



New Rules for Trustees to Establish Beneficial Ownership Register

Background

New rules have been introduced which require trustees of express trusts to maintain certain information in respect of the trust's beneficial owners. The rules have immediate effect, with the new obligations being imposed on trustees from 29 January 2019. The rules were introduced by way of the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (S.I. No. 16 of 2019) (the "**Regulations**"). The stated purpose of the Regulations is to give effect to certain provisions of the 4th EU Anti-Money Laundering Directive (as amended) (**AMLD4**) and also to give full effect EU rules on administrative cooperation in the field of taxation. For further information on AMLD4 and the subsequent amending directives (the 5th and 6th Anti-Money Laundering Directives) see our briefings [here](#) and [here](#).

It should be noted that these Regulations are distinct from the beneficial ownership regulations relating to corporates that were published in November 2016 (see our [previous client briefing](#) on the topic). At present, there is still no obligation for either corporates or trustees to submit beneficial ownership information to a 'central register' of beneficial ownership maintained by the State. It is expected that this obligation will be introduced in a phased manner during 2019.

What is a “beneficial owner” in the context of a trust?

The definition of “beneficial owner” is set out in the underlying EU legislation (AMLD4) and means any **natural person(s)** who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least, **in the case of trusts**, all following persons:

- i. the settlor(s);
- ii. the trustee(s);
- iii. the protector(s), 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.

It should be noted that there is no 25% qualifying threshold in relation to establishing the beneficial ownership of a trust as there is with corporate entities.

What types of trust are in scope?

The Regulations apply to express trusts whose trustees are resident in the State or which are otherwise administered in the State. These include amongst others, trusts established as collective investment undertakings, trust-based pension schemes and security trusts, as discussed below.

Maintaining a beneficial ownership register

A trustee of a trust must take **all reasonable steps** to obtain and hold adequate, accurate and current information in respect of the trust’s beneficial owners. This includes:

- Name
- Date of birth
- Nationality
- Residential address

The Regulations do not set out what steps a trustee must take to comply with this obligation.

The beneficial ownership information obtained by the trustee must be kept on the trust’s internal beneficial ownership register, which is referred to as an “express trust (beneficial ownership) register” in the Regulations.

In addition to the particulars set out above, the beneficial ownership register must include details of:

- The date on which the natural person was first added to the beneficial ownership register as a beneficial owner; and
- The date on which the natural person ceased to be a beneficial owner.

The beneficial ownership register must be kept up to date. Where a natural person ceases to be a beneficial owner of the trust or there is any change in the particulars of a natural person entered on the register, the trustee of the trust must make the appropriate alterations or deletions.

The Regulations are not prescriptive as to the form the beneficial ownership register must take.

Providing access to register

A trustee must provide the Revenue Commissioners or any State competent authority (at present, this includes the Central Bank of Ireland, the Minister for Justice, Equality and Law Reform and the Property Services Regulatory Authority) with timely access, on request, to the trust's beneficial ownership register.

A State competent authority may share information contained in the beneficial ownership register of a trust with corresponding competent authorities in other EEA Member States.

Obligations when entering business relationships

Where a trustee enters into a transaction to which customer due diligence measures must be applied with a "designated person" (within the meaning of anti-money laundering legislation) or forms a business relationship with such a designated person, the trustee must inform the designated person in writing that it is acting as trustee and, on request from the designated person, provide the designated person (without delay) with information identifying all the beneficial owners of the trust. In the case of a class of beneficiaries, this information may be provided by specifying the class of persons who are beneficiaries or potential beneficiaries under the trust.

Where during the course of the business relationship there is any change in the information provided to the designated person, the trustee of the trust must notify the designated person of the change and the date on which the change occurred no later than 14 days from the date on which the trustee became aware of the change.

Collective investment undertakings

In the case of a trust which is a collective investment undertaking (**CIU**) i.e. a UCITS under the UCITS Directive or an AIF under the AIFM Directive, the definition of trustee in the Regulations "includes the manager or operator" of the CIU. This reflects the fact that in the case of most CIUs, the role of the depositary (which also acts as "trustee" in the context of a CIU formed as a trust) is quite separate and independent from the role of manager (management company). It is typically the management company which either itself or, more often, through a delegate administrator, will act as a transfer agent and registrar of the CIU, and carry out KYC/AML/CTF checks in respect of the investors in the CIU. In the case of a CIU established as a

trust, a prudent approach would be to regard both the depositary and management company of the CIU as a trustee for the purposes of the Regulations. The CIU would have a single beneficial ownership register and contractual arrangements would need to be entered into between the depositary and management company setting out the practical aspects/responsibilities as regards relevant information gathering, the establishment and maintenance of the register (with input from the administrator/transfer agent of the CIU) and with both the depositary and management company having access to the register.

Pension schemes

The definition of “beneficial owner” when applied to a pension scheme is likely to capture current and former employees who have benefits held with the scheme on their behalf. It may also extend to their financial dependants and to pensioners drawing benefits from pension schemes.

Pension schemes will already maintain detailed records for their members to allow them administer benefits, albeit few schemes would record details of their members’ nationality. In terms of members’ financial dependants, typically schemes would not maintain records for them and it may be possible to simply refer to members’ financial dependants as a class of potential beneficiary.

Security trusts

A security trust is often used to hold security over a borrower’s assets for the benefit of various lenders under a syndicated facility. In most cases, the information in relation to beneficial ownership will already be available to (or attainable by) the security trustee. However, under the Regulations, the information will now have to be recorded in the beneficial ownership register.

Retention of records

The trustee of a trust must keep records of the reasonable steps they have taken to identify beneficial owners of the trust and retain those records for at least 5 years after the date on which the final distribution is made under the trust. The trustee must also make arrangements for those records to be deleted at the end of that 5 year period, unless there is a particular reason to maintain them.

Rectification of register

Where the name of a person is incorrectly entered in or omitted from a beneficial ownership register, or where default is made or unnecessary delay takes place in noting that a person has ceased to be a beneficial owner, the person aggrieved or “any other interested party” may apply to the High Court to rectify the beneficial ownership register.

In this context, “any other interested party” is a reference to any other person who is a beneficial owner of the trust.

On such application, the High Court may order the rectification of the register and may order payment of compensation by the trustee of the trust for any loss sustained by any party aggrieved.

Sanctions

Failure by a trustee to comply with any of the above obligations is a criminal offence and can result in the imposition of a fine of €5,000 on summary conviction.

Comment

The Regulations are particularly broad in scope, given that they apply to all express trusts, regardless of tax consequences. While the beneficial ownership information should already be available to trustees in most cases, given the use of trust structures across a wide range of commercial and financial transactions, it is possible that there will be unintended consequences for trustees in certain scenarios. For example, it seems unlikely that Revenue approved pension schemes were intended to be within the scope of the Regulations.

While the Regulations require trustees to take all reasonable steps to obtain information on the beneficial ownership of the trust, in contrast with the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016, there is no obligation on trustees to issue notices to persons they believe are beneficial owners of the trust. In addition, there is no provision made for a scenario where it is not possible to identify the beneficial owners, as there is in the regulations dealing with corporates, by inserting the name of the “senior managing official(s)” of the entity. Finally, also in contrast to those earlier regulations, there is no obligation on the beneficial owners themselves to inform the trustee of their status as such.

Timing and next steps

The Regulations are operative from 29 January 2019 and so trustees will need to take immediate action to ensure they are in compliance with their new obligations under the law.

AMLD4 (as amended) requires information on beneficial ownership of trusts to be submitted to a central register maintained by the State by March 2020. Access to this register must be granted to competent authorities, financial intelligence units (**FIUs**) and obliged entities (without restriction) and, on a more limited basis, any natural or legal person that can demonstrate a “legitimate interest” in the information.

Further legislation will be required to establish this central register and set parameters around the “legitimate interest” ground of access.

Related to this, legislation to establish a central register for beneficial ownership of corporate entities is expected shortly. Ireland is obliged to grant full public access to the information on the central register for corporate entities.

How can William Fry help?

William Fry is available to advise you on the new obligations in relation to disclosure of beneficial ownership and the steps that need to be taken to comply with the Regulations including:

- designing and maintaining the register for a trust/providing advice as to the design and maintenance of the register;
- advice on engagement between CIU depositaries, managers and administrators regarding compliance with the Regulations;
- advice to trustees as to their ongoing obligations under the Regulations.



Key contacts

If you would like to know more about the services which we are offering or have any queries in relation to the matters discussed above, please contact our personnel listed below or your usual contact at William Fry.



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