

New Developments in Corporate Beneficial Ownership – Ireland and the USA

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In this article, Ogier's Irish Corporate team explore recent developments in Ireland and the United States with respect to the access to, and filing requirements for, beneficial ownership information of corporate and other legal entities.

| Irish developments

In 2019, Ireland enacted the EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (**2019 Regulations**), as required by EU law. The 2019 Regulations require corporate or other legal entities incorporated in Ireland to obtain and hold adequate, accurate and current information in respect of its beneficial owners, and to state the nature and extent of the control exercised by them. A beneficial owner is an individual who ultimately owns or controls a legal entity, directly or indirectly, with a shareholding of 25% plus one share being an indication of direct ownership. In addition, the 2019 Regulations, as originally enacted, provided for broad public access to beneficial ownership information of entities filed with the Irish beneficial ownership register (**RBO**).

However, as mentioned in our December 2022 [article](#), in November 2022 the Court of Justice of the EU (**CJEU**) held in its *Sovrim* decision that legislative provisions requiring broad public access to beneficial ownership information on entities registered in the EU, constituted a disproportionate interference with the rights to the protection of personal data and respect for private life guaranteed by the EU Charter of Fundamental Rights. As an initial response to this, public access to the RBO was suspended. Subsequently, the Irish Government signed amending regulations into law, effective from 13 June 2023, which amended the 2019 Regulations in respect of the broad public access rights.

While retaining the existing access rights for law enforcement agencies, the overriding effect of the amendment is to restrict public access to beneficial ownership information to those with either a 'legitimate interest' or designated persons. Additional public interest safeguards have

also been included in respect of information relating to minors.

What amounts to "legitimate interest"?

To satisfy the "legitimate interest" requirement, a person must satisfy the Registrar of the RBO that (1) the person is engaged in the prevention, detection or investigation of money laundering or terrorist financing offences (**AML Offences**), (2) that they are seeking to inspect the information for such purposes and (3) that the entity being analysed is either (a) connected with persons convicted of AML Offences or (b) holds assets in a high-risk third country from an AML perspective (as identified and updated by the European Commission).

Designated Persons

As was the case previously, designated persons have retained access rights in order to carry out compulsory AML checks on their clients or prospective clients. This includes legal professionals, accountants, auditors, financial institutions and tax advisors.

Information on Minors & Public Interest Grounds

Even where a person falls within one of the above categories, the 2023 amendment provides that where the requested information relates to a minor, the designated person or person seeking the information is required to provide a summary of grounds on which he or she considers it in the public interest to receive this information. Disclosure of such information will only be permitted where the Registrar is of the opinion that there are substantial public interest grounds for doing so.

US developments

US regulators' incorporation requirements for privately held businesses have, historically, been less stringent than their European counterparts in relation to the information required to establish and run a business. This will change with the imminent implementation of the Corporate Transparency Act (2020) and the so-called "Final Rule" issued by the Financial Crimes Enforcement Network (**FinCEN**) in September 2022, which will significantly modify the information required to be provided by privately held US businesses, including entities registered in a foreign jurisdiction such as Ireland which are registered to do business in the US.

The Act and the Final Rule will require a broad range of privately held entities to submit specific details to FinCEN. This includes corporations, limited liability companies, and other entities registered to conduct business in the US, with some exceptions. The majority of US subsidiaries of Irish companies, both current and future, will be required to provide certain information to FinCEN.

What must be submitted?

Reporting entities must submit their full name, any alternate business names, address, jurisdiction of formation or registration, and employer identification number or other unique tax identification number to FinCEN. Furthermore, "company applicants" (ie the person/s submitting the initial document that forms the domestic reporting company or the individual primarily responsible for directing or controlling such filing) must provide their full name, date of birth, address, and photographic identification within thirty days of establishing a new entity after 1 January 2024.

In addition, reporting entities must provide information regarding their beneficial owners. The Final Rule defines a "beneficial owner" as any individual who either exercises substantial control over a reporting company or owns or controls at least 25% of the ownership interests in a reporting company (similar to the EU regime). This could include senior company officers and directors, as well as indirect owners who own more than 25% of the reporting company's equity through one or more intermediaries.

The Final Rule will be effective from January 1, 2024. An affected entity established on or after this date must submit the required information to FinCEN within thirty days of its formation. Entities formed before this date must provide the required information to FinCEN by January 1, 2025. Any alterations to previously reported information must be reported to FinCEN within thirty days of the change.

Access to Information

Regarding disclosure of this information, the Act allows FinCEN to disclose submitted information to certain governmental entities, with final guidance on such access expected soon. Penalties for noncompliance or misuse of beneficial ownership information are significant, including civil penalties and even potential imprisonment.

Conclusion

While the new US requirements around beneficial ownership information reflect developments that have taken place in Europe, it is clear from the developments in Ireland and the EU that legislators must strike a difficult balance between permitting further public access to beneficial information and respect for privacy and data rights. The European developments may inform the full access rights permitted under the US regime.

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