



STATUTORY INSTRUMENTS.

S.I. No. 233 of 2020

EUROPEAN UNION (MODIFICATIONS OF STATUTORY INSTRUMENT
NO. 110 OF 2019) (REGISTRATION OF BENEFICIAL OWNERSHIP OF
CERTAIN FINANCIAL VEHICLES) REGULATIONS 2020

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The Minister for Finance, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Article 30 of Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015¹, as amended by Article 1(15) of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018², hereby makes the following regulations:

Citation and construction

1. (1) These Regulations may be cited as the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020.

(2) The Principal Regulations and these Regulations shall be construed together as one.

Definitions

2. In these Regulations -

“applicable financial vehicle” means -

- (a) an Irish collective asset-management vehicle,
- (b) a unit trust, or
- (c) a credit union;

“Principal Regulations” means the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No.110 of 2019);

“UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011);

“unit trust” means -

- (a) a unit trust scheme within the meaning of the Unit Trusts Act 1990 (No. 37 of 1990), or

¹ OJ No. L141, 5.6.2015, P.73.

² OJ No. L156, 19.6.2018, P. 43.

- (b) an undertaking for collective investment in transferable securities (within the meaning of the UCITS Regulations), that is constituted of a unit trust (within the meaning of the UCITS Regulations) and authorised under those Regulations.

Purpose of Regulations

3. (1) In addition to what is mentioned in paragraph (2), the purpose of these Regulations is to provide for modifications of the Principal Regulations so that in respect of an applicable financial vehicle (but such a vehicle only) -

- (a) in the case of an applicable financial vehicle that is a unit trust -
 - (i) the specification of the particulars (so far as they relate to its beneficial ownership) that must be held by the unit trust and entered in its beneficial ownership register and delivered for entry in the central register (that is, the separate register as mentioned in subparagraph (c)) is a specification that takes account (in addition to the fact of there being a settlor or trustee in respect of such a trust) of the characteristics of a unit trust and, in particular, that beneficial ownership of such a trust, in the context of Article 30 of the Directive, is not to be equated with every instance in which one or more units in such a trust are held by a particular natural person but - by analogy with a company with a share capital - only with -
 - (I) an instance in which more than 25 per cent of the units in the trust are owned by a particular natural person or there is, on his or her part, an entitlement to the ultimate control of such a percentage, or
 - (II) any other instance in which a particular natural person may exercise ultimate control over the trust by means of direct or indirect ownership or by other means,
 - (ii) without prejudice to clause (iii), the provisions of the Principal Regulations must be construed and apply accordingly, and
 - (iii) the obligations of the unit trust under the Principal Regulations must be discharged by the management company of the unit trust and the obligations of any other person, under those Regulations, to the unit trust must be discharged by the person's doing (or, if the nature of the obligation requires, not doing) the act concerned in relation to the management company of the unit trust,
- (b) the persons who may be appointed under Regulation 18 of the Principal Regulations, whether as registrar or assistant registrars, for any of the purposes referred to in Regulation 19 of the Principal Regulations, need not necessarily be the same persons who are appointed under that Regulation 18, for any of the

foregoing purposes, in the case of a relevant entity that is not an applicable financial vehicle, and

- (c) the register that is established by virtue of Regulation 19 of the Principal Regulations and into which there must be entered the information required by Part 3 of the Principal Regulations to be delivered or submitted by or on behalf of an applicable financial vehicle, is to be a separate register, and bear a different title, from the register established by virtue of that Regulation 19 and known as the “Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies”.
- (2) Provision is also made by these Regulations for -
- (a) amendments to Regulations 18, 20 and 26 of the Principal Regulations concerning functions of the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies,
 - (b) an amendment to Regulation 24 of the Principal Regulations concerning the right to inspect the central register,
 - (c) amendments to the Principal Regulations concerning resources of the Central Bank of Ireland for the performance of certain functions and associated consultation, and
 - (d) an amendment to Schedule 2 to the Central Bank Act 1942 (No.22 of 1942).
- (3) Nothing in these Regulations affects the continued operation of the Principal Regulations as those Regulations relate to a relevant entity that is not an applicable financial vehicle and, in particular, nothing in these Regulations affects the continued existence and maintenance of the register known as the “Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies”.

Modifications of Principal Regulations concerning unit trusts

4. (1) In respect of an applicable financial vehicle that is a unit trust and such a vehicle only, the following definition shall be substituted, and shall be deemed always to have been substituted, for the definition of “beneficial owner” in Regulation 2(1) of the Principal Regulations:

“ ‘beneficial owner’, in relation to a relevant entity, means -

- (a) a natural person who owns, or is ultimately entitled to control, more than 25 per cent 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 the preceding subparagraphs);”,

and the Principal Regulations shall be construed and apply accordingly.

(2) Paragraphs (4) and (5) of Regulation 5 of the Principal Regulations shall be omitted, and be deemed always to have been omitted, from that Regulation in the case of an applicable financial vehicle that is a unit trust.

(3) A provision of the Principal Regulations that imposes an obligation on -

- (a) a relevant entity to do, or not to do, a particular act, or
- (b) a person to do, or not to do, in relation to a relevant entity, a particular act,

shall, in respect of an applicable financial vehicle that is a unit trust and such a vehicle only, operate and be deemed always to have operated, as a provision that imposes the obligation on, as the case may be

- (i) the management company of the unit trust to do, or not to do, the particular act, or
- (ii) the person to do, or not to do, in relation to the management company of the unit trust, the particular act,

but nothing in the foregoing operates, or has operated, to displace references in the provision concerned to beneficial ownership of the relevant entity in favour of references to the beneficial ownership of that management company.

Modifications of Part 3 of Principal Regulations

5. In respect of an applicable financial vehicle and such a vehicle only, Part 3 of the Principal Regulations shall apply with the following modifications:

(a) for Regulations 18 and 19 there shall be substituted, and there shall be deemed always to have been substituted, the following Regulations:

“Registrar of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts

18. The Minister for Finance may appoint -

(a) a registrar, who shall be known as the ‘Registrar of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts’ and is in these Regulations referred to as the ‘Registrar’, and

(b) such assistant registrars,

as he or she thinks necessary for any of the purposes referred to in Regulation 19, and may remove any persons so appointed.

Establishment and maintenance of central register

19. (1) There is, by virtue of this Regulation, established a register which shall be known as the ‘Central Register of Beneficial Ownership of Irish Collective Asset-management

Vehicles, Credit Unions and Unit Trusts' and is in these Regulations referred to as the 'central register'.

(2) The central register shall be maintained by the Registrar; the information required by this Part to be delivered or submitted to the Registrar shall be entered in that register by the Registrar and that register shall be kept in such form as he or she considers appropriate.

(3) For the purposes of the registration in the central register of the information specified in these Regulations, the Minister for Finance shall maintain and administer an office or offices in the State at such places as the Minister for Finance thinks fit.",

- (b) in Regulation 20, there shall be substituted, and there shall be deemed always to have been substituted, for paragraphs (1) and (2) the following paragraphs:

"(1) An applicable financial vehicle that is in existence before the commencement of the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 shall deliver the information specified in Regulation 21 to the Registrar within 6 months from such commencement.

(2) An applicable financial vehicle that comes into existence on or after the commencement of the Regulations referred to in paragraph (1) shall, within 6 months from the date of its coming into existence, deliver the information specified in Regulation 21 to the Registrar in such manner as the Registrar determines.

(2A) For the purposes of paragraphs (1) and (2):

- (a) in the case of an Irish collective asset-management vehicle, such a vehicle shall be deemed to have come into existence by virtue of the making (in respect of it) of a registration order under section 12 of the Irish Collective Asset-management Vehicles Act 2015 (No.2 of 2015) - but on the date on which such order comes into operation as distinct from the date on which the order is made;

- (b) in the case of a unit trust, such a trust –

- (i) unless it falls within clause (ii), shall be deemed to have come into existence by virtue of its authorisation under the Unit Trusts Act 1990 or the UCITS Regulations, as appropriate, and

- (ii) in the case of a unit trust deemed to be authorised under the Unit Trusts Act 1990 by virtue of section 20(2) of that Act or, as appropriate, the authorisation of which, under any of the regulations revoked by Regulation

139(1) of the UCITS Regulations, is continued in force, under those Regulations, by Regulation 139(4) of them shall be taken to be in existence before the commencement of the Regulations referred to in paragraph (1), and

- (c) in the case of a credit union, such a union -
 - (i) unless it falls within clause (ii), shall be deemed to have come into existence by virtue of there being issued, to the society that has made an application for registration, under the Credit Union Act 1997 (No.15 of 1997) as a credit union, of an acknowledgement under section 8(1) of that Act, and
 - (ii) in the case of a society deemed to be registered as a credit union under the Credit Union Act 1997 by virtue of section 5(3) of that Act, shall be taken to be in existence before the commencement of the Regulations referred to in paragraph (1).”,
- (c) in Regulation 21 -
 - (i) in paragraph (1) there shall be substituted, and there shall be deemed always to have been substituted, for subparagraph (c) the following subparagraph:
 - “(c) the name of the entity as it appears on the register kept by the Central Bank of Ireland under, as the case may be -
 - (i) the Irish Collective Asset-management Vehicles Act 2015,
 - (ii) the Unit Trusts Act 1990 or the UCITS Regulations, as appropriate, or
 - (iii) the Credit Union Act 1997;”;
 - (ii) there shall be omitted, and there shall be deemed always to have been omitted, paragraphs (2)(a), (5) and (6), and
 - (iii) in paragraph (7) - so far as it contains or includes a reference to paragraph (2)(a), (5) or (6) of Regulation 21 - each such reference shall be omitted and be deemed always to have been omitted, and
- (d) after Regulation 31, the following Regulation shall be inserted, and shall be deemed always to have been so inserted -

“Resources of Central Bank of Ireland for performance of certain functions

“31A. (1) This Regulation applies where the Central Bank of Ireland (in this Regulation and Regulation 31B referred to as the ‘Bank’) is appointed under Regulation 18 as the Registrar of

Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts.

(2) The Bank shall not provide any funds from its own resources, other than from those resources provided to it under paragraph (3), to defray expenses of the Bank incurred by it in the performance of the functions under this Part (in paragraph (3) referred to as ‘expenses of the Bank associated with its functions under this Part’).

(3) The Central Bank Commission shall make regulations under section 32D of the Central Bank Act 1942 (No. 22 of 1942) prescribing levies (in paragraph (4) referred to as the ‘dedicated levies’) to be paid by applicable financial vehicles, and the moneys received by the Bank by way of such levies shall be used by it to defray expenses of the Bank associated with its functions under this Part.

(4) Where -

(a) in any year, the Bank reasonably apprehends that it will be unable to defray all of the expenses of the Bank, arising in that year, associated with its functions under this Part from moneys received by it by way of the dedicated levies, or

(b) notwithstanding the existence of the dedicated levies and, apart from the circumstance referred to in subparagraph (a), for any reason there is an insufficiency in any year of moneys available to the Bank to defray all of its expenses, arising in that year, associated with the foregoing functions, the Minister for Finance shall, on the written request of the Bank, advance to the Bank such sums as he or she thinks proper to enable the Bank to defray all of its expenses, arising in that year, associated with the foregoing functions.

(5) The payments of sums referred to in paragraph (4) shall be made on such terms as to repayment, interest and other matters as may be determined by the Minister for Finance after consulting the Bank.

(6) All moneys from time to time required by the Minister to meet sums which may become payable by him or her under paragraph (4) shall be advanced out of the Central Fund or the growing produce thereof.

Consultation with Minister by Bank

31B. As soon as may be after the commencement of the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020, the Bank shall consult

with the Minister for Finance in relation to what the Bank estimates, as best it may, to be the likely amount of expenses incurred by it in the performance of the functions under this Part and shall have regard to such recommendations the Minister for Finance may decide to make to the Bank as the Minister for Finance considers are likely to limit the amount of those expenses.”.

Amendment of Regulations 18, 20 and 26 of Principal Regulations

6. (1) Regulation 18 of the Principal Regulations is amended by the renumbering of the existing Regulation as paragraph (1) thereof and the insertion of the following paragraph:

“(2) Any act required or authorised by this Part to be done to or by the Registrar may be done to or by an assistant registrar appointed under paragraph (1) or any other person authorised in that behalf by the Minister.”.

(2) Regulation 20(5) of the Principal Regulations is amended by the substitution of the following subparagraphs for subparagraph (b):

- “(b) any act done by the Registrar, as mentioned in paragraph (4), on foot of the receipt by the Registrar of a notice delivered under paragraph (3) and, in particular, any entry made in the central register by the Registrar on foot of such receipt,
- (c) a submission delivered under paragraph (4)(b)(ii)(I) to the Registrar by a relevant entity,”.

(3) Regulation 26(3) of the Principal Regulations is amended by the substitution of the following subparagraphs for subparagraph (b):

- “(b) any act done by the Registrar, as mentioned in paragraph (2), on foot of the receipt by the Registrar of a notice delivered under paragraph (1) and, in particular, any entry made in the central register by the Registrar on foot of such receipt,
- (c) a submission delivered under paragraph (2)(b)(ii)(I) to the Registrar by a relevant entity,”.

Amendment of Regulation 24 of Principal Regulations

7. Regulation 24(4) of the Principal Regulations is amended, in subparagraph (a) -

- (a) in clause (ii), by the deletion of “or”,
 - (b) in clause (iii), by the substitution of “Authority, or” for “Authority,”, and
 - (c) by the insertion of the following clause after clause (iii):
- “(iv) a member or member of staff of the Legal Services Regulatory Authority.”.

Amendment of Schedule 2 to Central Bank Act 1942

8. The Central Bank Act 1942 is amended in Part 2 of Schedule 2 by the insertion of the following:

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GIVEN under the Official Seal of the Minister for Finance,
25 June, 2020.

PASCHAL DONOHOE,
Minister for Finance.

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