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Requirements to maintain a register of Beneficial Ownership

Introduction

On 15 November 2016, the Department of Finance (the “**Department**”) published the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the “**AML Regulations**”), which came into effect on the same day. These AML Regulations transpose Article 30(1) of the Fourth Anti-Money Laundering Directive 2015/849/EC (“**MLD 4**”) into Irish law in advance of the 26 June 2017 transposition deadline. In accordance with Article 30(1), Member States, such as Ireland, are required to oblige corporates and other legal entities to obtain and hold adequate, accurate and current information on their beneficial ownership, including details of the beneficial interests held.

Further to the publication of the AML Regulations, most Irish companies are now obliged to hold adequate, accurate and current information on their beneficial ownership on an internal register (the “**Register**”). The AML Regulations affect companies incorporated under the Companies Act 2014 (the “**Act**”) as well as existing companies within the meaning of that Act and other legal entities incorporated in Ireland (“**Relevant Entities**”). Therefore this will include unregulated companies as well as regulated companies such as UCITS investment companies, AIF investment companies, ICAVs and fund administrators.

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Meaning of Beneficial Owner

The term “beneficial owner” is defined in the AML Regulations as meaning the natural person(s) who ultimately owns or controls a Relevant Entity through either a direct or indirect ownership of a sufficient percentage of shares or voting rights or ownership interest in that entity. Where a natural person holds more than 25% of the shares of the Relevant Entity or has an ownership interest of more than 25%, then that shall be an indication of direct ownership by that person. Where a corporate or multiple corporates hold more than 25% of the shares or other ownership interest exceeding 25% in the Relevant Entity and those holdings are controlled by a natural person, that shall be an indication of indirect ownership.

If the Relevant Entity is not able to identify (or if there is any doubt that the person(s) identified are the beneficial owner(s)), the natural person(s) who holds the position of “senior managing official(s)” shall be listed in the Register. The Relevant Entity must also document and keep records of all actions taken in order to identify the beneficial owners of the Relevant Entity as such term is defined in the AML Regulations.

Exemptions

As outlined above, the AML Regulations apply to Relevant Entities which essentially refers to every company or other legal entity incorporated in Ireland. However, there is an exemption for those companies that are;

- (i) Listed on a regulated market that is subject to disclosure requirements consistent with EU Law or
- (ii) Subject to equivalent international standards which ensure adequate transparency of ownership information.

The AML Regulations do not affect trust structures governed by Irish law. A separate provision of MLD 4 deals with the beneficial ownership of trusts, however this provision has not as yet been transposed into Irish law.

Register

The AML Regulations require every Relevant Entity to take all “reasonable steps” to obtain adequate, accurate and current information in respect of its beneficial owners. In this regard the AML Regulations require the Relevant Entity to take certain steps to identify any beneficial owners. Further to this obligation if the Relevant Entity has reasonable cause to believe that an individual is a beneficial owner it must give a notice to that individual asking that person to confirm whether he/she is a beneficial owner. If the relevant individual is a beneficial owner he/she must confirm and correct any particulars of the notice within one month of the receipt of such notice.

Separately, if the Relevant Entity believes that someone else has information about any beneficial owner it must serve a notice on that person looking for the relevant information.

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 the Relevant Entity that they are a beneficial owner if they have not received a notice from the Relevant Entity requesting this information. There is also a duty on natural persons in certain circumstances to notify relevant changes in beneficial ownership.

The information in the Register must contain the following particulars in respect of each beneficial owner;

- ▣ Name, date of birth, nationality and residential address;
- ▣ A statement of the nature and extent of the interest held by each such beneficial owner;
- ▣ The date on which each natural person was entered into the Register; and
- ▣ The date on which each natural person who ceased to be a beneficial owner ceased to be such an owner.

Relevant Entities are required to keep and maintain this information since 15 November 2016 and they must also seek to ensure that this information is up to date and take measures where there are any changes to the beneficial owners.

Sanctions

Failure by the Relevant Entity to comply with the obligations contained in the AML Regulations is an offence and the Relevant Entity can be liable on summary conviction to a fine not exceeding €5,000. It is also an offence for an individual to fail to comply with his/her obligations under the AML Regulations, including failing to comply with the terms of the notice received from the Relevant Entity. Such an individual can be liable on summary conviction to a fine not exceeding €5,000.

Next Steps

Companies should consider the impact of the AML Regulations and the steps they will need to comply with the obligations set out in the AML Regulations. In particular, they will need to consider how they will maintain the Register and prepare the various notices to be served on shareholders as required by the AML Regulations. If you require assistance from Dillon Eustace in assessing or meeting with the requirements of the AML Regulations, please contact Breeda Cunningham or Michele Barker, or your usual contact in Dillon Eustace.

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