

## Ireland – Central Register of Beneficial Ownership of Companies

The *European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019* (S.I. No. 110 of 2019) (the “Regulations”) were issued by the Irish Finance Minister on 22 March 2019.

The Central Register of Beneficial Ownership (“CRBO”) required to be established by the Regulations will begin to accept filings of beneficial ownership information from 22 June 2019. Existing Irish companies will have until 22 November 2019 to make their filings (while companies incorporated after 22 June 2019 will have 5 months from incorporation). The CRBO website, which will launch on 29 April 2019, will provide further information and companies will also be contacted directly in the coming weeks with details of their filing obligations.

Companies incorporated in Ireland were already required to maintain an internal register of beneficial ownership information; however, the law requiring maintenance of an internal register (S.I. No. 560 of 2016) has now been repealed and replaced by the Regulations.

### Background

The EU’s Fourth Anti-Money Laundering Directive (“4AMLD”) requires every EU Member State to create a CRBO for companies. The provisions of 4AMLD were required to be given effect in domestic law by 26 June 2017. Ireland was among Member States referred to the Court of Justice of the EU in July 2018 for failing to have implemented 4AMLD in full.

In the meantime, 5AMLD (the successor to 4AMLD) has been adopted by the EU and Member States are now required to bring its provisions into effect by 10 January 2020.

### Rights of access to the Irish CRBO

5AMLD requires company CRBOs to be accessible to “any member of the general public” (with the option to require registration and payment of a minimal fee in order to gain such access), whereas 4AMLD provides that members of the public could be required to demonstrate a “legitimate interest” in the information before being granted access.

Under the Regulations, the general public will have “restricted” rights of access to information on the CRBO; however, access is only “restricted” in the sense that not all particulars of beneficial owners will be visible (in particular the day of the date of birth, residential address and PPS/tax ID number). The only exception is where the beneficial owner whose personal information is sought is a minor (child); in this scenario the person seeking access will be requested to set out in writing the “grounds on which he or

she considers it is in the public interest that the information be disclosed to him or her". The Regulations allow the registrar to charge a fee for access, but such fee must not exceed the administrative costs of providing access (and it is not yet clear if such a fee will in fact be charged).

Law enforcement and competent authorities in Ireland will have unrestricted access to the CRBO; however that access is to be available only to relatively senior officers of such authorities, and only with the approval of officers of even higher seniority.

There are provisions for Irish law enforcement bodies to exchange CRBO information with equivalent competent authorities in other Member States upon request; as well as for Ireland's CRBO to be interconnected with those of other Member States through the "Central European Platform" potentially envisaged by 5AMLD.

## Definition of "beneficial ownership"

The definition of "beneficial ownership" for the purposes of Ireland's CRBO is that contained in 4AMLD, i.e.:

*"[T]he natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means".*

"Sufficient percentage" means more than 25% in the case of direct ownership by a natural person. In cases of indirect ownership, i.e. where ownership interests in an Irish company are held by another entity, any natural person who controls that other entity will be attributed its ownership interests in the Irish company for the purposes of identifying the natural persons who are, ultimately, the beneficial owners.

If after investigating it is found that there are no natural persons who fall within this definition of beneficial ownership, the "senior managing official(s)" (which includes directors and the chief executive) of the Irish company will be considered its beneficial owners. In this scenario, the Irish company must keep records of actions taken to identify the beneficial owners.

## Procedures to identify beneficial owners, make filings and ensure accuracy of the CRBO

Natural persons believed to be beneficial owners must be served with a notice by the Irish company asking for confirmation of whether he/she is a beneficial owner and, if so, confirmation of the particulars required to be registered (details of which are included below). The notice must state that a response is required within one month. The serving of notices can be avoided if the person's status as a beneficial owner has already been confirmed to the Irish company and their necessary particulars provided, either



by the beneficial owner in question or with his/her knowledge.

Notices can also be served on any other person requiring them to confirm if they know the identity of the beneficial owner (or information from which the beneficial owner can be identified), or the identity of anyone else likely to have such knowledge.

If an Irish company knows or has reasonable cause to believe that a change in beneficial ownership has occurred, it must serve similar such notices (again requiring a response within one month) in order to determine whether a change has occurred, the date of the change and the necessary particulars of the new beneficial owner(s). There is a general duty imposed on Irish companies to keep CRBO filings up to date and to notify changes within 14 days.

Furthermore, a duty is imposed on beneficial owners themselves to notify the Irish company in writing of their status and particulars in circumstances where they have not received a notice. A similar duty applies to beneficial owners to notify changes.

Designated persons and Irish competent authorities who believe they have discovered any discrepancy in CRBO filings are required to serve notice of such opinion on the Registrar, who will then follow the matter up with the Irish company.

CRBO filings will be made through an online portal only. CRBO filings are required to be deleted and destroyed by the Registrar 10 years following the dissolution of the Irish company.

### **Personal information (“particulars”) of beneficial owners to be included in CRBO filings**

The particulars of beneficial owners to be included in CRBO filings include the following:

- i. Name, surname and date of birth
- ii. PPS number (this is an Irish tax ID number, but there is a provision for alternative information to be provided, i.e. presumably a foreign equivalent)
- iii. Nationality
- iv. Country of residence
- v. Nature and extent of interest/control
- vi. Residential address
- vii. Date of entry as beneficial owner (and date of cessation)

*This document has been prepared as a general guide on 4 April 2019 and it is based on the latest legislation and published information available at that time. Whilst every care has been taken in its preparation, Verfides cannot accept any responsibility for any person relying on this publication. Professional advice should be obtained before undertaking transactions and Verfides will be pleased to provide such advice where appropriate.*