Regulation 30A(1), (1A), (2), (2A)

5.3.129A Firms must obtain an excerpt of the register of the company, unregistered company, the limited liability partnership, an eligible Scottish partnership, an in-scope trust, or registrable overseas entity before establishing a business relationship. The excerpt may be obtained from the customer, Companies House, or a third-party provider. In the case of in-scope trusts, an excerpt from the Trust Registration Service (TRS) must be obtained via the agent or trustee of the trust, and an excerpt of the Register of Overseas Entities (ROE) must be obtained for registrable overseas entity customers. See also 5.3.129C.

Firms must also obtain an excerpt as listed above whilst carrying out CDD and ongoing monitoring of a business relationship once established. Firms should apply a risk-based approach to obtaining up-to-date excerpts. For example, when it becomes aware that the beneficial ownership information it holds is outdated or has changed, or that an overseas entity has become registrable.[1]

Regulation 30(2B), 3, Schedule 3AZA

5.3.129B If the firm finds a material discrepancy between information relating to the beneficial ownership of the customer which it collects as above, and information which becomes available to it whilst conducting CDD (including during onboarding and ongoing monitoring), the material discrepancy must be reported to Companies House, or to HMRC if it relates to a trust. Although there is no obligation to actively seek out such discrepancies, firms should still adopt a risk-based approach.

Beneficial ownership in this context (excluding trusts and overseas entities), means a person of significant control (PSC) per the information held in the PSC register and not as defined in the ML Regulations. Information on the PSC register may thus differ from other beneficial ownership information and not necessarily be inaccurate. Discrepancies that result solely from the differences between the definition of PSC and ‘beneficial owner’ in the ML Regulations are not material and therefore not reportable. Beneficial ownership in the case of trusts means trustees, settlors, beneficiaries, protectors, or other individuals that exercise control over the trust (see 5.3.261). Beneficial ownership in the case of overseas entities means registrable beneficial owners, not PSCs.

Identifying a discrepancy does not in itself trigger the reporting obligation, as discrepancies must be material to be reportable.[2] For example, a material discrepancy would arise when there is a missing or different person (legal or natural) recorded, as compared between information in the PSC register, ROE or TRS and the beneficial ownership information obtained when conducting CDD.

A discrepancy itself does not necessarily prohibit the onboarding of a customer, nor require the firm to exit the relationship. The nature and relevance of the discrepancy should however be assessed by firms with their CDD process and risk-based approach, in considering whether there are reasonable grounds for suspicion of money laundering/terrorist financing.

[1] This could occur when the nature and purpose of the business relationship changes - the firm may start providing products/services to facilitate the purchase, sale or transfer of UK land or property.
[2] See MLRs Schedule 3AZA.

A discrepancy report is not a substitute for a suspicious activity report (SAR) and the requirement to submit a SAR where appropriate remains.

Material discrepancies should be considered with an overarching requirement of proportionality and reasonableness, taking into account the ML/TF risk that the firm has determined is posed by the customer, and the reasonable justification provided for the discrepancy.

Firms should consider whether the material discrepancy is indicative of being linked to ML/TF or concealing details of the business of the customer, which could be a potential indicator for suspicion of ML/TF. When doing so, firms need not consider whether any such concealment is deliberate or not. Discrepancies arising from administrative or clerical errors, or due to chronological factors affecting timely updates of the registers are unlikely to constitute concealment and therefore are unlikely to be reportable.

The material discrepancy report should be made as soon as reasonably possible when discovered.[3]

For further guidance (including circumstances where Companies House considers firms do not need to make a report) see: https://www.gov.uk/guidance/report-a-discrepancy-about-a-beneficial-owner-on-the-psc-register-by-an-obliged-entity.

For further guidance on discrepancy reporting for in-scope trusts (including what HMRC considers a material discrepancy) see: https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm70030.

5.3.129C Excerpts should only be those of the legal entity or trust that is the firm's customer, and not other undertakings, legal entities or trusts within the customer's ownership and control structure, unless the firm has a direct business relationship with them.

Excerpts of registers need only be obtained if the firm's customer is registered or registrable. This may be determined through the ordinary course of business and the application of existing CDD measures.[4]

The ROE only needs to be checked and excerpts of the ROE obtained when the nature and purpose of the business relationship involves or changes to mean the firm is providing products/services to facilitate the purchase, sale or transfer of UK land or property, subject to a risk-based approach and consideration of proportionality.

There are exemptions to registration (in respect of the TRS and ROE) and firms can apply a risk-based approach in this determination. Depending on the firm's assessment of risk, this could include obtaining an attestation from the customer in lower risk scenarios, or

[3] For trusts, firms may wish to resolve discrepancies with the customer and only make a report if unresolved within a reasonable time period.

[4] Overseas entities must be registered with ROE to purchase, sell or transfer UK land or property. UK and non UK trusts liable for UK tax must register with TRS.

obtaining independent professional advice in circumstances assessed as posing a higher ML/TF risk.[5]

If a firm determines that a customer is registrable but has not registered, it is a material discrepancy and is reportable.

If a firm is reasonably satisfied that an unregistered trust is not required to register, it does not need to make a report but should document its decision.

[5] See also HMRC guidance: https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm23000.