

TECHNICAL ALERT 04/2021

**Register of Beneficial Ownership
of Companies and Industrial and Provident Societies – Guidance for Insolvency
Practitioners**

This publication has been jointly developed by the member bodies of the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I), being the Institute of Chartered Accountants in Ireland, The Association of Chartered Certified Accountants, The Institute of Certified Public Accountants and Chartered Institute of Management Accountants.

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A. Introduction

1. This Technical Alert highlights the features of the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (“the **RBO**”) which are of particular importance to insolvency practitioners (“**IPs**”). It is not intended as a substitute for the formation and implementation of policies for compliance generally with the RBO by IPs and their firms. It contains general guidance only and legal and other professional advice should be obtained on any particular issue that arises in practice. This guidance has been prepared on a practical basis and is intended to be of a practical nature. At the time of publication, the CCAB-I Insolvency Committee is in the process of making a submission to the Minister for Business, Enterprise and Innovation seeking exemption for insolvency practitioners from certain provisions under the Data Protection Act 2018.
2. The purpose of the RBO is to improve corporate trust and transparency in Ireland and the EU by making it clear to law enforcement agencies, regulatory, obliged entities, other businesses and the public about who ultimately owns and controls Irish companies and industrial and provident societies (“**Relevant Entities**”). It is aimed at deterring money laundering and terrorist financing and to help sanction those who hide their ownership or control for the purpose of facilitating illegal activities.
3. The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the “**2019 Regulations**”) was transposed into Irish law Article 30 of the Fourth EU-Anti Money Laundering Directive, as amended by the Fifth EU Anti-Money Laundering Directive (the “**Directive**”).
4. The entity must identify their beneficial owners, keep their details on their own internal register and register these details with the RBO. The obligation to submit details and to update details on the RBO is on the corporate entity. There are significant fines and potential imprisonment for entities that do not comply and liability can be imposed on any person being a director, manager, secretary or other officer of a body corporate if it is proved that those persons consented to or connived with any offence committed by the body corporate.

5. The filing of beneficial ownership data must be done through the on-line portal on the RBO website and is therefore a process separate to the registration of information/forms under the Companies Acts etc.
6. Any changes to the relevant entities own list of beneficial owners must be notified to the RBO within 14 days of the change. This is defined as the relevant entities “follow up obligation”.
7. No guidance has been issued by the Companies Registration Office or the RBO concerning the application of the RBO to the performance of the functions of insolvency practitioners. At the time of publication, the CCAB-I Insolvency Committee is in the process of making a submission to the Minister for Business, Enterprise and Innovation seeking the issue of a Statutory Instrument for the exemption for insolvency practitioners from certain provisions under the Data Protection Act 2018.

B. Beneficial Owner

8. The 2019 Regulations state that a beneficial owner has the meaning given to it by Article 3(6) (a) of the Directive.
9. A beneficial owner is defined in Article 3(6) of the Directive. The definition of the beneficial owner of a corporate entity includes:
 - (i) the natural person(s) 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 entity, including through bearer shareholdings, or through control via other means other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25% plus one share or an ownership interest of more than 25% of a relevant company shall be an indication of direct ownership.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural

person(s), or by multiple corporate entities, which are under the control of the same natural person(s) shall be an indication of indirect ownership.

Control by other means is where an individual, who does not hold more than 25% of the shares or voting rights or ownership interest of an entity, still exercises significant control or influence over the entity. Examples of a person exercising control by other means include the exercise of control through a shareholders' agreement, the exercise of dominant influence or the power to appoint senior management.

(ii) If, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s) ("SMO"). The obliged entities must keep records of the actions taken in order to identify the beneficial ownership under point (i) and point (ii).

10. It is a natural person(s) who must be identified and entered on the RBO as the beneficial owner(s) of the relevant entity, irrespective of how many layers of ownership there are in the company/society's structure. The name of another company or society cannot be entered on the RBO.

11. Given that some groups operate with complex ownership structures, it may be necessary to seek legal advice to assist in establishing who a relevant entity's beneficial owners are.

C. Insolvency practitioners

12. Prior to appointment, an insolvency practitioner should make enquiries as to whether the directors of the company have complied with the 2019 Regulations.

13. A Liquidator is not, in his capacity as a Liquidator, a natural person who ultimately owns or controls a legal entity through direct or indirect ownership of shares or voting rights.

14. If no ultimate beneficial owner is identified or if there is any doubt that the persons identified are the beneficial owners, then the names of one or more natural persons who

hold the position of SMO of the relevant entity shall be entered on the register as its beneficial owner.

15. Senior Managing Official is defined in the 2019 Regulations as including a director and a chief executive officer. The definition does not refer directly to a Liquidator, but the use of the term "includes" means that a Senior Managing Official is not limited to a director or chief executive officer.
16. Where a Liquidator is identified as a SMO then the register should make it clear that he or she has been identified as the beneficial owner ex-officio and not through any ownership interest held or control exercised by other means.

This is on the basis that the Liquidator is the sole executive authority of the company and the officers of the company have no authority to manage the company's affairs.

17. Any changes to the relevant entities list of beneficial owners must be notified to the RBO within 14 days of the change. A Liquidator should comply with this obligation within 14 days of appointment.

D. Summary of obligations where Beneficial Owners have been identified prior to appointment and register is maintained:

Appointment type	Liquidator – Solvent	Liquidator – Insolvent	Examiner	Receiver – Fixed and Floating	Receiver – Fixed
Appointment triggers change in Beneficial Owners	▪ Yes	▪ Yes	▪ No	▪ Yes	▪ No (assuming the property in question subject to the fixed charge is not material to the Company)
Obligation on IP to update register and the Central Register	▪ Yes	▪ Yes	▪ N/A	▪ Yes	▪ N/A
Obligation on Officers to update register and the Central Register	▪ No	▪ No	▪ N/A	▪ N/A	▪ N/A
Position adopted	▪ Beneficial Owners should be already identified by the Company	▪ Beneficial Owners should be already identified by the Company	▪ Beneficial Owners should be already identified by the Company	▪ Beneficial Owners should be already identified by the Company	▪ Beneficial owners should be already identified by the Company

	<ul style="list-style-type: none"> prior to appointment. Liquidator is also a Beneficial Owner based on their control of the Company given the powers conferred on the Liquidator under the Companies Acts. 	<ul style="list-style-type: none"> prior to appointment. Liquidator is also a Beneficial Owner based on their control of the Company given the powers conferred on the Liquidator under the Companies Acts. 	<ul style="list-style-type: none"> prior to appointment. Existing Beneficial Owners retain control as the Examiner's function is to formulate a scheme of arrangement. 	<ul style="list-style-type: none"> prior to appointment. Receiver is also a Beneficial Owner based on their control of the Company given the powers conferred on the Receiver under the Companies Acts and the security debenture. 	<ul style="list-style-type: none"> prior to appointment.
Beneficial Owners	<ul style="list-style-type: none"> Existing Beneficial Owners identified prior to appointment; and Liquidator. 	<ul style="list-style-type: none"> Existing Beneficial Owners identified prior to appointment; and Liquidator. 	<ul style="list-style-type: none"> Existing Beneficial Owners identified prior to appointment. 	<ul style="list-style-type: none"> Existing Beneficial Owners identified prior to appointment; and Receiver. 	<ul style="list-style-type: none"> Existing Beneficial Owners identified prior to appointment.

E. Summary of obligations where no Beneficial Owners were identified prior to the appointment of the Liquidator and the SMO was included on the register which was maintained:

Appointment type	Liquidator - Solvent	Liquidator – Insolvent	Examiner	Receiver – Fixed and Floating	Receiver – Fixed
Appointment triggers change in Beneficial Owners	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No (assuming the property in question subject to the fixed charge is not material to the Company)
Obligation on IP to update register and the Central Register	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> N/A
Obligation on Officers to update register and the Central Register	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A
Position adopted	<ul style="list-style-type: none"> SMO is included on the register given their control in the absence of identified Beneficial Owners. However, on appointment, the Liquidator 	<ul style="list-style-type: none"> SMO is included on the register given their control in the absence of identified Beneficial Owners. However, on appointment, the Liquidator 	<ul style="list-style-type: none"> SMO is included on the register given their control in the absence of identified Beneficial Owners. SMO retains control as the Examiner's 	<ul style="list-style-type: none"> SMO is included on the register given their control in the absence of identified Beneficial Owners. However, on appointment, the Receiver is 	<ul style="list-style-type: none"> SMO is included on the register given their control in the absence of identified Beneficial Owners.

	is deemed the SMO based on their control of the Company given the powers conferred on the Liquidator under the Companies Acts.	is deemed the SMO based on their control of the Company given the powers conferred on the Liquidator under the Companies Acts.	function is to formulate a scheme of arrangement.	deemed the SMO based on their control of the Company given the powers conferred on the Receiver under the Companies Acts and the security debenture.	
Beneficial Owners	▪ Liquidator.	▪ Liquidator.	▪ SMO identified prior to appointment.	▪ Receiver.	▪ SMO identified prior to appointment.

F. Steps to comply with RBO requirements

18. A Liquidator should ensure that the Company has complied with its obligations under the 2019 Regulations prior to appointment.

19. In the event that the Company has not complied and a Liquidator is appointed, the Liquidator is required to identify natural persons who are beneficial owners –
 - a. Liquidator issues a “Regulation 7 Notice” to provide one months’ notice to the identified individuals believed to be beneficial owners, and request information to complete the registration.
 - b. Liquidator issues a “Regulation 9 Notice” where the company is unaware as to who the individual beneficial owners are. The notice must be issue to any person or company, to provide one months’ notice requesting the person / company to confirm the beneficial owners.

20. If the beneficial owners are identified, the Liquidator should create the Register of Beneficial Owners and file the beneficial owner’s information with the RBO as per the guidance outlined above.

If no beneficial owners are identified, i.e., do not meet the relevant beneficial ownership criteria or if no responses are received to the notices issued above, the Liquidator should create the Register of Beneficial Owners and file the beneficial owner’s information with the RBO as per the guidance outlined above.

21. The Liquidator is required to maintain the Register of Beneficial Ownership for each company until its dissolution.