

Beneficial ownership and Irish investment funds

The Irish beneficial ownership regulations (Beneficial Ownership Regulations) for corporate entities and trusts are relevant for Irish fund management companies and for collective investment schemes structured as companies, ICAVs and unit trusts.

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 with the Irish registrar of beneficial ownership of companies.

Corporate entities incorporated before 22 June 2019 have a filing deadline of 22 November 2019.

For further information on the provisions, requirements and penalties under the Beneficial Ownership Regulations, you can access our earlier briefings [here](#).

Beneficial ownership regulations and 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 – corporates

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 directors of the Irish corporate CIS will need to be entered on the BOR.

Information to be entered in the beneficial ownership register - corporates

- 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). Note information on ICAVs below
- 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](#) (the central RBO). This information will include information which is entered on its internal BOR.

The central RBO is live and accepting filings. The filing deadline for companies incorporated before 22 June 2019 is 22 November 2019. Irish corporate CIS incorporated after 22 June 2019 have 5 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 will be required to complete a Form BEN 2. The Form BEN 2 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 BEN 2 will be filed electronically and an RBO transaction number will then issue. This RBO transaction number can then be used for making future beneficial ownership filings for that person. The central RBO has not yet published details of the mechanism to submit the Form BEN 2.

Beneficial ownership regulations and unit trusts

Obligations under the Beneficial Ownership Regulations concerning the beneficial ownership of trusts fall equally on depositaries and managers of Irish collective investment schemes constituted as unit trusts. This is because the legislation refers to the “collective investment undertaking trustee” as both the manager and the trustee of the trust. As a matter of practice, to date, we have seen the fund management company, rather than the depositary, carrying out the obligations.

The trustee of a unit trust must

- 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.

Beneficial owner for trusts

The beneficial owner of a trust is “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 of the following:

- i. the settlor
- ii. the trustee(s)
- 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.

Beneficial ownership register – trusts

Unit trusts are obliged to maintain a BOR since 29 January 2019. Unlike the Beneficial Ownership Regulations for corporates, there is no 25% threshold so all beneficial owners of unit trusts, no matter how small their interest, need to be shown on the unit trust's BOR. This is one reason why identification of beneficial owners of Irish unit trusts in compliance with the definition in legislation is challenging.

There are other differences from the corporate beneficial ownership rules to determine beneficial owners. For example, where a corporate Irish CIS has exhausted all possible means to identify its beneficial owner(s) and cannot, the details of its directors can be entered into the BOR as an alternative means of compliance. There is no corresponding provision for trusts.

Here is another example. An Irish unit trust typically has a corporate manager and depository. The names of these entities arguably do not need to be entered in relevant field in the BOR as “settlor” and “manager”, respectively, as they are not natural persons. One interpretation is that in the section “Any other natural person exercising ultimate control over the trust by means of direct

or indirect ownership or by any other means” you would list information of the directors (and any individuals exercising control) of the management company and depository. The reasoning would be that directors are the natural persons who can exercise ultimate control over the management company and depository. In practical terms for Irish unit trusts, this would result in the name, DOB, nationality and residential address of each director of depositories and management companies appearing on the BOR.

Information to be entered in the beneficial ownership register - trusts

- Name, date of birth, nationality and residential address of each beneficial owner
- Date on which each natural person was entered in the register 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 – trusts

An Irish central register of beneficial ownership of trusts is to be established by 10 March 2020. It is not yet known who will be responsible for holding this register. The Beneficial Ownership Regulations provide for the “Revenue Commissioners or any State competent authority”.

Beneficial ownership regulations and ICAVs

The Irish beneficial ownership requirements applying to Irish corporate CIS apply, with one notable exception, to investment funds constituted as ICAVs. ICAVs cannot file their beneficial ownership information with the central RBO.

At the date of this briefing, we await a decision about what entity will act as the central register of beneficial ownership for ICAVs. The Irish CRO was appointed as the central RBO. The Irish CRO is not responsible for registering ICAVs and ICAVs do not have a company number issued by the Irish CRO. That fact, together with the absence of a specific provision in legislation permitting the central RBO to accept BOR filings from ICAVs, means that there is no obvious solution to the issue of where the central register for ICAVs will be maintained.

There are Irish legislative provisions relevant to collecting PPS numbers which conflict with the obligation on the ICAV to collect PPS numbers from beneficial owners. We would expect this to be resolved once the central register of beneficial ownership for ICAVs is identified. Until there are further developments on this point, we recommend that ICAVs do not commence collecting PPS Numbers. The Form BEN2 is an administrative mechanism created specifically by the central RBO for companies from which it can accept filings. As ICAVs cannot file with the central RBO it is not relevant for ICAVs.

For the moment, each ICAV should continue to maintain and keep up to date its internal BOR and make preparations for filing a BOR with a 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
- completing central RBO filing for corporate CIS (excluding, for the moment, ICAVs)

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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