

Issue 1, 2022**Central Register of Beneficial Ownership of Trusts: The Irish UBO Register**

Published March 21, 2022 in **Issue 1, 2022**



Aileen Keogan ,
Principal, Keogan Law & Tax

Table of Contents

- Introduction
- Requirement to Register
- Timing
- What Trusts Need To Be Registered
- Information Required
- Access to the Register
- Maintaining Up-to-Date Information
- Conclusion

Introduction

The Central Register of Beneficial Ownership of Trusts (CRBOT) is the third in a package of registers introduced by the EU through Anti-Money-Laundering Directives (AMLD) over the last few years, starting with the RBO (the Central Register of

Beneficial Ownership of Companies and Industrial and Provident Societies) and the CBI – Beneficial Ownership Register of CFVs (i.e. of certain financial vehicles).

All of these registers focus on identifying the beneficial owner(s) of the relevant entity. Unlike the RBO or the CFV register, CRBOT is not a public register, albeit there is the potential for the public to access information in very limited circumstances.

CRBOT is managed by the Revenue Commissioners.^[1] The Revenue website provides a stand-alone information page^[2] with detailed FAQs and troubleshooting guides on CRBOT, which is very useful and should be reviewed by practitioners before dealing with CRBOT.^[3]

The Fourth AMLD had introduced a precursor to CRBOT, an internal trust register, where trustees were required to set up and maintain an internal register, the information for which now forms the basis for CRBOT.^[4] The Fifth AMLD, however, is the basis for CRBOT, and this was brought into effect in Ireland by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 and, more particularly, by SI 110 of 2019, which amended the “base” legislation, which is the Act of 2010.^[5] The legislation has been amended significantly since 2010, making it quite unwieldy and certainly worthy of consolidation.

Requirement to Register

All relevant trusts existing in the EU or seeking to hold assets or carry out business in the EU must be registered on an EU register.

CRBOT is the Irish register, but similar central registers have been created throughout the EU, some with different access permissions than others. The mechanism of how information in each central register in Member States will be accessed has yet to be agreed.^[6] Obligations are placed on those businesses transacting with trustees^[7] to check that they have been properly registered.

Failure to register results in trusts being unable to administer the trust assets effectively and, most importantly, significant fines imposed on those obliged to register the trust and keep it up to date.

Timing

The effective date for registration of trusts in Ireland was 24 April 2021, introducing the requirement to register trusts within six months of that date, i.e. by 23 October 2021.

The Registrar for CRBOT is encouraging registration of existing trusts even if, strictly, such registration is late. Trustees should register within a reasonable period on the basis that there may be genuine difficulties for some trustees in registering their details on time.

All new trusts, i.e. those created on or after 24 April 2021, should be registered within six months of their creation.

What Trusts Need To Be Registered

Trusts that have been created expressly and whose trustees are resident in Ireland or otherwise administer the trust in Ireland must be registered on CRBOT unless specifically excluded.

An express trust is a trust established by deed or other declaration in writing. It requires certainty of subject matter, objects and words imperative to creating the trust. Typically, trusts would include a trust created under a will (once the estate is administered and handed over to trustees), an inter vivos (lifetime) trust, a nominee trust, a charitable trust, a trust owning a company registered

on the RBO, certain pension trusts and s189/189A TCA 1997 trusts. Discretionary, fixed interest/period trusts, life interest trusts and bare trusts are all registrable. There is not *de minimis* – even a pilot trust set up with a nominal €100 must be registered.

The following trusts are specifically excluded:

- approved occupational pension schemes,
- approved retirement funds,
- approved profit-sharing schemes or employee share ownership schemes,
- trusts for restricted shares,
- Haemophilia HIV Trusts, and
- unit trusts.

A statutory trust, such as one created for a minor on an intestacy, is not an express trust. Powers of attorney are not express trusts. Resulting or constructive trusts are also not considered express trusts (such as when dealing with joint bank accounts). Care should be taken to determine whether a trust exists or only a power arises, such as in the case of objects or powers in a company's constitution, which may not of itself create a trust. Likewise, if the relationship is one of agency, not trusteeship, this is not registrable.

The residency of each trustee is looked at in terms of residency in its ordinary sense, as opposed to residency of trustees or a trust as defined for income tax or capital gains tax purposes. If any trustee is resident in Ireland, the trust should be registered here unless it is already registered in another EU Member State. It is therefore sensible for trustees of a trust who reside in multiple EU Member States to decide between them the most appropriate register on which to register the trust.

A trust is considered to be administered in Ireland if it manages its assets here, gets advice from Irish professionals or other services are provided to the trust in Ireland.

If a trust is already registered in another EU country, it does not need to be registered in Ireland.

Separately, where a trust has not got any connection with Ireland or any other EU Member State but enters into an occasional transaction^[8] with a designated person or forms a business relationship^[9] with such a person, that trust will also need to be registered with CRBOT. In effect, a trustee's carrying out any transaction in Ireland brings the trust into the reckoning of being administered in Ireland and requiring registration here if not already registered elsewhere in the EU.

It should be noted that there is no Brexit or other derogation for trusts registered on the equivalent UK register. Therefore, a trust registered in the UK under its system of trust registrations may also need to be registered in Ireland.

Information Required

The information to be provided to CRBOT on registration focuses on the names, addresses, dates of birth and PPSNs^[10] of each beneficial owner as defined. It is important to realise that under the Fifth AMLD the beneficial owner of a trust is not defined in the usual sense of beneficial interest of a trust for trust purposes. A beneficial owner for CRBOT is the settlor, trustee, protector, other controlling individual and all beneficiaries (vested or the class of beneficiaries). Each beneficial owner should register for each category in the case where he or she holds multiple roles in the trust, e.g. is both a settlor and a beneficiary or is both a settlor and a trustee.

On registration the information on the status of each beneficial owner is also required, i.e. how the person has become a beneficial owner, such as by being a settlor, a trustee or a beneficiary. In the case of discretionary trusts, a description of the

class of beneficiaries is required, and although each identifiable discretionary beneficiary is not required to be detailed on CRBOT, that information should be retained on the internal register of the trust.

Although CRBOT does not of itself automatically seek information on the assets within the trust, it requires each beneficial owner to set out a statement of the nature and extent of his or her interest in the trust or control exercised. This may, depending on the nature and extent of the interest or control, require certain trust assets to be detailed. Generally, what is meant by nature and extent of interest held is the level of benefit owned, such as being a sole beneficiary, a beneficiary of a share with others and indeed specifying the level of share, holding a life interest and holding a reversionary interest. The nature and extent of the control exercised would include matters such as adding or removing beneficiaries or trustees and power to dispose of or invest in property. It is assumed that a trustee holding quite typical trust powers would not have to list all of the powers set out in the trust, and so in practical terms, filing to date has been made on the basis that such powers are standard. CRBOT is currently carrying out data checks on trusts that have been registered to date in relation to the information provided on the nature and extent of control or interest. We have been informed that its due diligence of trusts has shown that more information may be required than many trustees/agents have to date provided in that category.^[11]

Where a legal entity is a beneficiary and is already registered on another register (such as the RBO), the name, registered address, filing number and name of the register are required, together with the statement of the nature and extent of interest held or control exercised in relation to the relevant trust. Initially, if the legal entity is not a beneficiary (i.e. is a trustee, settlor or protector or holds a controlling interest), then the details of each individual beneficial owner of the legal entity are required, which was quite a frustration, although this is due to be updated.^[12]

Foundations can be considered hybrids of trusts and corporates, and care should be taken to ensure that if a foundation is not registered on CRBOT, then it might need to be registered on the RBO, or vice versa.

Access to the Register

The register is stand-alone from the Revenue Commissioners, insofar as Revenue's role in managing CRBOT is completely separate from its role in tax administration. Revenue records will not therefore link with CRBOT and so will not automatically update the register.

This can be seen when accessing registration through ROS. The business user/agent using ROS accesses the Trust Register from the ROS home page, but despite notice numbers issuing when filing the information on CRBOT similar to regular Revenue filing notice numbers, the notification does not show up on the main ROS inbox page. Instead, a separate identification number (separate from the filing notification number) is allocated to the trust on the CRBOT register home page within ROS.^[13]

Revenue, with other stated bodies and competent authorities,^[14] can obtain details from CRBOT about trusts to improve transparency and make it clear who owns and controls Irish trusts.

Furthermore, designated persons can access limited information of a trust for verification purposes through an access code provided by the registering trustee or agent.^[15] We understand that the newly provided facility to print out the registration status of the trust will also serve as the certificate of proof of registration for the purposes of trustees providing the proof to designated persons in other jurisdictions who otherwise would be seeking to have the trust registered in their jurisdiction when the trustees deal with them. We are seeking clarity on the reliance by designated persons on certificates issued from other EU registers as fulfilling the AML requirements for designated persons.^[16]

There are obligations on designated persons to report discrepancies^[17] between what is reported to them by the trustees and what is made available to the designated person by CRBOT. There is no prohibition on "tipping off" in relation to discrepancies,

and so on a practical level it is anticipated that the designated person might suggest to the trustees to update the register correctly and then give an updated access code to provide the designated person with the correct information on CRBOT.^[18]

There is limited power for persons showing legitimate interest to access the information on CRBOT. The legislation effectively envisages access being available to investigative journalists on a case-by-case basis specifically requesting details on someone who already has an AML conviction or holds assets in high-risk third countries. It is therefore not the case that a broad sweep can be made by a journalist seeking information generally on a well-known person.

There are protections for minors so that information on such minors will not be released. Unfortunately, this is not the case for beneficial owners who are vulnerable persons.

Maintaining Up-to-Date Information

Any changes to the status of the trust should be updated on CRBOT, such as changes of address and change of status of the trust or of the beneficial owners (e.g. where a life tenant has died; where a previously unvested interest vests and remains in trust; where the trust is wound up in full; where a beneficiary is added or removed; and where trustees, settlors, protectors or other controllers have died or their powers have changed).

There is no specified time limit on when the update should occur, so presumably registration of the necessary change can be done within a reasonable time from when the information is to hand. The trustees of the trust are under a duty to maintain both the internal register and the CRBOT register and ensure that it is up to date. However, beneficial owners themselves are also under a duty to notify trustees of changes to their status, such as change of address.

The details remain on CRBOT until the beneficial ownership ceases (such as on the death of the beneficial owner or the cessation of the trust), in which case the details remain on CRBOT until 10 years after notice of cessation. There was a requirement initially to register settlors who had died before 23 April 2021, but that has since changed.^[19] There is no facility to automatically remove those details, so anyone who registered these details should mark the deceased as ceasing to be a beneficial owner and, if wished, request the removal of the information from the register by separate email to CRBOT.

Conclusion

After quite a teething period in the early autumn, the registration process has settled down, but it is hoped that there will be more updates to the functionality of the register to allow it to be more user-friendly for trustees, their agents and designated persons.

It remains to be seen how access via the EU to the information on CRBOT will be managed to ensure that the Irish limitations on public viewing can be maintained.

It also remains to be seen how the availability of these registers will reduce money laundering and terrorist financing in practice and whether the public will see the results of this in reviews of the registers over the next few years. There is already significant international criticism that such trust registers are disproportionate and ineffective and seem to be a mechanism to reduce the use of trusts generally. The administrative burden on compliant trusts and the potential loss of privacy for compliant beneficiaries is excessive to those who believe that the concept that AML as a crime-stopper is dead.

*This article was written on 15 January 2022, and updates to CRBOT may have occurred since writing.

Footnotes

[1]The RBO is managed by the Companies Registration Office, and the Register of CFVs is managed by the Central Bank of Ireland.

[2]See <https://www.revenue.ie/en/crbot/central-register-of-beneficial-ownership-of-trusts/index.aspx>.

[3]The FAQs and troubleshooting guide has been developed in conjunction with a working group of practitioner representative bodies. Some of the original FAQs are to be incorporated in the main CRBOT website page going forward.

[4]SI 16 of 2019, since 29 January 2019. Although this statutory instrument is now revoked, the requirement for the internal register continues under SI 188 of 2021.

[5]Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

[6]This access system is known as BORIS. It is not clear if the information is accessed by the registrar in each Member State or by the State authorities only. If it is to be accessed by the registrar and then made available for access under local rules, there would be a concern that the confidentiality of the Irish register would be breached by access through other Member States' having registers that are more public than the Irish register.

[7]i.e. a designated person who is defined under s25 of the 2010 Act as amended. Examples include a bank, auditor, external accountant, tax adviser and independent legal professional.

[8]Section 24 of the 2010 Act.

[9]Regulation 6, SI 194 of 2021.

[10]Or, if no PPSN, foreign tax registration number, passport number or national identity number and evidence of that.

[11]Through the working group, we have requested greater clarity on and examples of this registration requirement, as it would seem unnecessary to list typical (and lengthy) trustee powers in a trust for this purpose.

[12]It is understood that this will change, but it is not yet in place at the time of writing this article.

[13]Insofar as the identification number is only initially allocated and there is no obvious record of times and details of when changes are made, it is advisable to print any amended pages submitted with a date stamp and retain the notice number automatically issued by ROS for potential cross-reference. Unfortunately, the CRBOT registration number is not alphabetised and is allocated on the filer's CRBOT inbox list in time order, so for those registering multiple trusts, it could be difficult to manage these going forward. A request for a search function on this list has been made by the working group.

[14]Revenue Commissioners, An Garda Síochána, Financial Intelligence Unit Ireland, Criminal Assets Bureau, competent authorities engaged in the prevention, detection or investigation of money laundering or terrorist financing, e.g. the Central Bank, Law Society, Bar Council, designated accountancy bodies, LSRA, PRSA, Minister for Justice.

[15]Initially only the registering party can obtain an access code, although this is under review by CRBOT and it is proposed that trustees will also be able to access and amend the filing and generate an access code. Practitioners may wish to consider with their trustee clients whether it would be more efficient that the trustee registers the trust direct with CRBOT, rather than the practitioner doing this, as the presenter will later need to be contacted each time the trust deals with a designated person to obtain an access code. If the presenter is an agent filing initially, care should be taken to print what has been registered by the agent and date stamp this manually as proof of filing, on the basis that the trustees may change the details later without the agent's being aware of such change.

[16]At the moment the Irish legislation indicates that the EU registration can be relied on only if the EU register contains the same information at a minimum as CRBOT. This would require the designated person to assess the content of another EU Member State's registration requirements, which seems to defeat the principle of consistency throughout the EU. This is under review, but the current position is that the designated person will be obliged to review the information on the EU register and ensure that it is consistent with the information required by CRBOT.

[17]Forms for such reporting are now available on the CRBOT website.

[18]It is also not clear whether the designated person is under the obligation anyway to check the register because of the option to rely on the information provided to them by the trustees from the internal register by virtue of the amendment of s35(3A) of the 2010 Act in SI 188 of 2021.

[19]A person who was a beneficial owner on or after 24 April 2021 and who dies within six months of then or within six months of the trust's being set up if set up after 24 April 2021, i.e. before the requirement to register arises, must still be registered as a beneficial owner, and the date of death of that person should be inserted as the date of the person's ceasing to be a beneficial owner.



The Institute is a company limited by guarantee without a share capital (CLG), registered number 53699.

The Institute is also a registered charity, number 20009533. EU Transparency Register No.: 08421509356-44

Disclaimer The Irish Tax Institute can accept no responsibility for the accuracy of contributed articles or statements appearing in this publication, and any views or opinions expressed are not necessarily subscribed to by the Institute. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors or publisher. Following publication of an article or other feature, it may happen that additional information or a correction will later be published so the reader is advised to refer to subsequent issues.