



## Overview of New Regulation on Beneficial Ownership

### Introduction

The first sub-paragraph of Article 30(1) of the Fourth Anti-Money Laundering Directive (4AMLD) is transposed by the statutory instrument entitled 'European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016' (SI No. 560 of 2016). This statutory instrument requires corporate and other legal entities incorporated within this State to hold adequate, accurate and current information on their beneficial ownership, including details of the beneficial interests held. It has come into force on 15 November 2016.

The rationale for transposing this provision in advance of the rest of the 4AMLD is that in order for the central register of beneficial ownership<sup>1</sup> to be effective from as early a date as possible after full transposition, corporate entities will need to initially gather the necessary beneficial ownership data and to record same in their own corporate beneficial ownership registers.

Work has commenced on putting in place a central register of beneficial ownership, but such a register is unlikely to be in place until later this year.

### Background

The first sub-paragraph of Article 30(1) of 4AMLD requires corporate and other legal entities incorporated within the State to hold adequate, accurate and current information on their beneficial ownership. It reads as follows:

*“Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held”*

The purpose of this provision is to enable the determination of the natural persons who are the real owners/controllers of a company. In many cases, this is clear as the legal owners and beneficial owners are one and the same. In other cases, the ownership may be so dilute that it is not possible to identify a particular beneficial owner. It is appreciated that there are many complex company ownership structures in place where determining who the underlying beneficial owners are will not be a simple task.

However, notwithstanding challenges which will undoubtedly arise, there should be no ambiguity that a core objective of this EU Directive is to establish mechanisms to assist designated persons such as banks to conduct CDD in relation to legal entities and as part of that work, to require companies to identify natural person controlling them, even if doing so necessitates in-depth legal analysis of their ownership structures.

In summary, therefore, there is a requirement for companies to identify the natural person/s who are their underlying beneficial owners on the basis of the definition in Article 3(6) (a) of the 4AMLD (*see appendix*).

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<sup>1</sup> Required under Article 30(3) of 4AMLD

## Main features of new regulation

The following should be noted in relation to the regulation:

- (i) The regulation applies to every corporate or other legal entity except for those:
  - (a) Listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU, or
  - (b) Subject to equivalent international standards which ensure adequate transparency of ownership information.

This exemption from scope is contained in the last three lines of the first paragraph of Article 3(6) (a) (i) of the 4AMLD.

- (ii) In the regulations, 'beneficial owner' is given the meaning provided by Article 3(6) (a) of the 4AMLD, which 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 or 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 customer 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 customer 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 (*see appendix for full text of Article 3(6)(a)(i)*)
- (iii) The regulations require every corporate or other legal entity to take all reasonable steps to obtain and hold adequate, accurate and current information in respect of its beneficial owners, e.g. name, d.o.b., address, statement of nature and extent of interest held by each beneficial owner and to maintain within the entity's records a register of that information.
- (iv) The regulations provide for a scenario where all avenues for determining the beneficial owner have been exhausted to no avail and in such a case, the names of the senior managing officials of entity will be added to the register.
- (v) The regulations allow a corporate entity, where it does not already have details of its beneficial owner, to give notice to any natural person whom it believes to be its beneficial owner; once such a notice has issued, the natural person assumed to be a beneficial owner will have a month to reply.
- (vi) The regulations allow a corporate entity to issue a similar notice to a person whom it has reasonable cause to believe knows who its beneficial owner or owners are. There is however a safeguard in respect of such 3<sup>rd</sup> party notices which will permit non-disclosure of information where any claim to legal professional privilege could be maintained in legal proceedings.

- (vii) The regulations provide for mechanisms to keep corporate entities' registers up to date, including notifications and communications concerning relevant changes in beneficial ownership between corporate entities and their beneficial owners;
  - (viii) A duty is also imposed upon a natural person who is a beneficial owner or who ought to know that they are one to notify an entity that they are a beneficial owner if they have not received a notice from the entity requesting this information. There is also a duty on natural persons, in certain circumstances to notify relevant changes in beneficial ownership
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## Appendix

### Beneficial ownership definition in 4AML

3(6) 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the 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, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer 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 customer 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. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, *inter alia*, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (3);

(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;