



Update: Transparency of Ownership of EU Corporate or Other Legal Entities - A New Legal Landscape?

Last summer we reported that companies and other legal entities were increasingly being asked to reveal details of their underlying beneficial owners i.e. not just their legal owners (click [here](#) for our previous alert). This summer we take a look at developments since that date within the EU, in particular to what extent EU member states have implemented the required corporate transparency obligations under Article 30 of the EU's Fourth Money Laundering Directive ("**MLD4**"), and additional forthcoming EU national legislation and EU-wide obligations.

What are the existing obligations?

Article 30 MLD4 required member states to implement national legislation by 26 June 2017, covering the following obligations ("**Obligations**"):

- Corporate and other legal entities incorporated within their territory must obtain and hold adequate, accurate and current information on their beneficial owners, including details of the beneficial interests held (the "**Information**"); and
- Information must be 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 organization who can demonstrate a legitimate interest.

Comparable obligations apply to the disclosure of beneficial ownership of trusts and similar arrangements.

One year on...

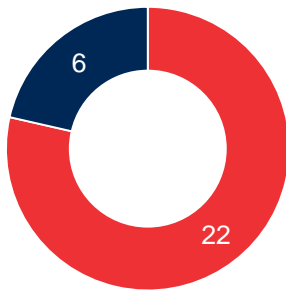
Baker McKenzie has updated its survey of each EU member state to provide an overview of implementation of the transparency requirement across the EU. Key Q&A include: the status of implementation; the date by which entities will need to comply; details of which entities are covered; the test for beneficial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

We can report that as at 26 June 2018 not all member states have implemented the relevant legislation. 22 EU member states have enacted legislation for the purpose of implementing the Obligations, however, not all Obligations are in effect yet under this legislation. There are a number of member states whose legislation requires further regulations or decrees to be made before the Obligations will apply in full.

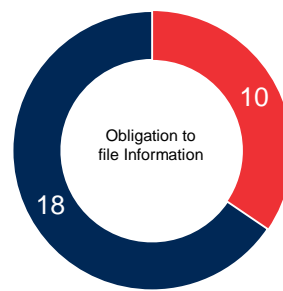
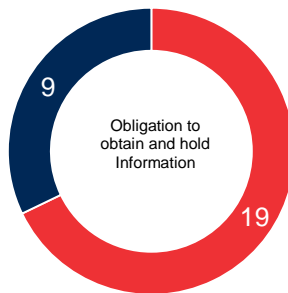
Of the 22 member states which have enacted legislation there are only 10 where both Obligations to 1) collect and hold Information and 2) file it with a central register are in force.

The remaining six member states' legislation is either still in draft form or has been approved by the relevant parliamentary body, but is awaiting publication or implementing decree before coming into effect.

EU member states with implementing legislation



EU member states' obligations to obtain and hold and/or file Information



■ In force
■ Not in force

19 member states have obligations in force to **obtain and hold** Information. Of those 19, 10 have obligations in force to **file** Information with the relevant registry.

Horizon scanning

Article 30 MLD4 has already been amended by the EU's Fifth Money Laundering Directive ("**MLD5**"). MLD5 requires EU member states to ensure that by 10 January 2020:

- Beneficial ownership registers for corporate and other legal entities will be publicly accessible;
- Breaches of the obligation to provide Information are subject to effective, proportionate and dissuasive measures or sanctions; and
- Mechanisms are put in place to verify that the Information held in the registers is adequate, accurate and current.

Although Article 30 MLD4 had no requirement to make Information publicly accessible, currently there are 10 member states whose registers of Information are publicly accessible, including Sweden and the United Kingdom. Under MLD5, all member states must make Information publicly accessible.

What should businesses be doing now?

Despite the varying degrees of implementation of Article 30 across the EU, in most jurisdictions the obligation to collect and hold Information already exists, so companies should have either already adopted, or should be looking at adopting mechanisms to comply with this obligation. Depending on the jurisdiction, the obligation to file Information with the relevant register may also apply.

To discuss how the Obligations apply to your company, or to request a copy of "Beneficial ownership of corporate entities: EU survey on the implementation of article 30 MLD4", please get in touch with your usual Baker McKenzie contact or, alternatively corporate partners, Kirsty Wilson or Kim Tan.

Contact us



Kirsty Wilson

Partner

kirsty.wilson@bakermckenzie.com



Kim Tan

Partner

kim.tan@bakermckenzie.com



Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This communication has been prepared for the general information of clients and professional associates of Baker & McKenzie. You should not rely on the contents. It is not legal advice and should not be regarded as a substitute for legal advice. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2018 Baker McKenzie