

Disclosure of beneficial ownership of Irish companies

Requirements for the disclosure of beneficial ownership of Irish companies and the creation of a new Central Register

On 22 March 2019 Ireland made further implementations of the EU's Fourth Anti-Money Laundering Directive (the 'Directive') by way of a statutory instrument. This Statutory Instrument (the 2019 Regulations) revokes the earlier Statutory Instrument (the 2016 Regulations) but repeats much of its content and provides for the creation of a new central register of the beneficial owners of Irish corporate entities.

On the **effective date, 22 June 2019**, a new Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the Central Register) was created. The Registrar of Companies was appointed to oversee the Central Register.

Relevant entities which exist prior to the effective date must then deliver the required information to the Central Register within **5 months of the effective date, ie 22 November 2019**. Newly incorporated companies from the 22 June 2019 will have five months from incorporation to deliver their information going forward.

The 2019 Regulations apply to all relevant entities being a corporate or other legal entity incorporated in the State and includes a entity and any other body corporate so incorporated (the Relevant Entity).

What is beneficial ownership?

The term 'beneficial ownership' is given the meaning provided by Article 3(6)(a) of the Directive. The beneficial owner of a Relevant Entity is a natural person(s) who ultimately owns or has control of 25% plus one share of the equity **or** voting/control rights, either directly or indirectly.

What information is to be obtained by the relevant entities?

- names, dates of birth, nationalities and residential addresses of each beneficial owner;
- a statement of the nature and extent of the interest held by each beneficial owner;
- the PPS number of each beneficial owner to *whom such a number has been issued*¹;
- the date on which the natural person was entered into the register as a beneficial owner; and
- the date on which the beneficial owner of the entity ceased to be such an owner.

With regard to the PPS number, the entity will have an obligation not to disclose the collected PPS number in the Register.

BEN2

For a beneficial owner who does not have a PPS number a Form BEN2 - Declaration as to Verification of Identity, will be used to verify that beneficial owner's identity.

The Form BEN2 requires the beneficial owner to make a sworn declaration as to his/her name, date of birth, nationality and address. Once completed and signed by the beneficial owner and a witness (e.g. notary public), the BEN2 will be uploaded via the Central Register online portal.

¹The requirement for PPS numbers appears to be the only additional information required by beneficial owners under the 2019 Statutory Instrument. PPS numbers are not contained on the Central Register and are collected for verification purposes only. Words in italics (which have been italicised by the writer for emphasis), would appear to suggest that only where a PPS number has been issued to such a beneficial owner should it be required to be provided under the statutory instrument, both for the purposes of the internal beneficial ownership register and the Central Register.

It will be an offence for a company or industrial and provident society not to provide a PPS number for a beneficial owner who has one, or to upload a Form BEN2 for a beneficial owner who has a PPS number, even if they are not resident in Ireland. The Form BEN2 will be used by the Registrar for identity verification purposes only, and will not be accessible to any third party.

The Registrar is currently finalising the technical aspects of the BEN2 process and will announce when it is ready.

Ownership interests in listed companies (in markets which meet EU or equivalent transparency criteria) are excluded from these requirements. For example, companies whose shares are listed on stock exchanges such as the Irish Stock Exchange, the London Stock Exchange and NASDAQ should be **excluded** from these requirements. However, it should be noted subsidiaries of such entities are not excluded.

Steps to be taken to identify beneficial owners

Where a Relevant Entity has been informed of the required particulars of a natural person as a beneficial owner by that natural person or with that natural person's knowledge, it is not required to give notice to that natural person.

Where the beneficial owners are known

The 2019 Regulations place a duty on the Relevant Entity to send a notice to any natural person whom it reasonably believes to be a beneficial owner of it and this notice must be replied to within one month. The beneficial owner must state whether they are a beneficial owner of the entity and confirm or correct any particulars that are included in the notice and supply any particulars that are missing.

Where the beneficial owners are not known

The entity may send a notice to any person (whether a natural person or not) who it has reasonable cause to believe has knowledge relating to beneficial owners. The addressee must respond stating whether they know of any beneficial owners or anybody who is likely to have knowledge of any beneficial owners and supply any information which they possess.

Keeping the internal beneficial ownership register up to date

The entity must keep an accurate beneficial ownership register. Any relevant changes must be made as soon as is reasonably practicable, after the entity learns of a change or has reasonable cause to believe that a change has occurred. Where a relevant change has occurred, the entity must issue a notice to the beneficial owner. A beneficial owner to whom such a notice has issued has one month from the date of the notice to comply and confirm whether or not the change concerned has occurred.

A relevant change includes, where:

- a beneficial owner previously listed on the register ceases to be a beneficial owner; or
- a change occurs as a result of the information in relation to the beneficial owners being incorrect or incomplete.

Where a beneficial owner has received notice of a change they must respond within one month from the date of the notice confirming whether or not the change concerned has occurred. Where the change has occurred the beneficial owner must reply and:

- state the date of the change;
- confirm/correct the information included in the notice; and
- supply any information which is missing from the notice.

There is also an onus on the beneficial owner to notify the entity in respect of a relevant change, where the beneficial owner has not received a notice from the entity and where the status or change has continued for a period of one month. The beneficial owner then has a period of one month in which to notify the entity of their status or change, for example a change in address.

Where beneficial owners cannot be identified

Where the entity has exhausted all possible means and provided there is no suspicion, the entity should use one or more natural persons who hold the position of 'senior managing officials' (ie director or CEO of the entity) including their date of birth, nationality and residential address.

A record should be maintained by the entity of the actions taken in order to identify the beneficial ownership of it.

Central Register

The information required to be recorded in the Central Register should be reflective of the current information contained in the entity's beneficial ownership register at the date on which the filing is delivered. Details of the person/presenter uploading the information will also be required.

With respect to the PPS number of a beneficial owner that has been delivered to the Registrar, the Registrar shall not disclose that number and only a 'hashed version' of the PPS number will be stored by the Registrar.

Following the initial filings made to the Central Register, any changes to the beneficial ownership information must be updated within **14 days** of such changes taking place on the internal beneficial ownership register.



Occasional transaction

Where an entity enters into an occasional transaction with a designated person (ie accountants, banks, solicitors or tax advisors) or forms a business relationship with a designated person where the designated person is required to apply customer due diligence measures, the entity shall provide information identifying all the beneficial owners of the entity. The entity shall also notify the designated person of any change to its beneficial ownership register that occurs which is relevant to the occasional transaction or occurs during the course of the business relationship within 14 days from the date on which the entity becomes aware of the change.

Access to information

Internal Beneficial Ownership Register

A relevant entity shall provide any member of An Garda Síochána, Revenue Commissioners, a competent authority, the Criminal Assets Bureau or an inspector appointed under section 764(1) of the Companies Act 2014 with timely access, on request, to its internal beneficial ownership register.

Central Register

Under the 2019 Regulations, unrestricted access to beneficial ownership information in the Central Register is permitted to a number of bodies, including but not limited to certain members of An Garda Síochána, the Financial Intelligence Unit (FIU) Ireland, Revenue Commissioners and the Criminal Asset Bureau amongst other competent authorities.

The general public may access the Central Register but access will be restricted to certain content. In general, a designated person or members of the public may inspect the information in the Central Register.

A designated person and members of the public have the right to access the following information (with the exception of information on minors, see below) in the Central Register that relates to the relevant entity:

- the name, the month and year of birth, the country of residence and nationality of each beneficial owner (no access to PPS numbers or residential addresses); and
- a statement of the nature and extent of the interest held or control exercised, by each such beneficial owner.

It is likely a nominal fee will be charged by the Registrar for access to the Central Register by a designated person or a member of the public (ie restricted access user).

Minors

Where a designated person or a member of the public seeks information on the Central Register that relates to minors, they will need to write to the Registrar noting the grounds on which they consider it is in the public interest that the information be disclosed. Whether there are substantial grounds to disclose this information and grant access to that information to the applicant will be at the Registrar's discretion.

Third party reporting obligations

The 2019 Regulations impose an onus on competent authorities, for example:

- An Garda Síochána;
- Revenue Commissioners;
- Criminal Assets Bureau; and
- designated persons.

They must report to the Registrar if they form an opinion that there is a discrepancy on the information held on the Central Register. On receipt, the Registrar may make an entry in the Central Register to give effect to that notice and serve a notice on the relevant entity setting out the procedures required to resolve the discrepancy, including setting out a period in which the relevant entity must reply as the Registrar determines.

Rectification of the Register

The 2019 Regulations allow a person whose details are incorrectly entered or omitted from a beneficial ownership register to apply to the High Court for rectification of the register.

Penalties for failure to comply with the 2019 Regulations

There has been a significant increase in penalties under the 2019 Regulations. These include but are not limited to:

- a relevant entity that fails to comply with certain regulations contained therein commits an offence and the liability can range from:
 - on summary conviction to a class A fine, currently €5,000; or
 - on conviction on indictment to a fine not exceeding €500,000, depending on the particular offence.

A person being:

- a beneficial owner;
- a presenter; or
- a designated person.

Any of the above that fails to comply with certain regulations contained therein commits an offence and shall be liable on summary conviction to a class A fine, currently €5,000.

A person who, in purported compliance with specific regulations, makes a statement that is materially false, knowing it to be so false or being reckless as to whether it is so false, commits an offence and shall be liable to:

- on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 12 months or both.



Officers of the entity

Where an offence under the 2019 Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate (or a person purporting to act in such a capacity), that person shall, as well as the body corporate, be guilty of an offence and liable to be proceeded against and punished as if they were guilty of the offence committed by the entity.

Where a person to whom a notice is given under certain regulations including, notice to a:

- natural person believed to be a beneficial owner;
- person (whether natural person or not) believed to have information, etc concerning beneficial ownership; and
- natural person to confirm occurrence of a change, etc.

Any one that fails to comply with such notice (or in purported compliance makes a statement that is materially false, knowing it to be so false or being reckless as to whether it is so false), shall be guilty of an offence and shall be liable:

- on summary conviction to a class A fine, currently €5,000, or imprisonment for a term not exceeding 12 months or both.

Sharing information

Under 2019 Regulations certain bodies including but not limited to An Garda Síochána, Revenue Commissioners, a competent authority and the Criminal Assets Bureau may disclose the information in the Central Register to any corresponding authority of another member state, the request shall be complied within a timely manner and no fee shall be charged.

As provided under the Directive, the Registrar shall arrange for the connection of the Central Register with central registers in other member states.

How Grant Thornton can help:

- providing advice on the necessary steps an entity needs to take;
- assisting entities in compiling their register;
- assisting entities with identifying their beneficial owners; and
- assisting with the filing obligation for the Central Register.

Please contact a member of our dedicated team if you would like further information regarding beneficial owners.

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