



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Central Register of Beneficial Ownership for ICAVs and Unit Trusts

by **Colm Hanley**

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A Central Register of beneficial ownership for certain financial vehicles, namely ICAVs, unit trusts and credit unions, became a legal requirement under Irish Regulations published in 2020. The register was created for anti-money laundering purposes and this article outlines the requirements for certain financial vehicles (CFV) under the 2020 Regulations and the penalties for non-compliance.

- The European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Amendment Regulations 2020 (2020 Regulations).
- The 2020 Regulations amended Regulations published in 2019: The European Union (Anti-Money Laundering: Beneficial Ownership and Corporate Entities) Regulations 2019 (2019 Regulations).

1. Creation of the Central Beneficial Ownership Register (Central Register)

The 2020 Regulations established a new central register of beneficial ownership of ICAVs and Unit Trusts and designating the Central Bank of Ireland (CBI) as responsible for the Central Register.

The Investment Limited Partnerships Act 2020 (ILP Act) makes provision for the beneficial ownership of ILPs and Common Contractual Funds (CCFs), including another separate central register of beneficial ownership, which will also be maintained by the CBI and has been available since 1 September 2021.

2. Access to the information on the Central Register

There will be two tiers of access to data contained on the Central Register.

Tier one access: unrestricted

Unrestricted access to the information on the Central Register is available for individuals acting on behalf of Garda Síochána, the Revenue Commissioners, the Financial Intelligence Unit of Garda Síochána, the Criminal Assets Bureau, the Central Bank, the Department of Justice, the Property Services Regulatory Authority, the Law Society of Ireland, the General Council of the Bar of Ireland, certain accountancy bodies and an inspector appointed by the Director of Corporate Enforcement under section 764(1) of the Companies Act 2014.

Tier two access: restricted

Members of the public and designated persons carrying out due diligence, except where the beneficial owner is a minor, will have a restricted right of access to information on the Central Register. They may

access the beneficial owner's name, country of residence, nationality, month and year of birth and a statement as to the nature and extent of the beneficial interest held. The beneficial owner's full date of birth and address will not be available to those with restricted access.

3. Mandatory Filing Requirements

The 2020 Regulations require CFVs to obtain and hold an accurate and current beneficial ownership register and to file details of its beneficial owners on the Central Register.

Established ICAVs and unit trusts are required to file their beneficial ownership details with the Central Register through an online portal access (ONR), which is operated by the CBI, within six months of their establishment. For ICAVs, this initial six months' mandatory filing deadline will operate from the date of the Registration Order of the ICAV; for unit trusts, it will be from the date of CBI authorisation under the Unit Trusts Act 1990 or the UCITS Regulations.

In terms of ongoing obligations, ICAVs and Unit Trusts are required to record changes to their beneficial ownership (including to the details of the beneficial owners) on the Central Register within 14 days of such a change occurring.

4. Beneficial Ownership Information Details

The type of information required to be filed by ICAVs is largely similar to that which already has to be filed by Irish corporate entities with the Companies Registrations Office (CRO) pursuant to the 2019 Regulations and includes the following:

- name
- date of birth
- nationality
- residential address
- a statement of the nature and extent of the interest held by each beneficial owner (who directly or indirectly owns or controls greater than 25% of the ICAV's shareholding)
- the date on which each natural person was entered in the register as a beneficial owner
- the pre-approved controlled function (PCF) status of the beneficial owner

Where a beneficial owner does not exist or cannot be identified, the details of the senior managing officials of the ICAV must be included on beneficial ownership submission form, such as the directors of the ICAV or the CEO. Notably, there is no requirement to submit the Personal Public Service Number (PPS Number) of the beneficial owner of the ICAV or unit trust.

The filing requirements are not as straightforward for unit trusts as for ICAVs. Under the 2020 Regulations, a beneficial owner means (a) any natural person who owns or ultimately is entitled to control more than 25% of the units in the unit trust; or (b) any other natural person exercising ultimate control over the entity by means of direct or indirect ownership or by other means. It is deemed to include a trustee and the management company to a unit trust. The 2020 Regulations clarify that a senior managing official position cannot be relied upon in the instance that no natural person is identified as a beneficial owner, as is the case for ICAVs.

5. Penalties

Failure to maintain an adequate, accurate and current internal register of beneficial owners of an ICAV or unit trust and/or failure to comply with filing requirements may result in:

- On summary conviction, a Class A fine not greater and €5,000; or
- On conviction on indictment, a fine not exceeding €500,000.

Additionally, any breach of the 2020 Regulations is also a prescribed contravention by virtue of the 2020 Regulations being a designated statutory instrument for the purposes of the Central Bank Act 1942, as amended. Therefore, such breaches may also be subject to the Central Bank's administrative sanctions

regime and/or proceedings for offences may be prosecuted summarily by the Central Bank.

6. CFV Dedicated Levy

The 2020 Regulations provide that the Central Bank is legally required to recoup any associated costs for the implementation and operation of the Central Register, as it cannot fund such costs from its own resources. Therefore, CFVs are required to pay a levy in respect of such costs. The details of the levy process were communicated to ICAVs and unit trusts in August 2021 in respect of the 2020 levy which must to be discharged within 28 days of receipt of invoice.

About the Author



Colm Hanley
Head of Company Secretarial

Colm is Head of the firm's Company Secretarial and Corporate Governance team.
T: +353 91 341 346 E: chanley@kshields.ie