

## Group Briefing

### April 2019

# AML Update: *Beneficial Ownership of Corporates*

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

The Irish Regulations on the Beneficial Ownership of Corporates, first introduced in November 2016, have been revised and extended in anticipation of a central register of beneficial ownership being launched in January 2020.

### BACKGROUND

In November 2016, the [European Union \(Anti-Money Laundering: Beneficial Ownership of Corporate Entities\) Regulations 2016](#) (the **2016 Regulations**) came into force in Ireland. They transposed Article 30(1) of the Fourth Money Laundering Directive (**MLD4**) into Irish law. Article 30(1) of MLD4 requires corporates to obtain and hold “adequate, accurate and current information on their beneficial ownership...” This requirement affected all Irish companies (including companies limited by guarantee) and other bodies corporate (including, for example, ICAVs, industrial and provident societies, and bodies corporate formed under specific statutes).

Our briefing on the 2016 Regulations is here: [AML Update: New rules on information about the beneficial ownership of corporates by individuals](#).

### WHY HAVE NEW REGULATIONS BEEN INTRODUCED?

Further regulations in this area were always expected, because those elements

of Article 30 of MLD4 that were not transposed ahead of time under the 2016 Regulations require that Member States establish a central register of the beneficial ownership of corporates (**the Central Register**). The Fifth Money Laundering Directive extended the deadline for establishing that Central Register to 10 January 2020.

The new Regulations (the [European Union \(Anti-Money Laundering: Beneficial Ownership of Corporate Entities\) Regulations 2019](#)) (the **2019 Regulations**) revoke the 2016 Regulations.

### STRUCTURE OF THE 2019 REGULATIONS

Part 2 of the 2019 Regulations is broadly similar to the 2016 Regulations, and deals with the obligation on corporates to set up a Beneficial Ownership Register. There are some small differences between Part 2, and the 2016 Regulations, and these are highlighted below.

Part 3 of the 2019 Regulations sets out the new obligation on corporates to file

information on their beneficial owners with the new Central Register. The key provisions of Part 3 are summarised below.

### BENEFICIAL OWNERSHIP REGISTERS – WHAT HAS CHANGED?

Part 2 of the 2019 Regulations takes immediate effect. In most respects, Part 2 is very similar to the 2016 Regulations:

- » the same corporates are in scope (and are known as “**relevant entities**”);
- » the definition of “**beneficial owner**” is unchanged;
- » the exemption continues to apply for corporates that are listed on a regulated market and subject to disclosure requirements consistent with EU law, or are already subject to equivalent international standards in respect of the transparency of information on beneficial ownership;
- » the steps that must be taken by relevant entities to identify their beneficial owners remain unchanged;
- » the obligations imposed on beneficial owners remain unchanged; and
- » the obligation on a relevant entity to list its “**senior managing officials**” (i.e. its directors and CEO) in its Beneficial Ownership Register where it cannot identify any beneficial owners remains.

Due to a numbering change in the 2019 Regulations, the Beneficial Ownership Register will be established under Regulation 15 (not Regulation 14), relevant entities must serve Regulation 7 Notices (not Regulation 6 Notices) on persons whom they believe to be their beneficial owners, and relevant entities may serve Regulation 9 Notices (not Regulation 8 Notices) on persons whom they believe to have knowledge about who their beneficial owners are.

New requirements included in Part 2 of the 2019 Regulations regarding Beneficial Ownership Registers are as follows:

### PPS numbers

In addition to collecting the name, date of birth, nationality, residential address, and statement of the nature and extent of the interest held, in respect of each beneficial owner, a relevant entity will also need to collect the PPS number of that beneficial owner (if they have one).

While that PPS number must be provided to the Registrar (see further below), the relevant entity may not otherwise disclose it.

### Access

A relevant entity must grant access to its Beneficial Ownership Register if requested by An Garda Síochána, the Revenue Commissioners, the Criminal Assets Bureau (CAB) or a competent authority. PPS numbers do not need to be disclosed as part of that access.

### Transactions with Designated Persons

If a relevant entity enters into an “**occasional transaction**” with a “**designated person**” under Irish AML legislation (the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018), or forms a business relationship with such a “**designated person**”, the relevant entity must:

- » give the designated person information about its beneficial owners;
- » give the designated person (if requested) information identifying each of its beneficial owners;
- » inform the designated person of any relevant change in its Beneficial Ownership Register within 14 days of that change.

An “**occasional transaction**” is one in respect of which a “**designated person**” is required to carry out customer due diligence (CDD) under Irish AML legislation.

A “**designated person**” can include a bank or financial institution, auditor, accountant, tax advisor, an independent legal professional (in respect of certain services), a trust or company service

provider, a property service provider or certain other persons acting in Ireland in the course of business carried on by them in Ireland.

### NEW PROVISIONS – THE CENTRAL REGISTER

Part 3 of the 2019 Regulations takes effect on 22 June 2019. Under Part 3:

#### Appointment of Registrar

The Minister for Business, Enterprise and Innovation, in consultation with the Minister for Finance, must appoint a Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies (the **Registrar**) – this role is expected to be performed by the Registrar of Companies and the Companies Registration Office (the **CRO**).

#### Set-up of Register

The Registrar must then maintain the Central Register (which will be known as the ‘Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies’.

#### Reporting

Relevant entities that are in existence before 22 June 2019 must deliver the following information to the Registrar by 22 November 2019 (assuming that the Central Register is operational by that time):

- » the name, date of birth, nationality and residential address of each of its beneficial owners;
- » details of the nature and extent of the beneficial interest held, or control exercised by, each of its beneficial owners;
- » its name and number as contained on the register maintained by the CRO under the Companies Act 2014, or with the Registry of Friendly Societies; and
- » the PPS number of each beneficial owner who has a PPS number (the Registrar will not include PPS numbers on the Central Register, and is required to store them in a

particular manner and not disclose them).

Relevant entities that come into existence after 22 June 2019 must deliver the above information to the Registrar within 5 months of incorporation.

### Note regarding ICAVs and certain other bodies corporate

While Part 3 imposes an obligation on all relevant entities to deliver information on their beneficial owners to the Registrar, the reference to “Companies and Industrial and Provident Societies” in the full name of both the Registrar and the Central Register, and the absence of a requirement to supply a registration number for an ICAV (which is registered on incorporation with the Central Bank rather than with the CRO) has led to uncertainty as to whether Part 3 currently applies to ICAVs and other bodies corporate that are not ‘companies’ or industrial and provident societies’. Clarity on that point has been sought from the Department of Finance.

Part 2 of the 2019 Regulations (dealing with the Beneficial Ownership Register) does, however, clearly apply to all types of relevant entities (as was the case with the 2016 Regulations on which Part 2 is based.)

### Updating the Central Register

When the relevant entity is updating the information held on its Beneficial Ownership Register, it must also notify the Registrar of the relevant changes within 14 days.

### Who will have unrestricted access?

An Garda Síochána, FIU Ireland (Ireland’s Financial Intelligence Unit), the Revenue Commissioners, the CAB, and competent authorities will have unrestricted access, free of charge, to the Central Register. However, the person inspecting the Central Register must hold at least a particular rank in each case. An inspector appointed under the Companies Act to investigate the ownership of a company may also

inspect the Central Register, free of charge.

### Access by designated persons and the public

A designated person with whom a relevant entity enters into an occasional transaction or a business relationship will be able to access the name, month and year of birth, country of residence, nationality, and statement of the nature and extent of the interest held/control exercised by each beneficial owner when carrying out CDD in respect of the relevant entity.

A member of the public may also access the same information as a designated person.

In each case, if a beneficial owner is a minor, the designated person or member of the public must give the Registrar a summary of the public interest grounds behind its access request.

The Registrar may charge a designated person or member of the public a fee for inspecting the Central Register.

### Discrepancies

If a designated person, An Garda Síochána, the Revenue Commissioners, a competent authority or the CAB dealing with a relevant entity forms an opinion that there is a discrepancy between the information on the relevant entity’s Beneficial Ownership Register, and the information on the Central Register, it must notify the Registrar, and the Registrar may seek clarification from the relevant entity.

### Deletion of information from the Central Register

The Registrar will delete information in relation to a relevant entity from the Central Register once 10 years have expired since the relevant entity’s dissolution.

## SANCTIONS

### Part 2 (Beneficial Ownership Register)

The sanctions in place under the 2016 Regulations for failing to comply

with the requirement to establish and maintain a Beneficial Ownership Register remain, and some additional sanctions are provided for as follows:

- » a relevant entity that fails to obtain and hold information on its beneficial owners, to maintain its Beneficial Ownership Register, and to include information on its beneficial owners in its Beneficial Ownership Register, may also be liable to a fine not exceeding €500,000 if convicted on indictment; and
- » a person who fails to comply with a notice under Regulation 7 (Notice to natural person believed to be a beneficial owner), Regulation 9 (Notice to person believed to have information, etc. concerning beneficial ownership) or Regulation 11 (Notice to natural person to confirm occurrence of change, etc.) may also be liable to a 12 month prison term.

### Part 3 (Reporting to the Central Register)

Part 3, which contains obligations not set out in the 2016 Regulations, contains some new criminal offences, including:

- » failure by a relevant entity to provide information on its beneficial owners to the Registrar, to ensure that the information on the Central Register is up-to-date, or to comply with a request from the Registrar to explain or rectify any discrepancies;
- » the provision of materially false information to the Registrar by a relevant entity or presenter on its behalf;
- » failure by a designated person to notify the Registrar of a discrepancy between a Beneficial Ownership Register, and the Central Register; and
- » failure by a presenter to provide certain information about itself to the Registrar.

### TIMING

Part 2 of the 2019 Regulations has immediate effect, but save as set out

above, most of the obligations set out in Part 2 were already in place under the 2016 Regulations.

Part 3 takes effect on 22 June 2019, and relevant entities in existence on that date will have 5 months to start reporting (i.e. by 22 November 2019). However, that is contingent on the Registrar being in a

position to accept information by that date.

### HOW WE CAN HELP YOU

If we have already assisted in the establishment of your Beneficial Ownership Register, we can update its format to make it compliant with the

2019 Regulations. We can also advise on how to obtain the new information required to be collected by relevant entities, and ultimately assist in presenting the required returns to the Central Register on your behalf.

## KEY CONTACTS

For further information, please speak to your usual Arthur Cox contact or:

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