



Anti money-laundering Regulations

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Introduction

At the end of 2016, and somewhat beneath the scanner, the Irish Government commenced Regulations which are important to both companies and their advisers. Those Regulations¹ are made pursuant to Article 30 of the Fourth EU Anti Money-Laundering Directive² and came into operation on 15th November 2016. The Directive envisages that every member state should keep a register of the natural persons who are the beneficial holders of the shares in companies registered in the member state. Before that can happen, each company must itself carry out investigations to discover the true owners of its shares. Thus, the new Regulations require Irish-registered companies to gather the necessary information and to keep accurate, adequate and current information regarding the beneficial ownership of their shares.

Purpose of the Regulation

The purpose of the Regulation is clear - to prevent owners of companies from hiding behind complex corporate structures which tend to facilitate both money-laundering and potential terrorist financing. In most cases, companies will have no difficulties identifying the beneficial owner of its shares since these are likely to be the same as the legal owners of the shares. However, the task may be more complex in other instances; indeed, a company may find it has no means of knowing whether a registered member is a beneficial owner or not, other than by simply taking his word for it. Larger companies in particular may face substantial costs in complying with their duties under the regulations.

Application

The Regulations apply to any Irish-registered company or "legal entity" other than:

¹ S.I. No. 560/2016 - European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016

² Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

- (i) a company or entity registered on a stock exchange and consequently subject to disclosure requirements consistent with those of the EU;
- (ii) a company or entity which is already subject to equivalent international disclosure standards requiring transparency of ownership information.³

The requirement is that a company or legal entity must keep information about its "beneficial owners". That term is prescribed a specific meaning and does not mean that the company needs to maintain information about every shareholder. Beneficial ownership may arise directly or indirectly. Direct beneficial ownership arises where a shareholding or ownership interest of more than 25% in the entity is held by a natural person. Indirect ownership arises where a shareholding or ownership interest of more than 25% in the entity is held by another corporate entity/entities which is/are under the control of a natural person.

Information to be kept

The kind of information which must be maintained by the company or entity includes the beneficial owner's name, address, date of birth and the nature and extent of his ownership interest. The information must be kept accurate and up to date. Where the company/entity has made all reasonable enquiries to identify beneficial owners but these have come to nought, or where there is some doubt as to the beneficial owners so identified, the information of the senior managers of the company ought to be entered in place of the beneficial owners.

Obtaining and transmitting the Information

A company or entity which believes a person to be a beneficial owner, may serve a notice on that person informing him that he is believed to be a beneficial owner and is required by the Directive to provide the requisite information about himself. He has one month to respond to the notice. A similar notice may be sent to a third party who the company/entity reasonably believes to know the identity of the beneficial owner. Such person is required to reply to the notice disclosing the requested information, save where it is covered by legal professional privilege. Moreover, a person who knows or ought to know that he is a beneficial owner, is under a duty to inform the company/entity of this without being prompted to do so.

All this information, once collected, is required to be submitted to the CRO for maintenance in the central register of beneficial ownership. That register has not yet

³Article 3(6)(a)(i) of the Directive

been established but is expected to come into existence by the end of 2017. In preparation for this, the CRO has published the following guidelines for companies:

1. The RBO⁴ is expected to be in place and ready to be populated in Q4, 2017.
2. There is likely to be a period of at least 3 months provided to file without being in breach of the statutory duty to file.
3. Filing will be done through an on-line portal, there are no plans for paper forms and there will be no filing fee.
4. The information to be filed with the RBO in respect of each beneficial owner (must be a natural person) will include the following:
 - Forename & Surname
 - Date of birth
 - Nationality
 - Residential address
 - A statement of the nature of the interest held by each beneficial owner (eg controlling shareholder)
 - A statement of the extent of the interest held by each beneficial owner (eg controller of 26% of shares in company)
 - The date on which each natural person was entered in the register as a beneficial owner of the corporate entity
 - The date on which each natural person who has ceased to be a beneficial owner of it, ceased to be such an owner
 - If no natural persons are identified there shall be entered in the register the names of the natural person(s) who hold senior management position(s).⁵

it is not clear whether the Register, once established, will be available for public inspection. While it will probably not be available to the public until a further EU Directive is agreed, the following persons will be permitted to access it:

- Competent authorities and financial intelligence units;

⁴ Register of beneficial ownership

⁵ www.cro.ie



- Entities required to carry out customer due diligence (such as banks);
- Any other person who can demonstrate a "legitimate interest" in the information.

A failure by a company or entity, or a person who receives a notice described above, to comply with their duties under the Directive is a criminal offence.

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Important Note

This article is intended to be an introduction to this area of law and should not be taken as constituting legal advice. If you require more information about this subject or require legal advice or representation, please contact us by visiting www.legalcounsel.ie