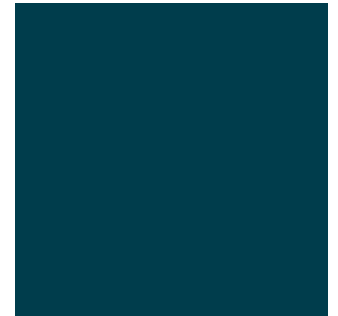
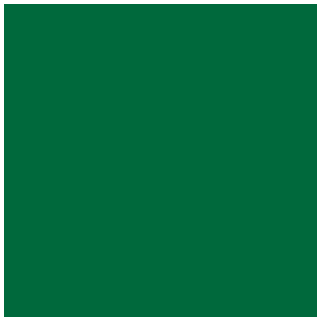


# Beneficial Ownership Seminar for Charities

Wednesday 19 June 2019



Dublin

London

New York

San Francisco

MHC.ie

# Welcome

Niamh Callaghan, Head of Corporate Charities, Mason  
Hayes & Curran



# Introduction

Tony Ward, Director of Finance, the Wheel



Stronger Charities.  
Stronger Communities.

# The European Union (Anti Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019

Alice Murphy, Corporate Charities Partner, Mason  
Hayes & Curran



# Introduction

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European Union (Anti-Money Laundering: Ownership of Corporate Entities) Regulations 2019 (the “**Regulations**”)

- Parts 1 and 2 in force from 22 March 2019.
- Part 3, which establishes the central register, in force from 22 June 2019 and you must comply by 22 November 2019.

# Background

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## EU legislation

- The Regulations are to implement the EU's Fourth Anti-Money Laundering Directive (Directive 2015/849) ("**4AMLD**") as amended.
- The objective: to combat money laundering and terrorist financing.
- Recital 14 of 4AMLD: *"The need for accurate and up to date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identify behind a corporate structure."*
- Recital 16 of 4AMLD: *"Timely access to information on a company's beneficial owners should be available on a central register in order to avoid tipping off any company concerned."*

## Background (cont'd)

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Original Irish legislation to implement the EU legislation

- European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (SI 560 of 2016).
- Came into force November 2016.
- Obligated all “*relevant entities*” to **obtain and hold** information on their beneficial owners and to enter that information onto an **internal beneficial ownership register** which it must keep and maintain.
- NB – this obligation to keep and maintain an internal beneficial ownership register is a live current legal obligation.

# The Regulations

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## Parts 1 and 2

- In force from 22 March 2019.
- Part 1 contains definitions and interpretation.
- Part 2 revokes and restates the 2016 Regulations.
- No changes, **some additions to** the 2016 Regulations.



# The Regulations (cont'd)

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What is a “relevant entity”?

- The obligations in the Regulations apply if your charity is a “relevant entity”.
- This is defined as every **corporate or other legal entity** incorporated in Ireland, (with the exception of a company or other body corporate that is listed on a regulated market subject to EU transparency laws or subject to equivalent international standards ensuring adequate transparency of ownership information).

# The Regulations (cont'd)

What is a “beneficial owner”?

- The Regulations use the definition from 4AMLD.
- “Relevant entities” must identify their “beneficial owners” who are defined as: any **natural person** 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 the relevant entity, **or** through control via other means.
- An ownership interest of over 25% is a sufficient percentage.

# The Regulations (cont'd)

What is a “beneficial owner”?

- How do we best interpret this in a charitable context?
  - While the concept of “beneficial ownership” does not sit well with charities, if there are three or less company members (or shareholders) there is likely to be “control” within the meaning of the Regulations, because each member has sufficient voting rights or ownership interest, according to the definition.
  - The definition does not take account of the fact that, in a charitable context, the ownership or voting interest is exercised strictly for the benefit of the charitable purpose of the charity.

# The Regulations (cont'd)

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What is a “beneficial owner”?

- In a majority of cases of charitable companies, it is unlikely that a natural person owns or controls a sufficient percentage of the ownership interest of your charity, because most charities have a minimum of 7 members, and some have many more.
- If this is the case, the definition of “senior managing officials” becomes relevant...

# The Regulations (cont'd)

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## Senior managing officials

- If a relevant entity **cannot** identify any beneficial owners, having **exhausted all possible means**, and provided no grounds for suspicion, it shall **enter the details** of its **senior managing officials** on its register.
- Senior managing officials “includes a director and a chief executive officer”.
- Your charity is likely to fall into this category if it does not have shares, and has 4 or more company members.

# Internal Beneficial Ownership Register

Sample Beneficial Ownership Register	
Name	
Residential Address	
Date of Entry on Register	
Date Interest Ceased	
Date of Birth	
Nationality	
Nature and Extent of Interest Held or Control Exercised	<b><i>* Note – this is the best place to explain the charitable nature of the company and why a given person has been named in your register *</i></b>
Date Interest Held From	

10

# The Regulations (cont'd)

Information to be included on the register

- Particulars of each beneficial owner to be included on the beneficial ownership register:
  - Name;
  - Date of birth;
  - Nationality;
  - Residential address; and
  - **Nature and extent of the interest held or control exercised.**
- Ongoing duty to keep information on the register up-to-date.

# The Regulations (cont'd)

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## Additional information to be obtained

- Relevant entities to obtain the PPS number of each beneficial owner “to whom such a number has been issued”.
- New obligation.
- Not to be included on the beneficial ownership register.
- Not to be disclosed to any person under Part 2.
- Also applies where particulars of the senior managing officials are included on register.
- For identity verification purposes.



# The Regulations (cont'd)

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## Notices

- Regulation 7 Notice –
  - sent to persons who the relevant entity has reasonable cause to believe is the beneficial owner.
- Regulation 9 Notice –
  - sent to persons who the relevant entity has reasonable cause to believe knows who is a beneficial owner or knows the identity of a person/entity likely to have such knowledge.
- Regulation 11 Notice
  - sent where the relevant entity understands or has reasonable cause to believe that there has been a change to the particulars of a beneficial owner.

# The Regulations (cont'd)

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## Notices

- Also obligations on beneficial owner to notify the relevant entity that:
  - he or she is a beneficial owner; and/or
  - his or her particulars have changed.

## The Regulations (cont'd)

Rights of access to the beneficial ownership information in the central register

- Relevant entity to provide timely access to its beneficial ownership register, on request, to:
  - Garda Síochána;
  - Revenue Commissioners;
  - competent authorities;
  - Criminal Assets Bureau;
  - Inspector appointed under section 764(1) of the Companies Act 2014 (by the Director of Corporate Enforcement to establish the persons who are financially interested in or controlling or influencing a company).
- Information can be shared with equivalent bodies in other Member States.

# The Regulations (cont'd)

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## Rights of access

- “Competent authority” is as defined in Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.
- Governing body of a class of designated person.
- Designated person is any person required to carry out customer due diligence (financial institutions, legal professionals, accountants and auditors, etc.)
- Competent authorities include Central Bank of Ireland, Law Society, Bar Council, etc.

# The Regulations (cont'd)

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## Rights of access

- Where a relevant entity enters into an “occasional transaction” or a business relationship with a designated person, the relevant entity shall:
  - provide information on its beneficial ownership to the designated person where the designated person is conducting its customer due diligence;
  - on the designated person’s request, provide the designated person with information identifying all the beneficial owners of the relevant entity; and
  - notify the designated person of any change to its beneficial ownership register which occurs and which is relevant to the transaction or relationship which first prompted the request.

# The Regulations (cont'd)

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## Rights of access

- “Occasional transaction” is a transaction in relation to which the designated person is required to apply customer due diligence in accordance with Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.
- Failure to comply with request from a State body, competent authority or designated person is an offence punishable by:
  - on summary conviction, class A fine (not exceeding €5,000); or
  - on indictment, fine not exceeding €500,000.

# The Regulations (cont'd)

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## Offences in Part 2

- Failure to give proper Regulation 7 notice – Class A fine.
- Failure to give proper Regulation 11 notice – Class A fine.
- Failure by a beneficial owner to give notice – Class A fine.
- Failure by recipient to comply with a notice, or making knowing or reckless false statement in response – Class A fine or up to 12 months imprisonment.
- Failure by relevant entity to keep beneficial ownership register- Class A fine in summary conviction, fine not exceeding €500,000 on indictment.

# The Regulations (cont'd)

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## Part 3 offence for designated persons

- Regulation 20: designated persons must notify the Registrar if:
  - information on a relevant entity's internal register comes to that designated person's knowledge; and
  - the designated person forms the opinion that there is a discrepancy between that information and the details on the central register.
- Registrar will ask the relevant entity to correct the register or explain the discrepancy.
- Failure by a designated person to make the report is a criminal offence punishable by a Class A fine.



# Thank you

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# The Central Register of Beneficial Ownership

Maureen O'Sullivan  
Registrar of Companies



AN CLÁR UM ÚINÉIREACHT THAIRBHÍÚIL  
REGISTER OF BENEFICIAL OWNERSHIP



## **Establishment of Central Register**

- SI 110 of 2019 provides that the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies will be established on 22<sup>nd</sup> June 2019
- Relevant entities will have a 5 month period in which to file information with the Central Register i.e. until 22<sup>nd</sup> November 2019
- Newly incorporated entities must file within 5 months of incorporation



## Information to be Filed with Central Register

- Name, date of birth, nationality and residential address of each beneficial owner of the entity
- A statement of the nature and extent of the interest held, or the nature and extent of the control exercised by, each beneficial owner
- The name and number of the entity as it appears on the Register of Companies or the Register of Industrial and Provident Societies
- The PPS number of each beneficial owner to whom such number has been assigned
- Changes in beneficial ownership must be notified to the Registrar within 14 days





Dashboard

Search

New Filing

My Filings

Messages

Orders

Payments

Account

Help

RBO

Search by Company Name or Number...

English

DUBLIN

Eircode

Details of Interest

Effective Date \*

DD/MM/YYYY

Nature of Interest \*

☒ Direct

☐ Indirect

☐ Both

Ownership Type \*

☒ Shares

☐ Voting Rights

☐ Ownership Interest

☐ Control Via Other Means

☐ Senior Managing Official

% owned or controlled \*

26

Nature/Extent of Control

Description of the extent of control

Save

Cancel

## Operation of the Central Register

- The Register will open for filing on 22nd June 2019
- Filing will be by electronic means only, through a dedicated portal
- Filing will be free
- Information may be filed on an entity's behalf by a presenter
- Regulation 22(2) sets out the information to be provided by the presenter
- Information on the Register will be destroyed 10 years after the dissolution of the relevant entity





## **Companies Limited by Guarantee**

Many companies limited by guarantee (which includes charities) are unlikely to have persons who will have sufficient percentage of the voting rights or ownership interest in the CLG.

CLG must then decide what natural persons control the CLG and enter their details in their internal register and in the RBO.

If, after having exhausted all possible means, there is no natural person identified as being in control of the CLG then the natural persons(s) who hold the position of Senior Managing Official(s) shall be recorded on the RBO as the beneficial owner(s).





## Unrestricted Access to the Central Register

- Unrestricted access to the Register will be provided to certain members of:
  - *An Garda Síochána*
  - *FIU Ireland*
  - *Revenue Commissioners*
  - *Criminal Assets Bureau*
- Competent authorities engaged in the prevention, detection or investigation of possible money laundering or terrorist financing
- An inspector appointed under section 764(1) of the Companies Act 2014
- **PPSN details will not be available under unrestricted access**



## **Restricted Access to the Central Register**

Restricted access to the central register will be available to:

- A designated person who forms a business relationship with a relevant entity or is taking customer due diligence measures in relation to a relevant entity
- A member of the public

There will be a small fee for access to the Register



## Information Available Under Restricted Access

The information regarding a relevant entity to be provided under restricted access will be limited to:

- The name, month and year of birth and the country of residence and nationality of each beneficial owner, and
- A statement of the nature and extent of the interest held or the nature and extent of control exercised by each beneficial owner.

Access to information regarding a beneficial owner who is a minor will be at the discretion of the Registrar.



## Reporting of Discrepancies

- A designated person who forms the opinion that there is a discrepancy between the entity's own register and the central register must notify the Registrar specifying the nature of the discrepancy

Competent authorities must also report discrepancies that come to their attention to the Registrar.

- The Registrar **may** then note on the Register that a discrepancy has been reported
- The Registrar **must** notify the entity that a report of a discrepancy has been received
- The entity must respond to the Registrar within a prescribed period.



## Enforcement

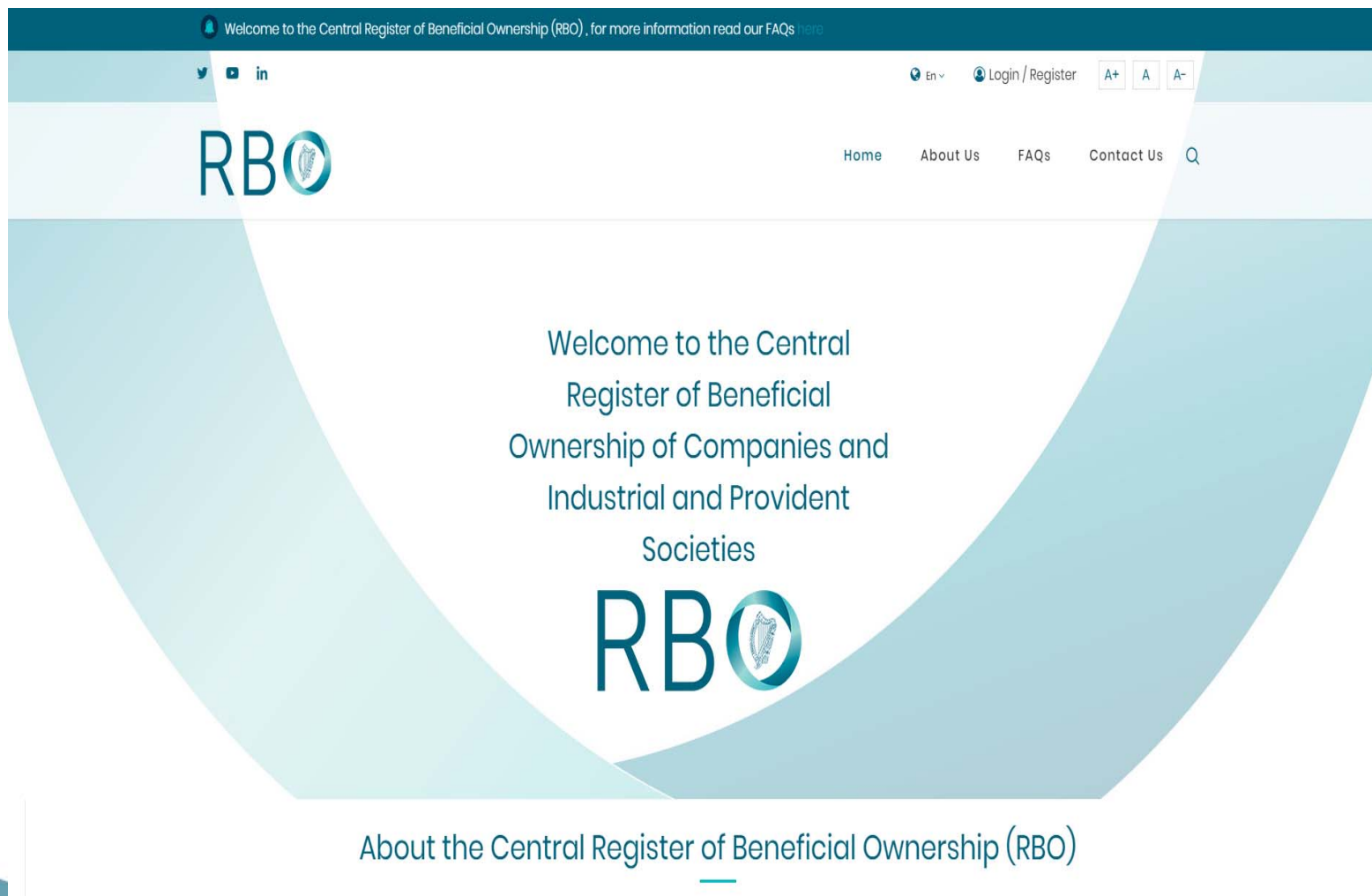
- After the initial 5 month filing period, the Registrar will issue reminders to relevant entities which have failed to file
- The Regulations provide for a number of offences
- Summary proceedings in relation to offences may be brought by the DPP or the Registrar



## Awareness Raising

- RBO website will go live on 29th April 2019
- RBO has accounts on Twitter and LinkedIn which will be regularly updated
- All relevant entities will be individually contacted by RBO either by email or by letter





Welcome to the Central Register of Beneficial Ownership (RBO), for more information read our FAQs [here](#)

[Twitter](#) [YouTube](#) [LinkedIn](#)

En ▼

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A+

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Welcome to the Central  
Register of Beneficial  
Ownership of Companies and  
Industrial and Provident  
Societies



About the Central Register of Beneficial Ownership (RBO)



Rialtas na hÉireann  
Government of Ireland

# Any Questions?





# Thank You!



Rialtas na hÉireann  
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# Questions?



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