

FINANCIAL REGULATION

Beneficial ownership of trusts

New Regulations on beneficial ownership of express trusts:

- Revenue is in the process of establishing a Central Register of Beneficial Ownership of Trusts, which opens for filings on 26 July 2021.
- Trustees of existing express trusts will have until 23 October 2021 to make filings.
- This is a consequence of new Regulations on beneficial ownership of trusts, which require trusts to keep internal beneficial ownership registers (carried over from 2019 regulations) and to file beneficial ownership information to a Central Register.

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Executive summary

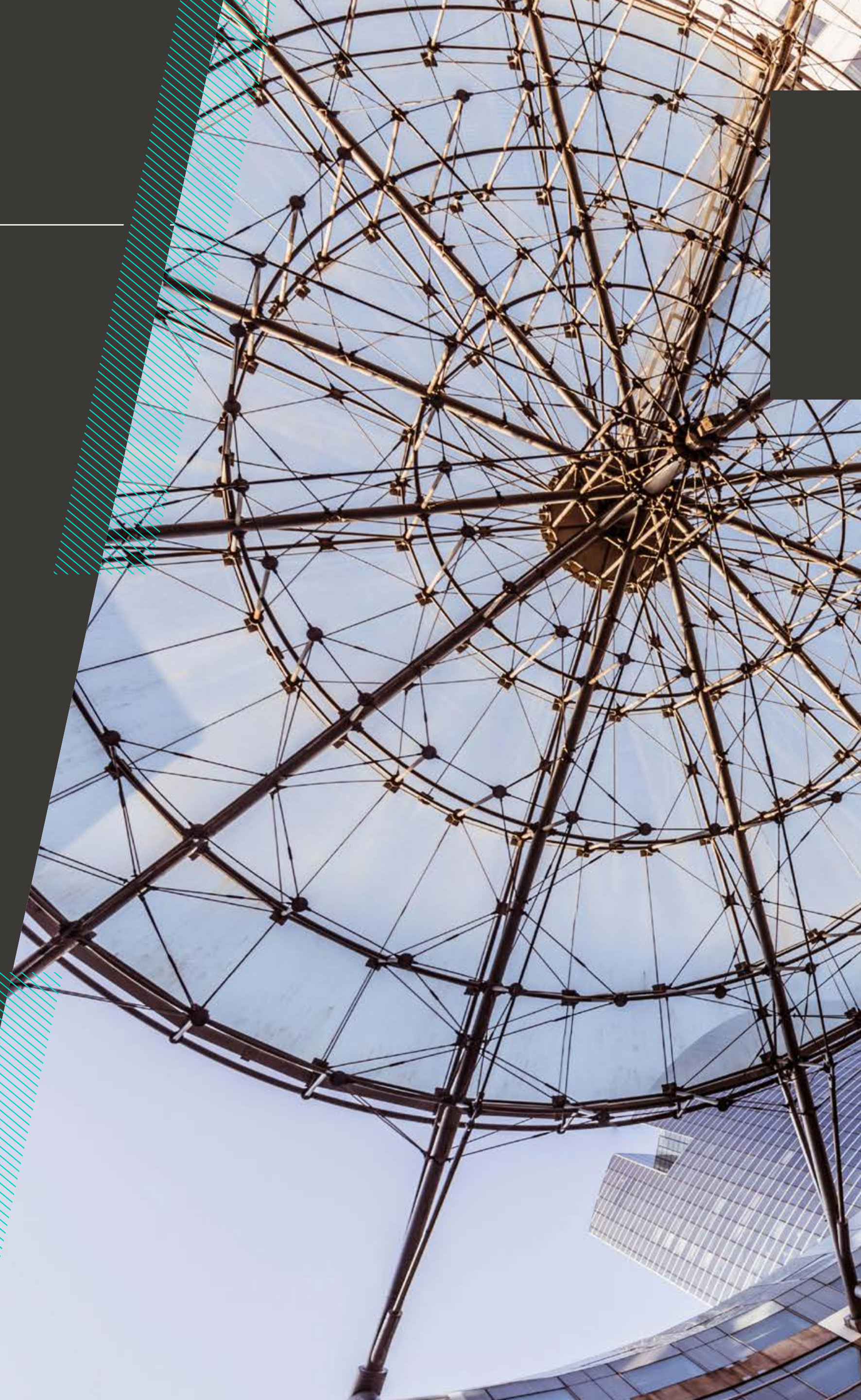
- Revenue is in the process of establishing a Central Register of Beneficial Ownership of Trusts.
- Revenue's Central Register opens on 26 July 2021 and existing trusts will have until 23 October 2021 to make filings.
- This is a consequence of new Regulations on beneficial ownership of trusts, which require trusts to keep internal beneficial ownership registers (carried over from 2019 regulations) and to file beneficial ownership information to a Central Register.
- The Regulations apply to express trusts established by deed or other declaration in writing where the trustee is resident in, or the trust is administered in, Ireland.
- If none of the trustees are resident in an EU Member State and the trust is not administered in the EU, the Regulations apply where the trustee enters into a business relationship in the State in their

capacity as trustee or acquires land or other real property in the State in the name of the trust.

- There is a very wide definition of in-scope trusts in the Regulations. There are no minimum thresholds for an express trust to be caught, with the result that trust arrangements such as private family trusts, nominee shareholder agreements and security trusts are within scope.
- Beneficial owners are defined as: (a) any individual who is entitled to a vested interest in possession, remainder or reversion, in the capital of the relevant trust property; (b) the class of individuals in whose interest the trust is set up or operates; (c) any individual who has control over the relevant trust; (d) the settlor; (e) the trustee; (f) the protector.
- Where an EU legal entity is a beneficiary, details of the entity's beneficial ownership register filing must be obtained by the trustee and filed both internally and in the Central Register.

- Where a non-EU legal entity is a beneficiary, the trustee must take reasonable steps to identify the trust's beneficial owners as constituted in this legal entity.
- Competent authorities (Gardaí, Revenue, etc) have unrestricted access to the Central Register.
- Members of the public will have to prove they have a "legitimate interest" before being granted restricted access.
- Designated persons (e.g. banks and financial institutions) will have restricted access and will require beneficial ownership information before entering into a business relationship or carrying out any transactions on behalf of the trust.

These are just the highlights. For a more detailed analysis of the Regulations, please read on.



Revenue’s Central Register

Revenue recently published information on its website concerning the Central Register of Beneficial Ownership of Trusts (CRBOT), which will be open for filings from 26 July 2021. The CRBOT will contain details of relevant trusts and their beneficial owners, as required by the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021. Trustees (or their agents, advisors or employees) must submit beneficial ownership details to Revenue, who will manage the CRBOT.

Trustees will register through the ‘Trust Register’ portal on Revenue’s Online Service (ROS) and individual filers who do not have a business tax registration number will register through Revenue’s myAccount. For trusts that were established on or before 23 April 2021, the registration deadline is 23 October 2021. Trusts created after 23 April 2021 must file within 6 months of their creation.

Revenue has confirmed that the CRBOT is a standalone Register. Each trust registered on CRBOT will be allocated a registration

number for the purposes of the CRBOT only and Revenue records will not be used to update the Register. Further information will be provided by Revenue before the portal goes live on 26 July, but there is a helpful set of FAQs available in the meantime

The 2021 Regulations

The European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021 (the 2021 Regulations) came into operation on 24 April 2021. The Regulations revoke and replace the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (the **2019 Regulations**) by applying a similar beneficial ownership regime to express trusts, as already applies to corporates and certain financial vehicles by way of earlier beneficial ownership regulations.

The 2021 Regulations implement further aspects of the Fourth Anti-Money Laundering Directive (**4AMLD**), as amended by the Fifth Anti-Money Laundering Directive. One of the key policy objectives of these directives is to promote transparency of beneficial ownership information.

The 2021 Regulations provide some welcome clarity on what is meant by an express trust, what trusts are excluded from scope and what constitutes the beneficial owner of an express trust. They also increase the information that a trustee is required to obtain and hold in respect of beneficial owners.

There are two key strands to compliance with the 2021 Regulations:

1. the obligation of trustees of in-scope trusts to “take all reasonable steps to obtain and hold adequate, accurate and current information in respect of the trust’s beneficial owners” in an internal beneficial ownership register, and
2. the obligation of such trustees to file beneficial ownership information to a central register (Revenue’s CRBOT)

What trusts are subject to the 2021 Regulations?

The 2021 Regulations apply to a relevant trust, which is defined as:

- i. “an express trust established by deed or other declaration in writing and any other arrangement or class of arrangements as may be prescribed but does not include an excluded arrangement”; and

- ii. “whose trustees are resident in the State or which is otherwise administered in the State”

If none of the trustees of a relevant trust are resident in the EU and the trust is not otherwise administered in the EU, then the 2021 Regulations apply where either of the following is the case:

- i. a trustee of the relevant trust, when acting as trustee, enters into a business relationship in the State, or
- ii. a trustee of the relevant trust, when acting as trustee, acquires land or other real property in the State in the name of the trust

“Express trust established by deed or other declaration in writing”

‘Express trust’ is not a defined term in the legislation, but the Revenue FAQs describe it as a trust “created in express terms, as distinguished from one inferred from the conduct or dealings of the parties”.

Certain express trusts, which were caught by the 2019 Regulations, continue to be within the scope of the 2021 Regulations. Arrangements frequently used in corporate and finance transactions, such as private family trusts, security trust arrangements,

declarations of trust in respect of shares and powers of attorney, are therefore required to comply with the 2021 Regulations.

Like the 2019 Regulations, the 2021 Regulations are very broadly drafted and do not provide any minimum thresholds before express trusts fall within their scope (such as an exemption for trusts which are of temporary duration).

“Excluded arrangement”

Whereas the 2019 Regulations failed to exclude any express trusts from their remit, there is now a list of excluded arrangements in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the **2010 Act**), which includes:

- occupational pension schemes approved pursuant to the Taxes Consolidation Act 1997 (the **TCA**)
- approved retirement funds within the meaning of the TCA
- profit sharing schemes or employee share ownership trusts approved pursuant to the TCA
- trusts for restricted shares within the meaning of the TCA
- unit trusts within the meaning of the European Union (Modifications of Statutory

Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020

- such other arrangements or classes of arrangement as may be prescribed

This is a welcome exclusion bearing in mind the multiplicity of beneficial owners which will typically be found in, for example, employment related trusts.

“Administered in Ireland”

In its FAQs, Revenue gives examples of the kinds of services which would cause a trust to be considered to be “administered in Ireland”. These include services such as the management of trust assets, or other services, provided to the trust by legal or accounting professionals or other trust service providers who are operating in the State.

Business relationship or property acquired in the State

This is a new feature of the 2021 Regulations. If none of the trustees are resident in the EU, and the trust is not otherwise administered in the EU, then the relevant trust is in-scope if a trustee (acting for the trust) enters into a business relationship in Ireland or acquires land or other real property in Ireland in the name



of the trust. In such instances, the 2021 Regulations apply to the trust as long as the business relationship exists, or the land or other real property continues to be held by a trustee of the trust.

Who are the beneficial owners?

One difference between the 2021 Regulations and the 2019 Regulations worth mentioning relates to the definition of ‘beneficial owner’. The 2019 Regulations tracked the definition of ‘beneficial owner’ set out in [Article 3\(6\) of 4AMLD](#). This definition includes an individual exercising ultimate control over an express trust, whether by direct ownership, indirect ownership or other means.

This aspect of beneficial ownership does not appear in the 2021 Regulations, which instead apply the definition of ‘beneficial owner’ in relation to a relevant trust set out in the 2010 Act (as amended in 2021). A beneficial owner of a relevant trust is defined as:

- a. any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the relevant trust property
- b. in the case of a relevant trust other than one that is set up or operates entirely for the benefit of individuals referred to in paragraph (a) , the class of individuals in whose interest the trust is set up or operates
- c. any individual who has control over the relevant trust
- d. the settlor
- e. the trustee
- f. the protector

This definition of ‘beneficial owner’ has quite a broad reach. For example, a settlor who has no current or continuing role in the trust, and who is not a beneficiary, is still regarded as a beneficial owner for the purposes of the 2021 Regulations. The concept of ‘control’ over the relevant trust is also quite widely defined.

Where the beneficiary is a legal entity

The 2021 Regulations provide that, if a legal entity is a beneficiary of a relevant trust and has registered its beneficial ownership information on another central register either in Ireland or another EU Member State, the trustee need only obtain more limited information in respect of the legal entity.

If the entity is not registered on another central register in Ireland or the EU (in the case of a non-EU entity, for example), the 2021 Regulations oblige the trustee “to take all reasonable steps to obtain and hold the information ... as respects any individuals, constituted through that legal entity, as beneficial owners of the trust”.

It might be argued that the absence of the ‘[ultimate control](#)’ strand from the beneficial ownership test for relevant trusts means that the trustee does not need to look beyond the legal entity to identify the trust’s beneficial owners. It remains to be seen how this will be understood and applied in practice. It may be that further guidance or amending legislation is required on this point.

What trustees must do: the internal register

The 2021 Regulations replicate the 2019 Regulations in terms of the requirement on trustees to:

- take “all reasonable steps” to obtain and hold “adequate, accurate and current information in respect of the trust’s beneficial owners”
- establish and maintain a “beneficial ownership register” for the trust (the internal register)

The information that the trustee must obtain and hold is:

- the name, date of birth, nationality, and residential address of each beneficial owner of it
- a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner
- the PPSN of each beneficial owner or, if the beneficial owner does not have a PPSN and is not resident in the State, a foreign tax registration number, a passport number or a national identity number and a copy of the document, issued by the authority in the state

concerned, containing such number (the PPSNs must not be disclosed by the trustee)

The trustee must also enter in the register:

- the date on which each individual was entered into the register as a beneficial owner
- the date on which each individual ceased to be a beneficial owner

“Nature and extent of the interest held”

Trustees of express trusts have been required to set up internal beneficial ownership registers since the 2019 Regulations were introduced. However, the requirement to include, in respect of each beneficial owner, a statement of the nature and extent of the interest held or the control exercised by it is new. Trustees will need to update their existing registers to include that additional information.

Revenue suggests that an example of the nature of a person’s interest could be their role in a trust, such as a trustee or a beneficiary. The extent of this could be demonstrated by indicating if they are the sole beneficiary, one of several, or one of hundreds and entitled to an equal share of the trust’s assets or to a specific percentage.

Legal entity as beneficiary

Where the beneficiary is a legal entity with a filing in an Irish or EU central register, the trustee need only obtain and hold the following information in respect of that entity:

- its name, registered office and a statement of the nature and extent of the interest held/control exercised by it in relation to the trust
- the name of the register and the filing number associated with that register

For such an entity, the dates of entry to the register and cessation as a beneficial owner are not required to be recorded.

As outlined previously, if the entity is not obliged to register on a central register in Ireland or the EU, the 2021 Regulations oblige the trustee to obtain and hold information on the individuals, constituted through the legal entity, who are identified as the trust’s beneficial owners

What trustees must do: the Central Register

Under the 2021 Regulations, trustees must now also file their beneficial ownership information to a Central Register, which is being established by Revenue and is expected to launch on 26 July 2021. For trusts that were established on or before 23 April 2021, the registration deadline is 23 October 2021. Trusts created after 23 April 2021 must file within 6 months of their creation.

Revenue will appoint a Registrar of Beneficial Ownership of Trusts (the **Registrar**).

The following information must be delivered by the trustee:

- the name, date of birth, nationality and residential address of each beneficial owner of the trust
- a statement of the nature and extent of the interest held, or the nature and extent of control exercised by, each such beneficial owner
- in the case of a relevant trust other than one that is set up or operates entirely for the benefit of individuals, the class of individuals in whose interest the trust is set up or operates

Other EU Member States

Where a relevant trust is:

- administered in more than one EU Member State, or
- two or more of the trustees of a relevant trust reside in different Member States, or
- none of the trustees reside in the EU, but they have business relationships or property in more than one Member State (one of which is Ireland),

it may be possible to comply with the Regulations without the need for a filing to the Central Register.

Where the trustee has filed information to the central register of another Member State and the information filed there is the same as that required to be filed in Ireland (except for the PPSN), then the trustee can satisfy their obligations under the Regulations by acquiring and retaining a certificate from the corresponding register in the other Member State and presenting it for inspection when required.

Legal entity as beneficiary

As discussed previously, if a legal entity is a beneficiary of a relevant trust and has registered its beneficial ownership information on another central register either in Ireland or another EU Member State, the trustee need only file the following information in respect of the legal entity:

- its name, registered address and a statement of the nature and extent of the interest held/control exercised by it in relation to the trust, and
- the name of the register and the filing number associated with that register

The situation where a legal entity is the beneficiary of a relevant trust and is not registered on another central register in Ireland or the EU is not specifically addressed in the 2021 Regulations with regards to filings to the Central Register. However, Revenue's FAQs state that, in such instances, the trustee must file:

- the entity's name, registered address and a statement of the nature and extent of the interest held/control exercised, and
- the personal details of the individuals, constituted by the entity, who are the trust's beneficial owners

Verification of identity

The trustee must also deliver to the Registrar the PPSN of each beneficial owner for the purposes of verification, but these will not be included on the Central Register and shall be stored securely by the Registrar. If the beneficial owner does not have a PPSN and is not resident in the State, the trustee must obtain a foreign tax registration number, a passport number or a national identity number and a copy of the document, issued by the authority in the state concerned, containing such number.

Officer or employee of the trust

Where the obligation imposed on a trustee is discharged by the trustee acting through an officer or employee of the trust, that person must provide to the Registrar their name, address, phone number and e-mail address and particulars as to the capacity in which the officer or employee is acting.

Presenter

Where the beneficial ownership information is delivered to the Registrar by a person acting on behalf of the trustee (the “presenter”), that person must provide to the Registrar their name, address, phone number and e-mail address and particulars as to the capacity

in which the presenter is acting; and if the presenter is not an individual, the name, address, phone number and e-mail address of an individual for correspondence purposes.

The ‘follow up obligation’

Where a trustee changes any information in a trust’s internal register, they must deliver to the Registrar the information required to make the same change on the Central Register. This is to ensure that the registers remain aligned. This follow up obligation must be discharged within 14 days from the date on which the obligation to update the internal register falls to be discharged by the trustee.

Further obligations on trustees and beneficial owners

The 2021 Regulations also contain detail on the further obligations that the trustee must comply with, including sending out notices to beneficial owners (Regulation 9, 11 and 13 Notices). The trustee must also provide timely access to the trust’s register when requested to do so by certain prescribed competent authorities (e.g. the Gardaí) and provide beneficial ownership information to designated persons performing customer due diligence.

A beneficial owner also has certain obligations. They must notify the trustee of their status if their details are not already in the trust’s beneficial ownership register and if they have not received a Regulation 9 Notice. If any of the particulars listed in a trust’s register have changed, the beneficial owner must also notify the trustee – provided they are aware of the change, the register has not already been updated, and they have not received a Regulation 13 Notice from the trustee.

Access to beneficial ownership information

Unrestricted access to the Central Register is granted to prescribed bodies and competent authorities, as set out in the 2021 Regulations.

In a change from the beneficial ownership regulations for corporate entities and certain financial vehicles, restricted access by members of the public to the Central Register will be granted only where the person provides proof of “legitimate interest” in the information contained in the register. This is quite a high evidential bar and the request for access must relate to that person’s AML/CFT activities. A person can also request access if the trust holds a controlling interest in a non-EU legal entity.

Designated persons and the Central Register

A designated person entering into an “occasional transaction” or “business relationship” with the trustee (in their capacity as trustee of a relevant trust), or otherwise carrying out customer due diligence on the trust will have a right of restricted access to information on the trust’s beneficial owners. Trustees must provide this beneficial ownership information to designated persons in these circumstances.

Section 35(3B) of the 2010 Act, a newly inserted provision, requires designated persons to “ascertain” that information concerning the relevant trust’s beneficial ownership has been entered in the trust’s register or the central register, as the case may be.

Designated persons also have an obligation to report discrepancies they observe between information in the entity’s internal register and information filed in the central register, where these discrepancies “come to the knowledge” of a designated person “on referring himself or herself to the information in the central register as it relates to that relevant entity”.

What’s next?

The 2021 Regulations create a number of new and onerous obligations for trustees of relevant trusts. Trustees of many express trusts have been complying with the obligation to obtain and hold information on the trust’s beneficial owners under the 2019 Regulations. Trustees might need to review trust arrangements having regard to these new 2021 Regulations.

A trustee should:

- consider whether their trust is in-scope under the 2021 Regulations
- review their current registers of beneficial ownership to ensure that the beneficial owners captured there reflect the requirements of the 2021 Regulations
- take steps to update their registers with the additional information on the nature and extent of each beneficial owner’s control
- obtain and hold the PPSN, or other identifying number, of each beneficial owner (although these numbers should not be included in the trust’s beneficial ownership register)
- hold these PPSNs or other identifying numbers for the purposes of verification of identity when making filings to the Central Register
- file their beneficial ownership information to the Central Register before 23 October 2021

Key contacts



Paula Reid
Partner
+353 1 649 2348
preid@algoodbody.com



Sinéad Prunty
Knowledge Lawyer
+353 1 649 2054
sprunty@algoodbody.com



Anne O'Neill
Senior Knowledge Executive
+353 1 649 2726
aoneill@algoodbody.com

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