to a wide range of persons, including members of the public, on and from 22 June 2019, although in practice it is likely to be later in the year before such information is included in the Central Register.

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