

Beneficial Ownership Regulations – ICAVs and Unit Trusts

Statutory Instrument No. 233 of 2020 *The European Union (Modifications of Statutory Instrument No.110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020* (the “**2020 Regulations**”) came into effect on the 25th June 2020.

The purpose of the 2020 Regulations is to amend *the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019* (the “**Principal Regulations**”), which came into effect on the 22nd March 2019 and to set out the beneficial ownership requirements for “Relevant Entities” as defined under the Principal Regulations.

These amendments relate to Applicable Financial Vehicles (“AFVs”) which include:

- Irish Collective Asset-management Vehicles (“ICAVs”),
- Unit Trusts, and
- Credit Unions.

Key Amendments to the Principal Regulations

Establishment of a Central Register

The 2020 Regulations establish the Central Register of Beneficial Ownership of ICAVs, Credit Unions and Unit Trusts (“the Central Register”) which will be housed by the Central Bank of Ireland (“CBI”).

The CBI has launched a webpage regarding the establishment of the Central Register and further information in relation to the process that will be in place for filing is expected. The webpage indicates that Investment Limited Partnerships and Common Contractual Funds registered under the Investment Limited Partnerships Act, 1994, will also be included on the Central Register in due course.

Removal of Verification Requirement

The requirement for verification of information delivered to the registrar by way of a PPS number or Ben2 form does not apply for AFVs.

Beneficial Ownership Definition of a Unit Trust

In the case of a Unit Trust there is a change to the definition of “beneficial owner” to introduce a 25% threshold as follows:

- a) a natural person who owns, or is ultimately entitled to control, more than 25% of the units in the entity, or
- b) any other natural person exercising ultimate control over the entity by means of direct or indirect ownership or by other means,

and shall be deemed to include any trustee under, or the settlor of, the arrangements that constitute the entity (whether or not falling within either or both of points a) or b) above).

The 2020 Regulations clarify that the obligation applying to corporate entities to list senior managing officials (e.g. directors) in the instance that no natural person is identified as a beneficial owner will not apply to Unit Trusts.

Compliance with the 2020 Regulations

Similar to the Principal Regulations, the 2020 Regulations require AFVs to:

- 1) Obtain and hold an accurate and current beneficial ownership register
- 2) File details of its beneficial owners on the Central Register
- 3) File any changes to its beneficial owners on the Central Register within 14 days of a change occurring (known as the “follow up obligation”)

Filing Requirement

AFVs established on or before the 25th June 2020 will have until 25th December 2020 to make their first filing. Any AFV established after this date will have 6 months from the date of incorporation/existence to make their first filing.

Information to be delivered to the Central Register

The following information for each beneficial owner listed on the beneficial ownership register shall be delivered to the Central Register:

- Name;
- Date of birth;
- Residential Address;
- Nationality; and
- A statement of the nature and extent of ownership or control.

Access to the Central Register

Unrestricted Access

The following will have unrestricted access to the information contained on the Central Register:

- The Irish Police
- FIU Ireland
- The Revenue Commissioners
- The Criminal Assets Bureau
- Other State Competent Authorities

Restricted Access

Members of the public will have restricted access to the Central Register. It is expected that there will be a nominal fee charged in respect of this access.

The following information for each beneficial owner listed on the beneficial ownership register will be available via restricted access:

- Name;
- Month and year of birth;
- Country of residence;
- Nationality; and
- Nature and extent of ownership or control.

Offences

An AFV who fails to comply may be liable to a class A fine or, on indictment, a fine not exceeding €500,000. A custodial sentence of a term not exceeding 12 months may also be imposed.

KB Associates Services

KBA offers the provision of suitably qualified professionals dedicated exclusively to anti-money laundering/counter terrorist financing (“AML/CFT”) compliance to ensure AFVs are in compliance with the 2020 Regulations.

If you wish to discuss any of the above, please contact:

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