



Time to identify beneficial owners



Ireland takes first step to create a central register of beneficial owners of Irish incorporated companies.

Under a statutory instrument released on 15 November 2016, Ireland takes the first step to create a central register of beneficial owners of Irish incorporated companies.

With effect from 15 November, Irish incorporated companies are required to create and maintain a register of beneficial owners.

The collection of beneficial ownership information by companies is the first step in meeting Ireland's obligations to establish a central register of beneficial owners under the European Union (EU) Fourth Anti-Money Laundering Directive ('4AMLD' or 'the Directive'). The 4AMLD is to be enacted into Irish law no later than 26 June 2017. Similar obligations apply to all EU Member States.

The purpose behind creating a central register of beneficial ownership information is, at a minimum, to make the information available to financial institutions in conducting their customer due diligence procedures for anti-money laundering purposes, to certain authorities such as police forces and to other persons or organisations who can demonstrate a legitimate interest in the information.

At an EU level, ECOFIN approved proposals in November to require information from the central register of beneficial owners to be made available to local tax authorities and to be shared between tax authorities within the EU. Separately, as a proposed amendment to 4AMLD, the European Commission is also proposing that information held on the central register will be made publicly available.

It is very possible that Ireland will decide to make the central register publicly available and that the Companies Registration Office will, most likely, be involved.

What information is to be held on the beneficial ownership register?

Beneficial owners are essentially individuals with significant control (whether direct or indirect) over the company. 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, although their subsidiaries will not be so exempt.

Ireland has adopted the definition of beneficial ownership and the threshold ownership level set out in the Directive. In simple terms, a beneficial owner includes an individual:

- Owning or controlling, directly or indirectly, more than 25% of the shares or voting rights in a company, or
- Who has the ability to exercise dominant influence or control over a 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 of the company should be disclosed on the register instead.

The information to be included on the register is:

- Name
- Date of birth
- Nationality
- Residential address, and
- A statement of the nature and extent of the interest held by the beneficial owner e.g. 30% of the ordinary shares of the company.

The register must also include details of the date on which the individual was first added onto the register as a beneficial owner and the date on which the individual ceased to be a beneficial owner.

If Ireland decides to make the central register publicly available it is likely to restrict public access or redact certain information e.g. residential address, to protect the privacy of owners.

Obligations of the company and beneficial owners

Individual owners are obliged to provide the ownership information to the company and to keep the company up to date with any changes.

Every company is obliged to keep its own register of beneficial owners up to date. However, the statutory instrument does not set out who has rights to inspect that register.

In due course, it is expected that as part of the next steps in setting up a central register, Ireland will put in place measures to require the information to be sent to a central register (once this is established).

The current measures set out the requirements for notices to be sent by the company to beneficial owners and for responses to be made by beneficial owners (or persons who have information on beneficial owners) and these take immediate effect. Beneficial owners are obliged to comply with requests from the company within one month from the date of receiving the notice to provide the information to the company.

Criminal penalties apply, for failure on the company's part to keep its own register of beneficial owners up to date, to collect the information and on the owner's part to supply such information.

International developments

The United Kingdom (UK) has moved already to implement a central register of "persons with significant control" (PSC) over UK incorporated companies. These have applied to companies since 1 April 2016 with the requirements to send the information to the central register held by Companies House coming into effect from 1 June 2016.

As Ireland's enactment of the measures are drawn directly from the Directive, those who are familiar with the UK requirements as they apply to UK companies are likely to find some differences in the practical implementation of the measures between the UK and Ireland.

On 19 November 2016, the Companies Registration Office released limited guidance on the measures. The guidance sets out a high level overview of the measures, describes the separate obligations on companies and beneficial owners and confirms that this is the first step towards Ireland establishing a central register.

If you have further questions in relation to these measures, please feel free to contact a member of your KPMG team.

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Produced by: KPMG's Creative Services. Publication Date: December 2016. (2371)