



STATUTORY INSTRUMENTS.

S.I. No. 560 of 2016



EUROPEAN UNION (ANTI-MONEY LAUNDERING: BENEFICIAL
OWNERSHIP OF CORPORATE ENTITIES) REGULATIONS 2016

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I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to the first subparagraph of Article 30(1) of Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015¹, hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016.

(2) These Regulations come into operation on 15 November 2016.

Interpretation

2. (1) In these Regulations—

“beneficial owner” has the meaning given to it by the portion of the Directive’s definition of “beneficial owner” relevant to these Regulations, that is to say — point (6)(a) of Article 3 of the Directive;

“beneficial ownership register” shall be construed in accordance with Regulation 14(1);

“company” means a company formed and registered under the Companies Act 2014 (No.38 of 2014) or an existing company within the meaning of that Act;

“Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;

“relevant entity” means a corporate or other legal entity incorporated in the State and includes a company and any other body corporate so incorporated;

“senior managing official” includes a director and a chief executive officer.

(2) References in Regulation 6, 8 or 10 to the server of a notice are references to the relevant entity that gives the notice referred to in Regulation 6, 8 or 10, as the case may be.

¹OJ No. L 141, 5.6.2015, p. 73.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 15th November, 2016.

(3) A word or expression that is used in these Regulations and is also used in the Directive shall have in these Regulations the same meaning as it has in the Directive.

Application of these Regulations

3. (1) Subject to paragraph (2), these Regulations apply to every relevant entity.

(2) These Regulations do not apply to a company or other body corporate—

(a) listed on a regulated market that is subject to disclosure requirements consistent with the law of the European Union, or

(b) subject to equivalent international standards which ensure adequate transparency of ownership information.

(3) For the purposes of paragraph (2)(a), “disclosure requirements consistent with the law of the European Union” includes the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007).

Relevant entities to obtain and hold beneficial ownership information

4. (1) In this Regulation—

(a) a reference to the “first limb of the relevant definition” is a reference to point (i) of point (6)(a) of Article 3 of the Directive; and

(b) a reference to “both limbs of the relevant definition” is a reference to points (i) and (ii) of that point (6)(a).

(2) Every relevant entity shall take all reasonable steps to obtain and hold adequate, accurate and current information in respect of its beneficial owners, that is to say—

(a) the name, date of birth, nationality and residential addresses of each beneficial owner of it; and

(b) a statement of the nature and extent of the interest held by each such beneficial owner.

(3) The relevant entity shall enter the information referred to in paragraph (2)(a) and (b) in its beneficial ownership register, and the following information shall also be entered by it in that register—

(a) the date on which each natural person was entered into the register as a beneficial owner of it; and

(b) the date on which each natural person who has ceased to be a beneficial owner of it ceased to be such an owner.

(4) If either—

- (a) after having exhausted all possible means and provided there are no grounds for suspicion by the relevant entity, no natural person under the first limb of the relevant definition is identified, or
- (b) there is any doubt that that any natural person so identified is a beneficial owner of the relevant entity,

there shall be entered, in the relevant entity's beneficial ownership register as its beneficial owners, the one or more natural persons who hold the position of senior managing officials of the relevant entity (including their date of birth, nationality and residential addresses).

(5) In a case falling within paragraph (4)(a) or (b), a relevant entity shall keep records of the actions taken in order to identify the beneficial ownership of it under both limbs of the relevant definition.

(6) A relevant entity that fails to comply with paragraph (2), (3), (4) or (5) commits an offence and shall be liable, on summary conviction, to a class A fine.

Natural persons reasonably believed to be beneficial owners: duty to give particular notice to them

5. Without prejudice to the generality of Regulation 4(2), a relevant entity shall give to any natural person whom it has reasonable cause to believe to be a beneficial owner of it the notice referred to in Regulation 6(1), but this is subject to Regulation 6(4).

Notice to natural person believed to be a beneficial owner

6. (1) The notice referred to in Regulation 5 is a notice, addressed to the natural person concerned, that requires the addressee—

- (a) to state whether or not he or she is a beneficial owner of the server of the notice, and
- (b) if so, to confirm or correct any particulars of his or hers that are included in the notice, and supply any that are missing.

(2) A notice under this Regulation shall—

- (a) state that it is given under “Regulation 6 of the European Union (Anti Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016”, and
- (b) as respects each of the particulars referred to in Regulation 4(2)(a) and (b)—
 - (i) set out that which—
 - (I) to the knowledge of the server is, or
 - (II) with reasonable cause is believed by it to be, the relevant particular, or

(ii) in the absence of such knowledge or belief (on its part as respects a relevant particular) indicate, by leaving a space in the appropriate place, that that particular is not given in the notice.

(3) A notice under this Regulation shall also state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.

(4) A relevant entity is not required to give a notice under this Regulation if—

(a) the relevant entity has already been informed of the status of the natural person referred to in Regulation 5 as a beneficial owner of it, and been supplied with all the particulars referred to in Regulation 4(2)(a) and (b), and

(b) the information and particulars were provided either by that natural person or with his or her knowledge.

(5) A relevant entity that fails to comply with Regulation 5 or any provision of this Regulation commits an offence and shall be liable, on summary conviction, to a class A fine.

Other particular steps that may be taken to establish identity of beneficial owners

7. (1) This Regulation—

(a) is without prejudice to the generality of Regulation 4(2), and

(b) does not derogate from the duty, where it arises, under Regulation 5.

(2) A relevant entity may give to any person (whether a natural person or not) the notice referred to in Regulation 8 if it has reasonable cause to believe that the person has the knowledge referred to in paragraph (1)(a) or (b) of that Regulation.

Notice to person believed to have information, etc. concerning beneficial ownership

8. (1) The notice referred to in paragraph (2) of Regulation 7 is a notice, addressed to the person referred to in that paragraph, that requires the addressee—

(a) to state whether or not the addressee knows the identity of—

(i) any natural person who is a beneficial owner of the server of the notice, or

(ii) any person (whether a natural person or not) likely to have that knowledge, and

(b) if so, to supply any particulars of any such person that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned.

(2) For the purposes of paragraph (1)—

- (a) a reference to knowing the identity of a person includes a reference to knowing information from which that person can be identified, and
- (b) a reference in subparagraph (b) of it to particulars is a reference—
 - (i) in the case of the natural person referred to in paragraph (1)(a)(i) — to the particulars referred to in Regulation 4(2)(a) and (b), and
 - (ii) in the case of the person referred to in paragraph (1)(a)(ii) — to any particulars that will allow the person to be contacted by the relevant entity.

(3) A notice under this Regulation shall state—

- (a) that it is given under “Regulation 8 of the European Union (Anti Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016”, and
- (b) that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.

(4) Nothing in this Regulation shall be construed as requiring a person to whom a notice under it is given to disclose any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Duty to keep information in register up-to-date

9. (1) This Regulation applies where particulars of a natural person, as being a beneficial owner of the relevant entity, are entered in a relevant entity’s beneficial ownership register.

(2) For the purposes of this Regulation, a relevant change occurs if—

- (a) the natural person referred to in paragraph (1) ceases to be a beneficial owner of the relevant entity, or
- (b) any other change occurs as a result of which the particulars (stated in the foregoing register) in relation to the natural person are incorrect or incomplete.

(3) Where this Regulation applies, the relevant entity shall, in accordance with paragraph (4), give the notice referred to in Regulation 10 to the natural person if it knows or has reasonable cause to believe that a relevant change has occurred, but this is subject to Regulation 10(4).

(4) The foregoing notice shall be given by the relevant entity as soon as reasonably practicable after it learns of the change concerned or first has reasonable cause to believe that the change concerned has occurred.

Notice to natural person to confirm occurrence of change, etc.

10. (1) The notice referred to in Regulation 9(3) is a notice, addressed to the natural person concerned, that requires the addressee—

(a) to confirm whether or not the change concerned has occurred, and

(b) if so—

(i) to state the date of the change, and

(ii) to confirm or correct the particulars included in the notice, and supply any that are missing from the notice.

(2) A notice under this Regulation shall—

(a) state that it is given under “Regulation 10 of the European Union (Anti Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016”, and

(b) as respects such of the particulars referred to in Regulation 4(2)(a) and (b) as are known by the server of the notice (or with reasonable cause believed by it) to have been the subject of the change concerned—

(i) set out that which—

(I) to the knowledge of the server are, or

(II) with reasonable cause are believed by it to be,

the relevant particulars as they now stand in consequence of that change, or

(ii) in the absence of such knowledge or belief (on its part as respects a relevant particular) indicate — by leaving a space in the appropriate place — that that particular is not given in the notice.

(3) A notice under this Regulation shall also state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.

(4) A relevant entity is not required to give a notice under this Regulation if—

(a) the relevant entity has already been informed of the change concerned, and

(b) that information (including, as the case may be, the relevant particulars referred to in Regulation 9(2)(b)) were provided either by the natural person concerned or with his or her knowledge.

(5) A relevant entity that fails to comply with Regulation 9 or any provision of this Regulation commits an offence and shall be liable, on summary conviction, to a class A fine.

Duty of beneficial owner (in certain circumstances) to notify his or her status as such

11. (1) This Regulation applies to a natural person if—

- (a) the natural person is a beneficial owner of a relevant entity,
- (b) the natural person knows that to be the case or ought reasonably to do so,
- (c) in relation to the natural person, the particulars referred to in Regulation 4(2)(a) and (b) are not stated in the relevant entity's beneficial ownership register,
- (d) the natural person has not been given a notice by the relevant entity under Regulation 6, and
- (e) the circumstances specified in subparagraphs (a) to (d) have continued for a period of at least one month.

(2) A natural person to whom this Regulation applies shall notify, in writing, the relevant entity referred to in paragraph (1) of the natural person's status (as a beneficial owner) of the relevant entity, and that notification shall state—

- (a) the date, to the best of the person's knowledge, on which the person acquired that status, and
- (b) the particulars referred to in Regulation 4(2)(a) and (b).

(3) Paragraph (2) shall be complied with by the natural person not later than the end of the period of one month beginning with the day on which all the conditions specified in paragraph (1)(a) to (e) were first met with respect to the person.

(4) A natural person who—

- (a) fails to comply with this Regulation, or
- (b) in purported compliance with this Regulation, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false,

commits an offence and shall be liable, on summary conviction, to a class A fine.

Duty of natural person (in certain circumstances) to notify relevant change

12. (1) This Regulation applies to a natural person if—

- (a) in relation to the natural person (as a beneficial owner of the relevant entity), the particulars referred to in Regulation 4(2)(a) and (b) are stated in a relevant entity's beneficial ownership register,
- (b) a relevant change occurs,

- (c) the natural person knows of the change or ought reasonably to do so,
 - (d) the relevant entity's beneficial ownership register has not been altered to reflect the change, and
 - (e) the natural person has not been given a notice by the relevant entity under Regulation 10 by the end of the period of one month beginning with the day on which the change occurred.
- (2) For the purposes of this Regulation, a relevant change occurs if—
- (a) the natural person referred to in paragraph (1) ceases to be a beneficial owner of the relevant entity referred to in that paragraph, or
 - (b) any other change occurs as a result of which the particulars (stated in the relevant entity's beneficial ownership register) in relation to the natural person are incorrect or incomplete.
- (3) A natural person to whom this Regulation applies shall notify, in writing, the relevant entity referred to in paragraph (1) of the relevant change, and that notification shall—
- (a) state the date on which the change occurred, and
 - (b) give to the relevant entity any necessary information so that it can alter its beneficial ownership register to reflect that change.
- (4) Paragraph (3) shall be complied with by the natural person not later than whichever of the following periods is the last to expire—
- (a) the period of 2 months beginning with the day on which the relevant change occurred,
 - (b) the period of one month beginning with the day on which facts have come to the notice of the natural person from which he or she could reasonably conclude that the relevant change has occurred.
- (5) A natural person who—
- (a) fails to comply with this Regulation, or
 - (b) in purported compliance with this Regulation, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false,

commits an offence and shall be liable, on summary conviction, to a class A fine.

Offence for failure to comply with notice under Regulation 6, 8 or 10

13. (1) A person to whom a notice under Regulation 6, 8 or 10 is given commits an offence if the person—

- (a) fails to comply with the notice, or
- (b) in purported compliance with the notice, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false.

(2) In proceedings for an offence under this Regulation it shall be a defence to prove that the requirement (in the notice concerned) to give information was frivolous or vexatious.

(3) A person guilty of an offence under this Regulation shall be liable, on summary conviction, to a class A fine.

Duty to keep and maintain a beneficial ownership register

14. (1) A relevant entity shall keep and maintain a register (which shall be known, and is in these Regulations referred to, as a “beneficial ownership register”) in which there shall be entered by it the information referred to in Regulation 4(2) to (4).

(2) A relevant entity that fails to comply with paragraph (1) commits an offence and shall be liable, on summary conviction, to a class A fine.

(3) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from a relevant entity’s beneficial ownership register, or
- (b) default is made or unnecessary delay takes place in entering in a relevant entity’s beneficial ownership register the fact that a person has ceased to be a beneficial owner of it,

the person aggrieved or any other interested party may apply to the High Court for rectification of the register.

(4) Where an application is made under paragraph (3), the High Court may either refuse the application or may order rectification of the beneficial ownership register and payment by the relevant entity of compensation for any loss sustained by any party aggrieved.

(5) On such an application, the High Court may—

- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the beneficial ownership register, and
- (b) more generally, decide any question necessary or expedient to be decided for rectification of the beneficial ownership register.

(6) The reference in this Regulation to “any other interested party” is a reference to—

- (a) any member of the relevant entity, and

(b) any other person who is a beneficial owner of the relevant entity.



GIVEN under my Official Seal,
9 November 2016.

MICHAEL NOONAN,
Minister for Finance.

EXPLANATORY MEMORANDUM

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of this Statutory Instrument is to give effect to the first subparagraph of Article 30(1) of Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015 requiring corporate or other legal entities incorporated in the State to obtain and hold adequate, accurate and current information in respect of its beneficial owners. This is a necessary first step for such entities to take in order for them to be able to transmit this information to a central register of beneficial ownership once established under Article 30(3) of the aforementioned Directive.

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