



Requirements for the disclosure of beneficial ownership of Irish companies

On 15 November 2016 Ireland implemented the European Union's (EU) Fourth Anti-Money Laundering Directive ('the Directive') by way of statutory instrument. This is the first step in creating a central register of the beneficial owners of Irish incorporated entities.

All Irish companies are now required to compile and maintain a register of beneficial owners (the 'Register'). This information may become publicly available through the Central Register, to be maintained at the Companies Registration Office (CRO) and which is expected to go live on **26 June 2017**. This has yet to be confirmed.

What information is contained in the Register?

- names, dates of birth, nationalities and addresses of each beneficial owner;
- nature and extent of the interest held by each beneficial owner;
- date on which the natural person was entered into the register as a beneficial owner; and
- date on which the beneficial owner of the company ceased to be such an owner.

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 their subsidiaries are not excluded.

Keeping the beneficial ownership register up to date

The company must compile and maintain adequate, accurate and current information in respect of their ultimate beneficial owners on the Register. Any relevant changes must be made as soon as is reasonably practicable after the company learns of a change or has reasonable cause to believe that a change has occurred. Where a relevant change has occurred the company must issue a notice to the beneficial owner.

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 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/update the information included in the notice; and
- supply any information which is missing from the notice.

What is beneficial ownership?

In the regulations, 'beneficial owner' is given the meaning provided by Article 3(6)(a) of the Directive. This sets out how beneficial ownership should be determined, so as to identify the natural person or persons ultimately controlling a legal entity, through direct or indirect ownership of a sufficient percentage of the shares, voting rights or ownership interest in that entity. A shareholding of 25% plus one share or an ownership interest of more than 25% in the entity, held by a natural person shall be an indication of direct ownership.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the entity held by a corporate entity, which is under the control of a natural person(s) or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership.

An individual will also be considered a beneficial owner where they have the power to control the company by other means, such as:

- the right to appoint or remove a majority of the board of directors;
- the right to exercise a dominant influence over the company, through for example a shareholders agreement or provisions in the company's constitution; or
- having the power to exercise or actually exercising dominant influence or control over the company.

Where it does not prove possible to establish the ultimate beneficial owners of a company and/or there are no individuals who meet these threshold ownership requirements, the name and details of the directors or the Chief Executive Officer (CEO) of the company should be disclosed on the register instead.

So what do you need to do now?

There is an obligation on each company to take reasonable steps to obtain and hold adequate, accurate and current information of its beneficial owners. The Register must contain details of each beneficial owner.

Where the beneficial owners are known

The company should send a notice addressed to the beneficial owner, this notice must be replied to within one month. The beneficial owner must state whether they are a beneficial owner of the company and correct any information which is to be kept on the Register.

Where the beneficial owners are not known

The company may send a notice to any person 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 of any beneficial owners which they possess.

Where the relationship between the addressee and the beneficial owner is one of a legal professional privilege relationship, no information is required to be supplied.

Where no beneficial owners can be identified

Where the company has exhausted all possible means and provided there is no suspicion, the company may decide to enter one or more natural persons who holds the position of 'senior managing officials' (eg. director or CEO of the company) in the register.

Penalties for failure to comply with this regulation

Class A fine which has a maximum penalty of €5,000, for the:

- company;
- the beneficial owner; and
- the person with reasonable knowledge.

Fines will also be imposed where any false statements regarding any information is given.

Contact

If you require assistance or want to learn more about the Companies Act 2014, please refer to our other publications at www.grantthornton.ie

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