



Transparency of ownership of EU corporate or other legal entities - a new legal landscape?

Focus on transparency of ownership

Companies and other legal entities are increasingly being asked to reveal details of their underlying beneficial owners i.e. not just their legal owners. Globally, the move towards greater transparency partly stems from international standards and initiatives such as the G20's "High-Level Principles on Beneficial Ownership Transparency," intended to combat criminal behaviours such as money-laundering.

In Europe, from 26 June 2017, member states are obliged by the EU's Fourth Money Laundering Directive ("MLD4") to maintain a central register detailing the ultimate beneficial owners of their corporate and other legal entities. All corporate groups with EU entities will need to comply with the obligation and identify their beneficial owners (regardless of whether those individuals are located within or outside the EU).

Although the directive applies to all EU member states, each jurisdiction must adopt national implementing legislation. The regime may therefore look slightly different in each jurisdiction. Countries can choose, for example, whether they make the register of beneficial owners publicly available (it must, in any event, be made available to anyone with a "legitimate interest").

What is the obligation?

MLD4 contains a number of obligations with which member states must comply, one of which, detailed in article 30, requires member states to ensure that:

- corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate

and current information on their beneficial owners, including details of the beneficial interests held (the "Information"); and

- Information is held in a central register (in the relevant member state) which is accessible to certain authorities, firms carrying out customer due diligence and any person or organisation who can demonstrate a legitimate interest.

A comparable requirement applies to the disclosure of beneficial ownership of trusts and similar arrangements.

Which entities does the obligation apply to?

The obligation applies to "corporate and other legal entities". Member states are encouraged to include "the widest possible range of legal entities incorporated or created ... in their territory". Entities listed on an EU regulated market, which already have to provide similar information, fall outside the scope of the regime. There is no exception for entities belonging to groups headquartered outside the EU.

Who is a beneficial owner of a corporate entity?

A beneficial owner of a corporate entity includes at least the natural person who ultimately owns or controls the 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.

Direct ownership equals:

- a shareholding of 25% plus one share; or
- an ownership interest of more than 25%

held by a natural person.

Indirect ownership equals:

- a shareholding of 25% plus one share; or
- an ownership interest of more than 25%

held by a corporate entity that is under the control of a natural person, or by multiple corporate entities that are under the control of the same natural person.

What should businesses be doing now?

Baker McKenzie has surveyed each EU member state to gain an overview of implementation of the transparency requirement across the EU. Key Q&A include: the status of implementation; the date by which entities will need to comply; details of which entities are covered; the test for beneficial ownership; the entity's obligations; penalties for failure to comply and whether the Information will be publicly available.

Question	Answer
Is the requirement to identify the Information in force?	The majority of jurisdictions did not implement the requirement by 26 June 2017 (the deadline to do so). Some member states are yet to even publish draft legislation. Relevant local law must be checked, noting that each jurisdiction's regime, including the level of proactivity required from entities to identify their owners, may differ markedly.
Will the Information be publicly available?	To date, only a few countries have committed to, or are considering, making the Information publicly available.

What happens if the obligation is not complied with?

Penalties for non-compliance vary substantially with no minimum penalty prescribed by the directive.

Can new entities be formed without detailing the beneficial owners?

The new requirement will also be relevant on formation of a new EU entity. Some jurisdictions may require the Information to be provided before an entity can be formed.

To discuss the impact of this requirement on your company, or to request a copy of the survey, please get in touch with your usual Baker McKenzie contact or, alternatively, Kirsty Wilson or Kim Tan.



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