



STATUTORY INSTRUMENTS.

S.I. No. 16 of 2019

EUROPEAN UNION (ANTI-MONEY LAUNDERING: BENEFICIAL
OWNERSHIP OF TRUSTS) REGULATIONS 2019

European Union (Anti-Money Laundering: Beneficial Ownership of Trusts)
Regulations 2019

I, Paschal Donohoe, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to paragraphs (1) to (3) and paragraph (7) of Article 31 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015¹ and giving full effect to Article 22(1a) of Council Directive 2011/16/EU of 15 February 2011², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019.

Interpretation

2. (1) In these Regulations -

“beneficial owner” has the meaning given to it by point (6)(b) of Article 3 of the Directive;

“beneficial ownership register” shall be construed in accordance with Regulation 6(1);

“collective investment undertaking” has the same meaning as it has in paragraph (e) of the definition of “financial institution” in section 24(1) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No.6 of 2010);

“collective investment undertaking trustee”, in the case of a trust which is a collective investment scheme, includes the manager or operator of the collective investment undertaking;

“Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC¹;

¹ OJ No. L 141, 5.6.2015, p. 73

² OJ No. L 64, 11.03.2011, p.1

¹ OJ No. L 141, 5.6.2015, p. 73

“Member State” means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993);

“trust” means an express trust whose trustees are resident in the State or which is otherwise administered in the State.

(2) A word or expression that is used in the Directive and is also used in these Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) For the purposes of this Regulation, in the case of a trust which is a collective investment undertaking, a reference to the trustee of a trust includes a reference to a collective investment undertaking trustee.

Trustees of trusts to obtain and hold beneficial ownership information

3. (1) A trustee of a trust shall take all reasonable steps to obtain and hold adequate, accurate and current information in respect of the trust’s beneficial owners, that is to say the name, date of birth, nationality and residential addresses of each beneficial owner of it.

(2) The trustee shall enter the information referred to in paragraph (1) in the trust’s beneficial ownership register, and the following information shall also be entered by it in that register:

- (a) the date on which each natural person was entered into the register as a beneficial owner of it; and
- (b) the date on which each natural person who has ceased to be a beneficial owner of it ceased to be such an owner.

(3) A trustee of a trust shall provide the Revenue Commissioners or any State competent authority with timely access, on request, to the trust’s beneficial ownership register.

(4) A State competent authority may disclose the information in a beneficial ownership register to any corresponding competent authority of another Member State (and where there is a request made by the second-mentioned competent authority of the first-mentioned one for disclosure of such information the request shall be complied with in a timely manner).

(5) In paragraphs (3) and (4) “State competent authority” means a competent authority referred to in subsection (1)(a) or (b) of section 62 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No.6 of 2010) or a competent authority prescribed under subsection (1)(c) of that section 62.

(6) Where a trustee of a trust, acting as trustee, enters into an occasional transaction with a designated person within the meaning of section 25 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, or forms a business relationship with such a designated person, the trustee shall -

- (a) inform the designated person in writing that it is acting as trustee, and

- (b) on request from the designated person, provide the designated person without delay with information identifying all the beneficial owners of the trust (which, in the case of a class of beneficiaries, may be provided by specifying the class of persons who are beneficiaries or potential beneficiaries under the trust).

(7) Where during the course of the business relationship concerned, there is any change in the information provided under paragraph (6)(b), the trustee of the trust concerned shall notify the designated person of the change and the date on which it occurred within 14 days from the date on which the trustee or, if more than one, any one of the trustees of the trust, became aware of the change.

(8) For the purposes of paragraph (6), “occasional transaction” means a transaction in relation to which the designated person is required to apply customer due diligence measures under section 33 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Duty to keep information in register up-to-date

4. (1) This Regulation applies where particulars of a natural person, as being a beneficial owner of a trust, are entered in the trust’s beneficial ownership register.

(2) For the purposes of this Regulation, a relevant change occurs if -

- (a) the natural person referred to in paragraph (1) ceases to be a beneficial owner of the trust, or
(b) any other change occurs as a result of which the particulars (stated in the foregoing register) in relation to the natural person are incorrect or incomplete.

(3) Where this Regulation applies, as soon as practicable after the trustee of the trust learns of the fact that a relevant change has occurred, there shall be made in the trust’s beneficial ownership register, by the trustee, the appropriate alteration or deletion of information so as to reflect the change that has occurred.

Retention of records

5. The trustee of a trust shall -

- (a) keep records of the actions taken under Regulation 3(1) in order to identify the beneficial ownership of it and retain those records for a period of not less than 5 years after the date on which the final distribution is made under the trust, and
(b) make arrangements for those records to be deleted at the end of that period, other than where -
(i) the trustee is required to retain them by or under any enactment or for the purpose of court proceedings,

- (ii) any person to whom information in a record relates, consents to the retention of that information, or
- (iii) the trustee has reasonable grounds for believing that the records should be retained for the purpose of legal proceedings.

Duty to keep and maintain a beneficial ownership register

6. (1) A trustee of a trust shall keep and maintain a register which shall be known as an “express trust (beneficial ownership) register” and is in these Regulations referred to as a “beneficial ownership register”.

(2) There shall be entered in the beneficial ownership register by the trustee the information referred to in Regulation 3(1).

(3) If -

- (a) the name of any person is, without sufficient cause, entered in or omitted from a beneficial ownership register, or
- (b) default is made or unnecessary delay takes place in entering in a beneficial ownership register the fact that a person has ceased to be a beneficial owner of the trust concerned,

the person aggrieved or any other interested party may apply to the High Court for rectification of the register.

(4) Where an application is made under paragraph (3), the High Court may either refuse the application or may order rectification of the beneficial ownership register and payment by the trustee of the trust concerned of compensation for any loss sustained by any party aggrieved.

(5) On such an application, the High Court may -

- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the beneficial ownership register, and
- (b) more generally, decide any question necessary or expedient to be decided for rectification of the beneficial ownership register.

(6) The reference in this Regulation to “any other interested party” is a reference to any other person who is a beneficial owner of the trust.

Offences

7. A trustee of a trust who fails to comply with Regulation 3(1), (2), (3), (6) or (7), Regulation 4(3), Regulation 5(a) or (b) or Regulation 6(1) or (2) commits an offence and shall be liable, on summary conviction, to a class A fine.



GIVEN under my Official Seal,
29 January 2019

PASCHAL DONOHOE
Minister for Finance.

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