

OBLIGATION FOR IRISH COMPANIES TO FILE BENEFICIAL OWNERSHIP DETAILS

09 DECEMBER 2019

AN IRISH REGISTERED COMPANY IS NOW REQUIRED TO COMPLETE AND FILE A FORM WHICH GIVES ACCURATE AND CURRENT INFORMATION ON ITS ULTIMATE BENEFICIAL OWNERS.

THE IRISH REGULATIONS

Ireland enacted the required legislation in two stages.

First, with effect from 15 November 2016, the 'European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016' (SI No. 560 of 2016), required affected corporate and other legal entities incorporated in Ireland to hold accurate and current information on the beneficial ownership interests in them.

Secondly, the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019, effective from 22 June 2019, revoked the 2016 Regulations but re-enacted much of their provisions.

AFFECTED COMPANIES AND OTHER ENTITIES

New companies formed and registered under the Companies Act 2014 and existing companies within the meaning of the Act and industrial and provident societies registered under the Industrial and Provident Societies Acts 1893 to 2018 must file the required information relating to their beneficial ownership on the RBO. Companies listed on a regulated market do not have to provide the information.

WHO IS A BENEFICIAL OWNER UNDER THE NEW REGULATIONS?

A Beneficial Owner is any natural person(s) who ultimately owns or controls a legal entity, either through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the entity, including through bearer shareholdings, or through control via other means.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person is an indication of direct ownership.

The New Regulations are most vague when it comes to identifying beneficial owners where no owner owns more than 25% of the voting rights. For example, are you a beneficial owner of a company if you only have a small minority share in it? The safe approach may be to treat all shareholders as beneficial owners.

If, after having exhausted all possible means no person is identified as a beneficial owner of a company, or if there is any doubt about such owner(s), the natural person(s) who hold the position of senior managing official(s) may be treated as the beneficial owners.

INFORMATION REQUIRED FOR FILING

The information in relation to a beneficial owner to be filed includes:

- the full name of the beneficial owner, the date of birth, nationality and residential address;
- a statement of the nature and extent of the individual's interest held;
- the Personal Public Service Number (PPSN) – a unique reference number – (provided, that it is issued);
- the date on which the individual was entered into the Register of Beneficial Owner.

For beneficial owners who do not have a PPSN, the Form BEN2 - Declaration as to Verification of Identity – has to be filed. The information must be kept up to date at all times.

WHO HAS ACCESS TO THE `REGISTER OF BENEFICIAL OWNERS`

Duly authorised officer of relevant governmental, tax and enforcement authorities will have unrestricted access to the information on the RBO.

The public will have access to the following information only provided the beneficial owner is over 18: Forename and Surname, month and year of birth, nationality, country of residence and a statement of the nature and extent of the beneficial interest held or control exercised.

The public will not see the day of birth or address of the beneficial owner.

THE DEADLINE FOR AFFECTED COMPANIES TO FILE

Existing Companies and societies had to file their beneficial ownership information latest on Friday 22 November 2019. Newly founded companies have 5 months after incorporation to provide the required details.

Filing of beneficial ownership data can only be made online through a portal on the RBO website at www.rbo.gov.ie. There are no paper forms and no filing fees involved.

THE RIGHT OF ACCESS TO THE INFORMATION ON BENEFICIAL OWNERSHIP

One of the issues to be considered in relation to a central register of the beneficial ownership of a company is who may have access to the information relating to that ownership on the central register. The primary purpose of the register is to make information on the beneficial ownership of companies available to the lawful authorities.

SANCTIONS FOR FAILURE TO COMPLY

A company which fails to comply with its obligation to establish its own internal register or to deliver the information to the central register will commit an offence for which it can be liable for a fine not exceeding EUR 500.000. For an individual it is also an offence to fail to notify the relevant entity that the person in question is a beneficial owner when the person knows this is incorrect, or to fail to comply with a request of the company to provide information. In any such case it can result on summary conviction to a fine not exceeding EUR 5.000.

HOW TIPP MC KNIGHT CAN HELP?

We can provide:

- support with the identification of beneficial owners and the creation of the beneficial ownership register;
- advice which steps are necessary and support with collecting all information which is required.

If you have any questions concerning the New Regulations or the required information for filing with the RBO, please do not hesitate to contact us.



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