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New Regulations on Beneficial Ownership of Trusts published

Background

On 24 April 2021, the [European Union \(Anti-Money Laundering: Beneficial Ownership of Trusts\) Regulations 2021](#) came into operation (the **Regulations**).

The Regulations give effect in Irish law to Article 31 of the Fourth Anti-Money Laundering Directive (EU) 2015/849, as amended by the Fifth Anti-Money Laundering Directive (EU) 2018/843, requiring obligations to be imposed on trustees of trusts to identify beneficial owners. The Regulations revoke and replace the existing regulations in this area - the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (S.I. No. 16 of 2019) (**2019 Regulations**). Our briefing on the 2019 Regulations is available [here](#).

The 2019 Regulations imposed a duty on trustees to obtain and hold beneficial ownership information, to create and maintain an internal beneficial ownership register and, upon entering into an “occasional transaction” with a “designated person” (being entities regulated for anti-money laundering/terrorist financing purposes), to inform the designated person that it is acting in the capacity of a trustee. These obligations have been substantively restated in the Regulations, in some cases with additional requirements.

Scope of the Regulations

A “relevant trust” is defined in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (the **Act**) as “an express trust established by deed or other declaration in writing ...” (**Relevant Trust**).

For further information on any of the issues discussed in this article please contact:



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A number of arrangements are excluded from the definition of a Relevant Trust, including:

- an occupational pension scheme that is an approved scheme pursuant to Chapter 1 of Part 30 of the Taxes Consolidation Act 1997;
- a unit trust for which, by virtue of existing regulations, is required to be registered in the Central Register of Beneficial Ownership of ICAVs, Credit Unions and Unit Trusts; and
- such other arrangements, or class of arrangements, as may be prescribed.

The Regulations apply to “a Relevant Trust whose trustees are resident in the State or which is otherwise administered in the State”. The Regulations also apply where none of the trustees of a Relevant Trust are resident in the EU and the trust is not otherwise administered in the EU, in circumstances where a trustee of the Relevant Trust enters into a business relationship in the State or acquires land or other real property in the State in the name of the Relevant Trust.

The term “beneficial owner” in the Regulations is given the meaning designated to it by the Act.

Key requirements introduced under the Regulations

In addition to the existing obligations introduced by the 2019 Regulations, the Regulations make the following changes to the beneficial ownership regime for Relevant Trusts:

- Trustees are now obliged to obtain and record in an internal beneficial ownership register, “a statement of the nature and extent of the interest held, or control exercised, by each beneficial owner” and the PPS number (or national equivalent) of each such beneficial owner, in addition to the existing requirement to obtain the name, date of birth, nationality and residential address of each beneficial owner.
- Where a legal entity is a beneficiary of the Relevant Trust, the beneficial ownership information of which is recorded in the Central Register of Beneficial Ownership of Companies, the Central Register of Beneficial Ownership of ICAVs, Credit Unions and Unit Trusts or any equivalent register in another EU Member State, the trustee is not required to obtain the beneficial ownership information in respect of any natural person who is a beneficial owner of the Relevant Trust by virtue of ownership of that entity, provided the trustee holds certain particulars in respect of the entity, namely its registered name and address, a statement of the nature and extent of the interest held or control exercised by it in relation to the Relevant Trust and any filing number assigned to it by an aforementioned register. Where the beneficial ownership of such a legal entity is not recorded in one of the aforementioned registers, trustees will be obliged to obtain the beneficial ownership information of any natural person who is a beneficial owner of the Relevant Trust by virtue of ownership of that entity.
- The Regulations place an obligation on trustees to give a notice to any individual whom the trustee has reasonable cause to believe to be a beneficial owner of the Relevant Trust. The notice must require the addressee to (1) state whether or not he or she is a beneficial owner of the trust and (2) if so, to confirm or correct any particulars of his or hers that are included in the notice and supply any that are missing. Trustees are also

obliged to inform an individual by way of notice when a change has been/will be made to their details in the Relevant Trust's internal beneficial ownership register.

- The Regulations place a corresponding obligation on beneficial owners of a Relevant Trust to notify the trustee of his or her status as such, and of relevant changes to their beneficial ownership information, in certain circumstances.
- The Regulations provide for the establishment of a "Central Register of Beneficial Ownership of Trusts" (the **Central Register**) to be maintained by the Revenue Commissioners. A trustee is obliged to file (and keep up to date) information on the beneficial ownership of the Relevant Trust with the Central Register. There is an exception to this obligation available where the beneficial ownership information of the Relevant Trust has already been filed in the equivalent central register in another EU Member State. This obligation may be discharged by a third party acting on the trustee's behalf. In addition, designated persons have reporting obligations where they notice a discrepancy in the Central Register.
- There will be unrestricted access to the Central Register for enforcement authorities, including the Garda Síochána. Designated persons conducting due diligence exercises will have access (but will have no access to the residential address of beneficial owners). Members of the public will have similar restricted access, subject to certain requirements.
- Prior to the establishment of a business relationship with a customer to which the Regulations apply (i.e. a Relevant Trust), a designated person is obliged to ascertain that information concerning the beneficial ownership is entered in the Relevant Trust's internal beneficial ownership register or in the Central Register, as the case may be. However, a designated person that is a credit institution/financial institution may allow an account to be opened with it by a customer prior to this, as long as no transactions are carried out on behalf of the customer before ascertaining the information.

Sanctions for non-compliance

The sanctions for non-compliance have been significantly increased. Failure by a trustee to comply with the obligations contained in the Regulations is an offence. Maximum penalties for non-compliance extend to fines not exceeding €500,000 for conviction on indictment and up to 12 months imprisonment for summary conviction or conviction on indictment.

Next steps

Trustees should ensure that their internal beneficial ownership registers are up-to-date.

Trustees have until 24 October 2021 to file information on the beneficial ownership of a Relevant Trust with the Central Register. New entities will have six months to make this filing from the date the entity comes into existence.

We look forward to further information being published on the format and practicalities of filing information with the Central Register. We expect the Revenue Commissioners to publish these details in due course.

The Regulations follow publication of equivalent legislation in respect of corporate entities and ICAVs, credit unions and unit trusts, addressed in previous briefings [here](#) and [here](#), respectively.

For further information on any of the issues discussed in this publication, please contact Keith Waine or your usual contact in Dillon Eustace.

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