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## New obligations imposed on trusts to maintain a register of beneficial owners

### Introduction

The Department of Finance has published the [European Union \(Anti-Money Laundering: Beneficial Ownership of Trusts\) Regulations 2019](#) which came into effect on 29 January 2019.

The AML Regulations transpose into Irish law certain paragraphs of Article 31 of the Fourth Anti-Money Laundering Directive (EU 2015/849) (“**MLD4**”) requiring obligations to be imposed on trustees of trusts to identify beneficial owners. This follows the publication of largely similar legislation requiring corporate entities to identify their beneficial owners and create and maintain a beneficial ownership register in November 2016.

It is worth noting that the AML Regulations clarify that in the case of a collective investment scheme, obligations imposed on trustees under the legislation are imposed on the manager of the relevant fund.

### Obligation to obtain and hold beneficial ownership information

The AML Regulations require trustees to take “all reasonable steps” to obtain and hold “adequate, accurate and current information” in respect of the beneficial owners of the trust. This information must include the name, date of birth, nationality and residential address of each beneficial owner.

A “beneficial owner” is defined by reference to MLD4 which provides that the beneficial owner of a trust is any natural person who ultimately owns or controls the customer and/or the natural

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person(s) on whose behalf a transaction or activity is being conducted, and includes at least:

- (i) the settlor;
- (ii) the trustee;
- (iii) the protector, if any
- (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

### **Obligation to create and maintain a Beneficial Ownership Register**

The trustee (or manager in the case of a collective investment scheme) must establish a beneficial ownership register (the “**Register**”) which must contain details of all beneficial owners of the trust as well as information on the date on which each beneficial owner was entered on the register and, where applicable, the date on which any such person ceased to be a beneficial owner of the trust. The Register must be kept up-to-date and reflect any change in beneficial ownership as and when that change occurs. The Register must be made available to the Revenue Commissioners, Central Bank, Department of Finance and other competent authorities on request.

### **Record keeping obligation**

The AML Regulations require the trustee to keep records of steps taken to identify the beneficial owner(s) of the relevant trust and retain those records for at least 5 years after the date on which the final distribution is made under the trust.

### **Obligation to inform other designated persons**

Where the trustee of a trust engages with other “designated persons” (being other entities regulated for anti-money laundering/terrorist financing purposes), it must inform that entity that it is acting in the capacity of a trustee. It must also provide that designated person with details of the beneficial owner(s) of the trust on request and, where relevant, notify that designated person of any change to the beneficial ownership of the trust.

### **Sanctions for breach**

Failure by the trustee to comply with the obligations contained in the AML Regulations is an offence and the trustee may be liable, on summary conviction to a fine not exceeding €5,000.

### **Next Steps**

Trustees should consider the impact of the AML Regulations and the steps they will need to take to comply with the obligations set out in them.

In the case of unit trusts the Trustees will need to consider how they will obtain information on the beneficial owners of the relevant trust from their unitholders. Trustees will also need to determine

whether they themselves or an entity acting on their behalf will be responsible for maintaining and updating the Register.

If you require assistance from Dillon Eustace in assessing or meeting the requirements of the AML Regulations, please contact Keith Waine or your usual contact in Dillon Eustace.

**Dillon Eustace**  
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