

Beneficial ownership and Irish investment funds 2021

There are beneficial ownership requirements relevant for Irish authorised fund management companies and for collective investment schemes structured as companies, ICAVs, unit trusts, CCFs and ILPs.

In this briefing we take a look at the challenges for investment funds in identifying beneficial owners, the requirements for maintaining a beneficial ownership register, the latest on central registers and practical points for filing beneficial ownership registers with the relevant Irish authorities.

There are Irish Beneficial Ownership Regulations (Beneficial Ownership Regulations) for corporate and legal entities, which includes ICAVs, and Beneficial Ownership Regulations which modify the position for unit trusts and ICAVs.

The Central Register of Beneficial Ownership of corporate entities was established by the Irish Companies Registration Office in 2019.

The Central Bank of Ireland (CBI) is responsible for the central beneficial ownership register for ICAVs and unit trusts. Existing ICAVs and unit trusts will need to file by 25 December 2020.

The Investment Limited Partnerships Act 2020 (ILP Act) makes provision for the beneficial ownership of ILPs and CCFs, including a central register of beneficial ownership, which will be maintained by the CBI.

Beneficial ownership regulations for corporate entities

The Irish beneficial ownership rules require corporate Irish collective investment schemes (CIS) to

- take 'all reasonable steps' to obtain and hold 'adequate, accurate and current' information in respect of their beneficial owners
- construct and keep a beneficial ownership register
- keep the information on beneficial ownership contained in the beneficial ownership register up to date
- provide beneficial ownership information to 'designated persons' when entering into an occasional transaction or business relationship with that designated person and keep that information updated

Beneficial owner for corporates

Beneficial owners, for corporate investment funds, are natural person(s) who ultimately own or control the entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights in that entity or through control by other means. A percentage of 25% plus one share is an indication of evidence of ownership or control through shareholding, and this threshold applies to every level of direct and indirect ownership.

Beneficial ownership register – corporate entities

Irish corporate CIS should analyse their investor base to identify natural persons who are beneficial owners and enter the details of the natural person(s) on the beneficial ownership register (**BOR**). In certain circumstances, notices are required to be served on beneficial owners when establishing if they are required to be entered on the BOR or when updating the information although there are exceptions to this.

If no natural persons are identified, which can be the case for many Irish CIS, the details of the senior managing officials (often the directors) of the Irish corporate CIS will need to be entered on the BOR.

Information to be entered in the beneficial ownership register – corporate entities

- name, date of birth, nationality and residential address of each beneficial owner or, where no beneficial owner is identified, of each director
- a statement of the nature and extent of the interest held, or information on 'the nature and extent of the control exercised' by each beneficial owner or, where no beneficial owner is identified, by each director
- the name and number of the corporate entity given by the Irish companies registration office (the **Irish CRO**).
- date on which each natural person was entered in the BOR as a beneficial owner
- date on which each natural person who ceased to be a beneficial owner of it ceased to be such.

Central register of beneficial ownership – corporates

The Irish corporate CIS is obliged to electronically file its beneficial ownership information with the [Irish Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies](#) (**Central RBO**). This information will include information which is entered on its internal BOR.

The Central RBO has been live and accepting filings since October 2019. Irish corporate CIS have five months from incorporation to make their initial filing.

PPSN or Form BEN2

In order to verify the identity of each beneficial owner, the Irish corporate CIS must obtain and submit the Personal Public Service (**PPS**) number of each beneficial owner where one has been assigned. The PPS number is not required to, and should not be included in, the BOR. The Central RBO is under an obligation not to disclose PPS numbers and to store them in hashed format to prevent identification.

Where a PPS number has not been assigned to the beneficial owner, the beneficial owner is required to complete a Form BEN2. The Form BEN2 comprises a declaration as to verification of identity. It must be declared by the beneficial owner before a notary public if declared outside Ireland. It can be declared before a solicitor if declared in Ireland. The Form BEN2 is filed electronically and an RBO transaction number then issues. This RBO transaction number can then be used for making future beneficial ownership filings for that person.

Beneficial ownership regulations for ICAVs

- The Irish beneficial ownership requirements applying to Irish corporate CIS apply to investment funds constituted as ICAVs, with some notable modifications. These are detailed in the Beneficial Ownership Regulations for CFVs (or Certain Financial Vehicles which include ICAVs and unit trusts). The CBI issued the CBI's Beneficial Ownership Register FAQs (**FAQs**) which detail the CBI's interpretation of the legislation and the CBI's expectations for compliance
- ICAVs file with the Register of Beneficial Ownership of Certain Financial Vehicles hosted by the CBI (CBI Central RBO).
- ICAVs are not obliged to file PPS numbers (or forms BEN 2) of beneficial owners with the CBI Central RBO.
- When entering the details of a beneficial owner on the CBI Central RBO, the presenter must indicate whether or not the person is currently a PCF holder in this or any other Regulated Financial Services Provider.
- The CBI expects that when recording senior managing officials, the ICAV includes at a minimum a director and manager/CEO, and would expect that the chairperson is included among directors recorded. The FAQ also notes that it is ultimately a matter for the ICAV to interpret this requirement, and record additional senior management or directors as senior managing officials as they see fit.

ICAVs have six months from the date of authorisation to make their initial filing on the CBI Central RBO.

The Beneficial Ownership Regulations for CFVs that came into effect on 25 June 2020 remove the obligation on ICAVs and Unit Trusts to verify the identity of beneficial owners using PPS numbers when filing beneficial ownership information on the CBI Central RBO. The presenter who makes the filing must give their own details and must complete a declaration that the information is complete and correct to the best of their knowledge.

Beneficial ownership regulations for unit trusts

The Beneficial Ownership Regulations for CFVs which came into effect on 25 June 2020 aim to apply the beneficial ownership rules for ICAVs to unit trust CIS with some sensible modifications. We take the view that some further refinements to the legislation are required to bring the provisions into full effect.

The Beneficial Ownership Regulations for CFVs clarify that it is the management company, rather than the depositary, of the unit trust which has responsibility for maintaining the BOR and filing information with the CBI Central RBO.

The definition of beneficial ownership in the case of a unit trust has a 25% threshold. This is a welcome provision.

For unit trusts, the CBI requires the following.

- A natural person must be identified as the beneficial owner. This is required even where there is no investor owning more than 25%. This natural person must exercise ultimate control over the entity by means of direct or indirect ownership or by other means. Ultimately, it is a matter for each unit trust to determine who this is but the CBI notes that this may be a person in the depositary or management company who, in respect of the unit trust, exercises such a role. For example, the most senior PCF in the depositary or management company.

Beneficial owner for unit trusts

Beneficial owner for a unit trust means:

- a natural person who owns, or is ultimately entitled to control, more than 25% of the units in the unit trust
- any other natural person exercising ultimate control over the unit trust by means of direct or indirect ownership or by other means

and shall be deemed to include any trustee under, or the settlor of, the arrangements that constitute the unit trust whether or not falling within either or both of the first two points.

- The depositary or settlor whether they are a natural person or a corporate entity must also be identified.
- As with ICAVs, no PPSN number or form BEN 2 is required to validate the information on the beneficial owner.
- And as with ICAVs, when entering the details of a beneficial owner on the CBI Central RBO, the presenter must indicate whether or not the person is currently a PCF holder in this or any other Regulated Financial Services Provider.
- The obligation to enter the names of senior managing officials as beneficial owners does not apply to unit trusts.
- When unit trusts submit details of the depositary or settlor:
 - » the details of the corporate depositary or settlor should be entered in the field titled: *Further information / clarification in relation to nature / extent of ownership / control*
 - » the details should include (as relevant) - *Legal name, Registered Office, Central Bank Institution Code, Companies Registration Office number.*

Unit trusts have six months from the date of authorisation to make their initial filing on the CBI Central RBO.

The European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 which came into force on 29 January 2019 (**2019 Trust Regulations**) were not amended by the provisions of the Beneficial Ownership Regulations for CFVs affecting unit trusts which came into effect on 25 June 2020. Further clarity on the interplay of these beneficial ownership regulations will be welcome.

CBI Central Register for Unit Trusts and ICAVs

The CBI launched a [webpage](#) called the Register of Beneficial Ownership for Certain Financial Vehicles and a CBI Beneficial Ownership Register [FAQ](#). The filing is to be done on the CBI's online reporting ONR system. The CBI webpages contain

- general information on the CBI Central RBO
- FAQs in relation to the register and a guidance paper how entities can submit the required information
- beneficial ownership submission form
- secure return upload facility via the ONR for entities to submit their information

Common Contractual Funds and Investment Limited Partnerships

The ILP Act will introduce beneficial ownership rules for ILPs and CCFs which are fairly closely aligned with the rules which apply to companies (including variable capital companies), ICAVs and Unit Trusts. In particular, the definition of beneficial ownership for an ILP or CCF has a 25% threshold as well as a control prong.

The ILP Act will oblige the general partner of an ILP and the management company of a CCF to establish and maintain a register of beneficial ownership and to submit that information to

the CBI Central RBO. The ILP Act also provides for the validation of information on beneficial owners by use of a Personal Public Service Number.

ILPs and CCFs in existence at the date of commencement of the provisions will have 6 months to file their beneficial ownership information on the CBI's Central RBO. ILPs and CCFs created after the provisions come into effect will have 6 months from the date of their formation to file their beneficial ownership information on the CBI's central register.

How ALG can help you

You can contact a member of the A&L Goodbody Asset Management & Investment Funds team for more information about the topics in this briefing. We can assist you with

- identification of beneficial owners
- preparing, completing or updating the BOR
- gathering relevant director information and arranging for signing of BEN2 for corporates
- completing central RBO filing for corporate CIS (excluding ICAVs)
- completing CBI beneficial ownership register filing for ICAVs and unit trusts
- keeping up to date with developments at the CBI for CCFs and ILPs

You can access more information in A&L Goodbody's previous bulletins on beneficial ownership and corporates and on beneficial ownership and trusts [here](#).

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