



JULY 2020

Revisions to the Beneficial Ownership Regulations

On 30 June 2020, the [European Union \(Modification of Statutory Instrument No. 110 of 2019\) \(Registration of Beneficial Ownership of Certain Financial Vehicles\) Regulations 2020](#) (the **Modifying Regulations**) were published.

The Modifying Regulations make a number of revisions to the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the **Principal Regulations**).

Background

The Principal Regulations impose an obligation on Irish corporate entities to keep a register of their beneficial owners and to file certain information with the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies (the **Registrar**), where it is maintained on a publically accessible central register. The Registrar however, does not maintain a central register in respect of Unit Trusts, Irish collective asset-management vehicles (ICAVs) or credit unions.

The purpose of the Modifying Regulations is: (i) to amend the Principal Regulations insofar as they apply to Unit Trusts, ICAVs and credit unions and; (ii) to make certain changes affecting the rights and liabilities of the Registrar and competent authorities. This note deals only with the changes impacting Unit Trusts, ICAVs and credit unions.

Clarity for Unit Trusts?

The equivalent beneficial ownership regulations for trusts (the **Trusts Regulations**) ([see our previous briefing](#)) gave rise to uncertainty as whether a Unit Trust's compliance is the responsibility of the Management Company or the Depositary, or both. The Modifying Regulations state that responsibility for compliance rests with the Management Company.

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The definition of '*beneficial owner*' for the purposes of the Trusts Regulations has also caused difficulty for the Irish funds industry, given that the scope of the definition extends to the beneficiary of each and every unit in a Unit Trust. This made the application of the Trusts Regulations impracticable for most Unit Trusts. The Modifying Regulations provide that, in the case of Unit Trusts, '*beneficial owner*' means a natural person who owns or controls more than 25 per cent of the units in the trust or who exercises control over the trust by any means, and includes a trustee or settlor. This brings the definition into line with the definition used for corporate entities and has the welcome effect of ensuring a consistent application of the beneficial ownership requirements across the range of Irish investment fund structures.

The Modifying Regulations also provide for an exemption for Unit Trusts from the requirement to include senior managing officials on the beneficial ownership register in cases where it is not possible to identify a beneficial owner.

Confusingly, each of these modifications relate to the Principal Regulations, which apply only to incorporated entities and so exclude Unit Trusts. The Modifying Regulations do not purport to amend the definition of '*relevant entity*' in the Principal Regulations. Nor do they mention the Trusts Regulations, which specifically address Unit Trusts. Further clarity on the interplay of these regulations will be required.

A New Central Register and Registrar for Unit Trusts, ICAVs and Credit Unions

The Modifying Regulations provide for the appointment of a separate central register of beneficial ownership for Unit Trusts, ICAVs and Credit Unions. This central register will be maintained by the Central Bank of Ireland with the cost of maintenance funded by a levy on the relevant entities.

The information to be filed does not need to include Personal Public Service Numbers (PPSNs), in contrast with the register for corporates. Instead, the Central Bank is tasked with determining what documentation is required for the purposes of verifying the identity of beneficial owners.

Comment and next steps

The changes applying to Unit Trusts will be welcomed by the Irish funds industry and should allow for a practical application of the beneficial ownership requirements which is consistent with the approach adopted for other fund structures. Whilst there remain some areas of uncertainty, it seems likely that the Trust Regulations will soon be revised, which it is hoped will provide further clarity.

Existing Unit Trusts, ICAVs and credit unions have until 25 December 2020 to make their beneficial ownership filing with the Central Bank. New entities will have six months from the date the entity comes into existence. No details in relation to the process for filing are available yet and we expect the Central Bank to publish those details in due course.

If you have any queries in relation to the content of this briefing, please contact the writer or your usual contact in Dillon Eustace.

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