

ADVISORY
Industry Information

Ireland Update: Central Register of Beneficial Ownership of Trusts – October Filing Deadline Fast Approaching

October 2021

Executive Summary

On 26 July 2021, the Central Register of Beneficial Ownership of Trusts (“**Central Register**”) was launched allowing trustees (or agents, advisors or employees of trustees) to register and file beneficial ownership information relating to trusts with the Central Register.

One of the key objectives of the creation of the Central Register is to improve the transparency of trust ownership, thereby helping to detect instances where trusts are being used for criminal and illegal purposes. The introduction of equivalent registers of beneficial ownership of trusts in other EU Member States will assist in achieving this objective on an EU-wide scale.

The Central Register was established under the [European Union \(Anti-Money Laundering: Beneficial Ownership of Trusts\) Regulations 2021](#) (the “**2021 Regulations**”). The 2021 Regulations entered into force on 24 April 2021 and further transpose the provisions of the Fourth Anti-Money Laundering Directive 2015/849 (“**MLD4**”) (as amended by the Fifth Anti-Money Laundering Directive 2018/843 (“**MLD5**”)) into Irish law.

The 2021 Regulations revoke and replace the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (the “**2019 Regulations**”). The 2019 Regulations required trustees of trusts to gather information on the trust’s beneficial owners.

The introduction of the 2021 Regulations means that the beneficial ownership information gathered by trustees must now be filed with the Central Register. The Central Register is operated by the Revenue Commissioners (“**Revenue**”).

Trusts established before 23 April 2021 must file details of their beneficial ownership with the Central Register by 23 October 2021. Trusts established after 23 April 2021 are obliged to file 6 months after their establishment.

Scope of Operation of the Central Register

The obligation to file beneficial ownership information applies to a “*relevant trust*” whose trustees are resident in the State or which is otherwise administered in the State. The term ‘relevant trust’ is defined in the 2021 Regulations by reference to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (the “**CJA 2010**”) as 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.

The [Revenue’s FAQs](#) provide guidance regarding the meaning of “*administered in the State*”. 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 Ireland.



The 2021 Regulations may also apply where none of the trustees of a relevant trust are resident in the EU and the trust is not otherwise administered in the EU, in circumstances where:

- 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.

Although the term 'express trust' is not defined in the legislation, the Revenue FAQs describe an 'express trust' as a trust "*created in express terms, as distinguished from one inferred by the law from the conduct or dealings of the parties*". Certain express trusts, which include arrangements frequently used in corporate and finance transactions, such as security trust arrangements and declarations of trust in respect of shares will be within scope of the requirement to file beneficial ownership information with the Central Register.

Excluded arrangements

A number of arrangements that employ the use of trusts are excluded from the scope of the 2021 Regulations by virtue of the amendments introduced by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (the "2021 Act"). These include:

- » occupational pension schemes;
- » approved retirement funds;
- » profit sharing schemes or employee share ownership trusts; and
- » unit trusts.

Identifying Beneficial Owners

The 2021 Regulations identify the following as beneficial owners of relevant trusts:

- i. 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;
- ii. 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 (i), the class of individuals in whose interest the trust is set up or operates;
- iii. the settlor;
- iv. the trustee;
- v. the protector; and
- vi. any individual who has "*control*" over the trust.

The 2021 Regulations state that "*control*" means the power to deal with the trust property, vary the terms of the trust, add or remove beneficiaries, appoint or remove trustees, or control how such powers are exercised. "*Control*" can be exercised alone, jointly, or with the consent of another person.

The 2021 Regulations also describe instances in which the meaning of the term "*beneficial owner*" is more limited, including for:

- » trusts of amateur sports clubs and associations;
- » trusts for beneficiaries of the estate of a deceased person in the course of administration; and
- » charitable trusts.

In the case of charitable trusts the beneficial owners will be the trustees, the committee/other governing body, and any other individual who has "*control*" over the trust.



Trustee Obligations

Maintenance of Internal Register

As has been the case since in the introduction of the 2019 Regulations, trustees are required by the 2021 Regulations to take “all reasonable steps” to obtain and hold accurate, adequate and current information on the trust’s beneficial owners. Trustees are also required to establish a “beneficial ownership register” for the trust (the “**Internal Register**”) where the beneficial ownership information of the trust is maintained. Beneficial ownership information recorded in the Internal Register must be kept up-to-date by the trustee.

The 2021 Regulations specify that trustees must obtain and hold the following beneficial ownership information:

- » the name, date of birth, nationality and residential address of each beneficial owner;
- » a statement of the nature and extent of the interest/control attributed to each beneficial owner;
- » the PPS number of each beneficial owner (or, where the beneficial owner is resident in a country other than Ireland, a unique tax number, passport number or national identity card number from that jurisdiction);
- » the date on which each individual was entered into the register as a beneficial owner; and
- » (where applicable) the date on which each individual ceased to be a beneficial owner.

The 2021 Regulations notes that in contrast to the other information listed above, the PPS number (or analogous identifier obtained from a non-Irish resident) must be kept confidentially and must not be entered on the Internal Register or otherwise disclosed by the trustee.

Dealing as Trustee – Due Diligence Disclosure Requirements

When a trustee, acting in its capacity as a trustee of trust, enters into a transaction with a “designated person” (within the meaning of the CJA 2010), the trustee is required to inform the designated person in writing that it is acting as trustee. The trustee is also required to provide the designated person with information about the legal and beneficial ownership of the trust. Trustees are also obliged to notify the designated person of any relevant change in the beneficial ownership of the trust within 14 days from the date on which the trustee became aware of the change.

Additional requirements

In circumstances where information on the trust’s beneficial owners is not readily available to the trustee, the 2021 Regulations require trustees to take additional steps to identify the beneficial owner of a trust. These steps include notifying:

- i. any individual that the trustee has reasonable cause to believe is a beneficial owner of the trust;
- ii. any person that it has reasonable cause to believe may know the identity of a beneficial owner;
- iii. a beneficial owner where the trustee learns of a change in the particulars of that beneficial owner that are contained in the Internal Register, or has reasonable cause to believe that such a change has occurred.

Submission of Beneficial Ownership Information to the Central Register

Under the 2021 Regulations, trustees must also file the following beneficial ownership information to the Central Register:

Where beneficial owner is an individual:

- i. the name, date of birth, nationality and residential address (incl. country of residence) of each beneficial owner of the trust;
- ii. a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each beneficial owner;
- iii. 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;
- iv. the PPS number of each beneficial owner (or analogous identifier where the beneficial owner is resident in a country other than Ireland). The PPS number or analogous identifier will not be disclosed on the Central Register and will be stored securely by Revenue.



Where beneficial owner is a legal entity:

- i. the name and registered address of the legal entity
- ii. a statement of the nature and extent of the interest held, or the nature and extent of control exercised by it, in relation to the relevant trust;
- iii. the filing number of the legal entity on any other public register of beneficial ownership and the name of the public register of beneficial ownership on which they are already registered;

If the legal entity's beneficial ownership status is that of trustee, settlor or protector, then the option to enter details of another public register of beneficial ownership is not available. Instead, the required details of the individual beneficial owners of the legal entity (as listed above under the heading "Where beneficial owner is an individual") must be submitted.

Follow up obligation

Where a trustee changes any information in a trust's Internal Register, the trustee is required to deliver to the Revenue, the information required to make the same change on the Central Register. This is to ensure that the Internal Register and Central Register 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.

Third Party Access to Beneficial Ownership Information

Internal Register

A trustee is obliged to make the information recorded in a relevant trust's Internal Register (save for the PPS number (or analogous identifier obtained from a non-Irish resident) of a beneficial owner) available for inspection, upon request from a member of the Garda Síochána, the Revenue Commissioners, a competent authority or the Criminal Assets Bureau. These parties may disclose the information in an Internal Register with any corresponding competent authority of another EU Member State.

Central Register

- » **Public Authorities:** The 2021 Regulations grant specified members of the Gardaí, FIU Ireland, Revenue and the Criminal Assets Bureau the right to inspect the Central Register. As with the beneficial ownership information, these parties may, where requested, share the information they gather from the Central Register with any corresponding authorities in other EU Member States.
- » **Designated Person:** When a trustee of a relevant trust, acting as trustee, enters into an occasional transaction with a designated person, or forms a business relationship with a designated person, or a designated person is taking customer due diligence measures in relation to a relevant trust, the designated person shall have a right of access to certain limited information as recorded on the Central Register.
- » **Legitimate Interest:** While the Central Register is not open to public inspection, any person may seek limited access, if they can demonstrate that they have a legitimate interest in accessing the information on the Central Register, for example if that the person is engaged in the prevention, detection or investigation of money laundering or terrorist financing offences.

Discrepancy reporting

The 2021 Regulations oblige competent authorities and designated persons, where they have formed the opinion or become aware that there are discrepancies between the beneficial ownership information of a trust as recorded in the Central Register and its Internal Register, to report such discrepancies to Revenue.

Beneficial Owner Obligations

An individual who is aware, or reasonably ought to know, that they are a beneficial owner of a trust within scope of the 2021 Regulations and they have not been included in the trust's Internal Register or contacted by the trustee, must notify the trustee of that trust of their status as beneficial owner.

Also, where an individual is a beneficial owner of a trust, they must notify the trustee where a change occurs that would mean the particulars in relation to that individual on the Internal Register or Central Register are inaccurate or incomplete.

An individual who is subject to these requirements and who fails to comply with these obligations commits an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000.



Sanctions for Breach of the Regulations

A failure by a trustee to comply with its duties under the 2021 Regulations will constitute a criminal offence. The maximum penalties for non-compliance extend to fines not exceeding €500,000 and up to 12 months imprisonment, on conviction on indictment in certain circumstances. A trustee could also be required to pay compensation to a person who successfully applies to the High Court to have their name added or removed from the beneficial ownership register.

Next Steps

Following the implementation of the 2021 Regulations, trustees of relevant trusts should undertake a review of existing Internal Registers to ensure that the beneficial information relating to the trust is accurate and up-to-date.

To the extent any further steps are required to identify beneficial owners or where additional information is required to be obtained from beneficial owners, trustees of existing relevant trusts should take all necessary measures as soon as possible to ensure they are in a position to meet the 23 October 2021 filing deadline.

How can Walkers help?

The Walkers Regulatory Team are ready to assist clients in complying with their obligations under the 2021 Regulations and in particular in relation to the following:

1. identification of in-scope trusts;
2. identification of beneficial owners;
3. advising on any steps necessary to obtain this information, including drafting statutory correspondence to compel the production of this information if so required;
4. assisting trustees with the preparation of an Internal Register;
5. preparing compliance statements/handbooks to ensure that the Internal Register is kept up to date and compliant with the 2021 Regulations; and
6. (where possible) submitting information to the Central Register and providing updated information to the Central Register.

If you would like to discuss any of the above, please contact the below or your usual Walkers contact.

Key Contacts



Niall Esler
Partner, Regulatory
T: +353 1 863 8517
E: niall.esler@walkersglobal.com



Shane Martin
Of Counsel, Regulatory
T: +353 1 470 6673
E: shane.martin@walkersglobal.com



Conor Daly
Senior Associate, Regulatory
T: +353 1 470 6684
E: conor.daly@walkersglobal.com



Bill Laffan
Associate, Regulatory
T: +353 1 863 8511
E: bill.laffan@walkersglobal.com



Fiona de Lacy
Managing Director
Walkers Professional Services
T: +353 1 470 6611
E: fiona.delacy@walkersglobal.com

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