



Beneficial Ownership of Corporates - Establishment of Central Register

April 2019

Executive Summary

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. 110 of 2019) (the "2019 Regulations") have substantially come into force as of 22 March 2019. Part 3 of the 2019 Regulations ("Part 3"), which relates to the establishment and operation of a central register of beneficial ownership of corporate entities (the "Central Register"), will enter into force on 22 June 2019.

An Irish incorporated company or other legal entity (a "Relevant Entity"), incorporated prior to the entry into force of Part 3, will be required to submit relevant information to the Central Register within five months of the introduction of the 2019 Regulations (i.e. by 22 November 2019). A Relevant Entity incorporated after 22 June 2019 shall commence providing information to the Central Register within five months of its incorporation.

The 2019 Regulations transpose the provisions of the Fourth Anti-Money Laundering Directive (the "4MLD") (as amended by the Fifth Anti-Money Laundering Directive (the "5MLD")) and repeal the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the "2016 Regulations").

The introduction of the 2019 Regulations, which expand on the legal framework introduced by the 2016 Regulations (see our previous briefings relating to the 2016 Regulations [here](#) and [here](#)), are part of a suite of EU and global initiatives that have been introduced in order to improve corporate transparency.

In addition to the 2019 Regulations, regulations imposing a requirement on trusts to maintain a register of beneficial ownership have recently come into force in Ireland, as part of the transposition of 4MLD. A central register of beneficial ownership of trusts, once introduced, will be maintained by the Revenue Commissioners (for further detail please see our separate [briefing](#)). Our understanding is that separate regulations will be published providing for the establishment of a register of beneficial ownership of ICAVs, which will be maintained by the Central Bank of Ireland.

Overview of the 2019 Regulations

The 2019 Regulations restate the majority of the provisions of the 2016 Regulations, while also introducing some important amendments and enhanced responsibilities for corporates coming within the scope of the legislation. The 2019 Regulations also provide for the establishment of the Central Register and for the appointment of a Registrar of Beneficial Ownership of Companies and Industrial & Provident Societies (the "Registrar"). It is intended that this function will be performed by the Registrar of Companies.

The concept of beneficial ownership in the 2019 Regulations remains unchanged from the 2016 Regulations and captures any natural person individual who, directly or indirectly, has a greater than 25% ownership or controlling interest in a Relevant Entity (a "Beneficial Owner").

Where the ultimate ownership of an Irish corporate is diluted amongst multiple individuals and it is not possible to identify any natural person individual that satisfies the beneficial ownership test, the Relevant Entity's internal beneficial ownership register should be populated with the senior managing officials of the Relevant Entity.



2019 Regulations - Principal amendments to existing framework

As both the 2019 Regulations and the 2016 Regulations transpose the provisions of the 4MLD many of the definitions remain unchanged. There are however some significant changes introduced by the 2019 Regulations, including the following:-

Information

Relevant Entities are now obliged to record the PPS numbers of their beneficial owners, where available, on their internal register of beneficial ownership ("**Internal Register**"). Where a legal entity is a beneficial owner in a particular instance, then the company number and name as they appear on the Register of Companies should be recorded on the Internal Register.

In circumstances where senior managing officials are included on the Internal Register as beneficial owners, the 2019 Regulations require that the nature and extent of their control should be recorded also.

Access to Internal Register

Under the 2019 Regulations, Relevant Entities are now required to provide An Garda Síochána, the Revenue Commissioners, the Central Bank of Ireland and the Criminal Assets Bureau with timely access to their Internal Register. This requirement does not give the aforementioned authorities an unencumbered right to access and certain information, such as PPS numbers recorded on the Internal Register, remain confidential.

The 2019 Regulations also provide that these authorities may share the information on an Internal Register with corresponding authorities in another EU Member State.

Transactions with Designated Persons

When a Relevant Entity enters into an "*occasional transaction*" or forms a business relationship with a "*designated person*" (such terms as defined in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended)), the Relevant Entity is required to:

- a. provide details of its beneficial ownership as part of any customer due diligence information pack;
- b. provide, on request, details of its beneficial ownership to the designated person; and
- c. notify the designated person of any change to the information contained on its Internal Register during the course of their business relationship.

Sanctions relating to maintenance of Internal Register

The 2019 Regulations introduce enhanced sanctions for Relevant Entities who fail to comply with their obligations around obtaining, holding and maintaining up-to-date information on their Internal Register. Under the 2019 Regulations, failure to comply is now subject to a fine of up to €500,000, on conviction on indictment.

2019 Regulations – Establishment and Operation of Central Register

As noted above, Part 3 contains provisions around the establishment and operation of the Central Register.

Delivery of Information to Central Register

Part 3 requires existing Relevant Entities to submit necessary information to the Central Register within five months of the introduction of Part 3 of the 2019 Regulations (i.e. by 22 November 2019). Relevant Entities incorporated after 22 June 2019 shall commence providing information, as required under the 2019 Regulations, to the Central Register within five months of their incorporation.

The 2019 Regulations provide for the appointment of a third party to submit details of beneficial ownership to the Central Register on behalf of the Relevant Entity. This may allow corporate service providers that maintain Internal Registers of Relevant Entities, to submit details of beneficial ownership to the Central Register.

Part 3 provides for the delivery of the following information to the Central Register:

- » the name, date of birth, nationality and residential address of each beneficial owner of the entity;
- » a statement of the nature and extent of the interest held, or the nature and extent of control exercised by, each such beneficial owner;



- » company name and number;
- » for verification purposes, the PPS number of each beneficial owner.

Where senior managing officials are named in the role of beneficial owners on the Internal Register, there shall be submitted to the Central Register, under Part 3, the following information:

- » the name, address, phone number and e-mail address of the officer or employee for correspondence purposes; and
- » particulars as to the capacity in which the officer or employee is acting.

With regard to the submission of PPS numbers to the Central Register, Part 3 provides that the PPS number shall only be stored on the Central Register in hashed form and that the Registrar shall not be permitted to disclose any PPS number held on the Central Register.

With regard to the information to be delivered to the Central Register, Relevant Entities are obliged under Part 3 to keep information stored on the Central Register up to date and aligned with the information maintained on their Internal Registers.

Access to Central Register

Part 3 grants members of An Garda Síochána, the Revenue Commissioners and the Criminal Assets Bureau who have been appropriately authorised by a superior, unrestricted access to the Central Register. Employees of the Central Bank of Ireland or other competent authority who have been given appropriate permission under Part 3 and who are engaged in the prevention, detection or investigation of possible money laundering or terrorist financing may also inspect the Central Register.

Part 3 affords “designated persons” restricted access to the Central Register when entering into an “occasional transaction” with a Relevant Entity or where carrying out customer due diligence. In these circumstances, designated persons will be given access to:

- a. the name, the month and year of birth and the country of residence and nationality of each beneficial owner of it; and
- 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.

Part 3 provides that a designated person may not rely solely on the information accessible through the Central Register for their customer due diligence. Inspection of the Central Register should only form part of the designated person’s customer due diligence process.

Subject to certain restrictions where a minor is the beneficial owner of a Relevant Entity, a member of the public may also inspect the following information on the Central Register relating to any Relevant Entity:

- a. the name, the month and year of birth and the country of residence and nationality of each beneficial owner of it; and
- 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.

Discrepancies in Information held on Central Register

Where a designated person perceives a discrepancy between the information contained on a Relevant Entity’s Internal Register and the Central Register, the designated person is required under Part 3 to notify the Registrar of this discrepancy. The Registrar will then serve a notice on the Relevant Entity in question requesting clarification of whether or not there is a discrepancy and, if so, the necessary information to remediate the discrepancy.

An Garda Síochána, the Revenue Commissioners, competent authorities and the Criminal Assets Bureau are also obliged by Part 3 to report discrepancies between the information kept on a Relevant Entity’s Internal Register and the Central Register where they have been identified.

Sanctions for Non-Compliance with Part 3

Part 3 provides for a number of additional criminal penalties for non-compliance by Relevant Entities with the requirements under the 2019 Regulations to provide up-to-date information on its beneficial owners to the Central Register, or to comply with a request from the Registrar to explain or rectify any discrepancies in the information provided to the Central Register.

Individuals or other entities providing materially false information to the Central Register shall also be guilty of an offence under the 2019 Regulations. Submission of materially false information to the Central Register shall be subject to penalties of up to €500,000 or imprisonment for a term not exceeding 12 months or both.



Furthermore, designated persons that fail to notify the Registrar of a discrepancy between an Internal Register and the Central Register shall be guilty of an offence under Part 3.

How can Walkers help?

Walkers and Walkers Professional Services are ready to assist clients by:

1. aiding with the identification of beneficial owners;
2. advising on any steps necessary to obtain this information, including drafting statutory correspondence to compel the production of this information if so required;
3. drafting an Internal Register to capture the information required to be held by Relevant Entities in respect of their beneficial owners;
4. preparing board resolutions and compliance statements/handbooks to ensure that the Internal Register is kept up to date and compliant with the 2019 Regulations; and
5. submitting information to the Central Register on behalf of Relevant Entities and providing updated information to the Central Register where necessary.

Contacts

If you have any queries on the content of the 2019 Regulations and/or the impact that they may have on you and your business, please speak to your usual contact in Walkers or contact:



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