

Twenty Questions on the new Beneficial Ownership Register

Dr Thomas Courtney and Daíbhí O'Leary, Arthur Cox, answer the top 20 questions on the Beneficial Ownership Register.

1. What are the new obligations?

New Regulations – the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (S.I. 560 of 2016) – require the vast majority of Irish companies (and other entities) to set out, in a new register, details of its “beneficial owners”, being any natural persons who have a significant level of ownership or control in the entity.

2. Who do the obligations apply to?

The obligation applies to a “relevant entity”, meaning a legal entity incorporated in Ireland. The obligation therefore applies to every Irish company – save as set out in the following paragraph – as well as to other Irish-incorporated entities.

3. Are there any exceptions?

The Regulations do not apply to a company or body corporate that is listed on a regulated market subject to disclosure requirements consistent with EU law, or is subject to equivalent international standards ensuring transparency regarding ownership information. Therefore the Regulations do not apply, for example, to a company listed on the Irish Stock Exchange; however there is no automatic exemption for a subsidiary of a listed company.

4. Why have these obligations been introduced?

The Regulations look to transpose part of the Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849), which is itself part of a European-wide initiative to counter money-laundering.

5. When do these obligations have effect?

The Regulations took effect on 15 November 2016, so every relevant entity should look to take action promptly to meet the obligations.

6. What is a “beneficial owner”?

The term “beneficial owner” has a very specific and technical meaning (as set out in the Directive), and means a natural person who ultimately owns or controls a relevant entity. A person who holds or controls (directly or indirectly) over 25% of the shares in a relevant entity shall generally be held to be a beneficial owner; alternatively, this may be achieved through holding the requisite levels of ownership interests or voting rights. The Regulations do not address trusts.

7. What happens if a relevant entity has corporate bodies among its members?

If a relevant entity has a company or other corporate body among its members, it may be necessary to look further up the chain of ownership to see if a natural person ultimately has the requisite level of ownership or control in the relevant entity.

8. What must a relevant entity do?

A relevant entity must do two things. Firstly, it must establish a beneficial ownership register. Secondly, it must take “all reasonable steps” to obtain and hold adequate, accurate and current information in respect of its beneficial owners.



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9. What are “reasonable steps”?

The Regulations do not define “reasonable steps”. Often the directors will know who the beneficial owners are (for example where a small number of individuals make up its entire membership) and the process will be relatively straightforward. In other cases – due to the complex nature of the ownership structure, or where interests are held on trust – the approach will be more complicated and may need to be decided on a case-by-case basis. The Regulations require that certain actions be taken and suggest other actions.

10. Are there any actions that a relevant entity must take?

A relevant entity must give notice to any natural person whom it has reasonable cause to believe is a beneficial owner, requiring that that person confirm whether this is the case and (if so) provide the particulars required to be included in the register.

Such notice need not be sent where the entity has already received confirmation that the natural person is a beneficial owner and has been provided with the relevant particulars and where the confirmation and particulars were provided by that person or with their knowledge.

11. What other actions are suggested in the Regulations?

The Regulations permit, but do not require, a relevant entity to send a notice to any person if it has reasonable cause to believe that the person has knowledge of the identity or particulars of a beneficial owner, or of any other person likely to have that knowledge.

12. What happens if a relevant entity has no beneficial owners?

If, having exhausted all possible means, no natural person is identified as a beneficial owner, or if there is any doubt that any natural person so identified is a beneficial owner, then the senior managing officials of the relevant entity (which includes their directors and CEO) must instead be included in the register as beneficial owners.

13. What particulars must be included in the register?

The name, date of birth, nationality and residential address(es) of each beneficial owner must be stated in the register and a statement of the nature and extent of their interest. The relevant entity must also set out the date on which the person was entered in the register and (ultimately) the date on which they ceased to be a beneficial owner.

14. Is it possible to redact this information?

There is no express provision in the Regulations allowing information to be redacted. This contrasts with company law provisions allowing a director's residential address to be kept private where their safety or security is at risk and further consideration may need to be given to this, if such a director is likely to be deemed to be a beneficial owner.

15. What ongoing obligations apply?

As above, a relevant entity must hold adequate, accurate and current information regarding its beneficial owners. Where a relevant entity has reasonable cause to believe that a change has occurred so that particulars in the register are incorrect or incomplete, it must send a notice to the relevant natural person requesting that they confirm the change.

In addition, if a natural person knows that such a change has occurred in their particulars (or that they are a beneficial owner but are not stated on the register), they must notify the relevant entity of the relevant facts.

16. What are the consequences of an entity not complying with its obligations?

If a relevant entity fails to take all reasonable steps to obtain relevant particulars of its beneficial owners, or fails to include relevant particulars in the register, it will be guilty of an offence and liable to a class A fine (i.e. a fine of up to €5,000). This will also be the case if it fails to send out the required notice at 10 above (unless exempted from doing so).

17. What are the consequences of an individual not complying with their obligations?

If a person fails to reply to a statutory notice, or fails to notify the relevant entity of a change in their particulars, or that they have been incorrectly omitted from the register, that person shall be guilty of an offence and again liable to a class A fine.

18. Who has access to the entity's register?

There is no express provision in the Regulations for anyone to have access to the register. It is implicit that the directors would have access to it (so that they can keep it up-to-date) and that a beneficial owner would have access to information relating to them (again, so that they can meet their obligations). However there is currently no provision for any other person to have access to a relevant entity's register.

19. What future steps are envisaged?

The Directive envisages that each Member State will take further steps to set up a “central register”, to consolidate the information held on entity registers. It is understood that regulations will be introduced in this regard in mid-2017.

20. Who will have access to the central register?

The Directive envisages that the central register will be accessible to parties such as competent authorities and to persons that can demonstrate a legitimate interest. Again, it will be necessary to await the detail in further regulations; however it is not currently expected that information on beneficial owners would be generally publicly available.