

CRBOT

FAQs

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Interpretation

1. What is a relevant trust?

Pursuant to the provisions of S.I. No. 194/2021 - European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021 the designated meaning of a “relevant trust” in the Act of 2010 shall apply. The 2010 Act, being the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, at section 106ZC (1) provides that a “relevant trust” is an express trust established by a deed or other declaration in writing.

2. How can I ascertain if a trust is an express trust and within the scope of the Trust Register?

An express trust is one established by deed or other declaration in writing where a settlor has clearly declared that identifiable assets have been placed on trust for the benefit of certain beneficiaries. The express trust is one that is established not merely contemplated.

3. What is the definition of trustee ‘residence’?

A definition is not provided in the legislation and on this basis it’s ordinary meaning must apply. A trust with any trustee residing in the state is within the scope of CRBOT. However, if trustees reside in multiple Member States (MS), registration on only one central register is required. There is no requirement for trustees to register in the MS where the majority of the trustees reside.

4. What is meant by “otherwise administered” in the State?

A trust could be considered to be administered in the State, whether trustees are resident in the State or not, when services such as:

- The management of its assets, or
- Other services, provided by legal or accounting professionals or other trust service providers, are rendered to the trust by such professionals operating in the State.

The definition of administered in the state is broad and can bring a trust within the scope of CRBOT, even when the administration activities are provided on a temporary basis.

5. When can beneficiaries be described as a class of beneficiaries?

The legislation refers to the Beneficial Owner in the case of a relevant trust, other than one that is set up or operates entirely for the benefit of individuals, as the *class of individuals* in whose interest the trust is set up or operates. If an individual is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible in the capital of the relevant trust, the individual beneficial owner must be identified. However, if the interest is not vested, the class of individuals in whose interest the trust is set up or operates is the beneficial owner and individual names are not required. e.g. the settlor’s children

Note there is a follow-on obligation to keep the Register up to date when there are changes to beneficial ownership and where the nature of an interest changes.

6. Is the trust obliged to disclose trust assets on the Register?

The legislation does not specifically provide that trust assets are part of the beneficial ownership information that is required on the CRBOT. However, in order to comply with the obligation in regard to the disclosure of the nature and extent of the control or interest, it may be necessary to provide details of assets held.

7. If a beneficial owner is deceased, must the details be provided on CRBOT?

An individual that is deceased on or before 23 April 2021 is not a beneficial owner for the purposes of the CRBOT.

If an individual is a beneficial owner of a trust on 23 April 2021, but is now deceased, the individual beneficial ownership details are required on the CRBOT, but the date of death can be entered as the ‘date when the beneficial owner ceased being a beneficial owner’.

For estates that provide for a trust, the will trust is not regarded as a relevant trust until the estate has been administered. On the creation of the will trust, the settlor is deceased and is not a beneficial owner.

8. Is an executor or an administrator of an estate a beneficial owner?

Under the Regulations an executor or administrator of an estate in the course of administration is defined as a beneficial owner where a relevant trust has been provided for in the will. However, an executor or administrator cannot be a beneficial owner of a relevant trust until the estate has been administered. Beneficial ownership details of a will trust must be entered on the Trust Register when the administration of the estate has concluded.

9. Can possible future interests, even remote ones be regarded as an interest for the purposes of detailing the nature and extent of interest held?

The legislation refers to a Beneficial Owner in a relevant trust as an individual entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible in the capital of the relevant trust property

Scope of the CRBOT

10. Must a share scheme that is not an approved share scheme, register on CRBOT?

Yes, only approved share schemes are excluded from the scope of CRBOT.

11. If an account is held by an elderly person, and (typically) a child of that person is put as a name on the account for convenience purposes to allow them access the account for their parent, for paying nursing home fees etc., is the holding of such an account for convenience considered to be a trust?

The operation of a joint bank account as set out above does not give rise to a trust during the lifetime of the parent but may give rise to a resulting/implied trust after the death of the parent. A resulting or implied trust arising out of these circumstances is not an express trust established by a deed or declaration in writing.

12. Could a power of attorney come within the scope of 2021 Regulations? For example, where a corporate executes a power of attorney in favour of an Individual to sell one of its assets?

A Power of Attorney by itself does not fall within the scope of the 2021 Regulations as it is not an express trust established by deed or declaration in writing. A power of attorney is a legal document giving one person (the agent) the power to act for another person (the principal). The agent does not control the trust assets or hold them in trust, that is the role of the trustee. The scope of the agent's power is outlined in the instrument creating the power of attorney. A power of attorney instrument may provide the agent with the power to create a trust and once established where that trust is a relevant trust as defined for the purposes of the legislation, then it must be registered on the CRBOT.

13. Are 'trusts for sale' express trusts for the purposes of CRBOT, even if they are for administrative purposes only?

Yes, if the trust for sale is an express trust, they are within the scope of CRBOT.

14. Are resulting trusts and constructive trusts within the scope of CRBOT?

No. CRBOT relates to express trusts only.

15. Can trusts, such as pilot trusts and dormant trusts with nominal sums, be provided with a de minimis exemption, that will exempt them from the registering for CRBOT?

No, all relevant trusts must register on CRBOT.

16. I am a chairperson/ member of an unincorporated association. Do we need to register with the CRBOT?

Unincorporated associations do not have a legal status and therefore cannot in themselves be considered to be a trust with obligations to file on the CRBOT. However, unincorporated bodies/associations cannot hold property and a trust may be in place to hold assets for the benefit of the associations members. Chairpersons/ members should be aware of the documents governing their unincorporated association and if an express trust has been created through these documents, it must be registered on the CRBOT. All beneficial owners of the trust must be registered.

17. Must charity bare trust property holding companies register on CRBOT or the RBO Register?

Where the trust is a relevant trust for the purposes of the legislation, the trust and the beneficial owners must register on the CRBOT. There is no exemption for charity bare trust holding company acting as a trustee. The holding company may have a separate filing obligation on the RBO Register.

18. If an object or power in a company constitution, Memorandum or Articles of Association, refers to the ability to create a trusteeship - is a separate declaration of trust or trust deed required to create an express trust?

These documents must be reviewed on a case by case basis as the wording or declaration can differ. An object or power in a company's constitution to create or hold a trust does not typically, in itself, create a relevant express trust for the purposes of the CRBOT. In order for an express trust to be created, there are a number of requirements known as the "three certainties" that must be fulfilled. The subject matter must be certain, the objects of the trust must be certain, and the words relied on as creating the trust must have been used in an imperative sense so as to show an intention to create an obligation. The express trust must also be established by deed or other declaration in writing. If the three certainties are present and in writing, any document can potentially create an express trust within the scope of CRBOT.

19. Are statutory body corporates required to register on CRBOT?

Statutory Body Corporates are a body of trustees established under the Charities Act 1973 (as amended). These are not established by deed – rather by a scheme under the seal of the Charities Regulator (previously the Commissioners for Charitable Donations and Bequests – functions transferred to the Charities Regulator pursuant to section 82 of the Charities Act 2009). These charities should review the current governing legislation of the body (as opposed to the initial establishing framework) as subsequent actions may bring that body within the scope of CRBOT. Where a charitable organisation, responsible for a relevant trust, is a body corporate and not a company with RBO registration obligations, then that body corporate may have filing obligations falling within the scope of the CRBOT.

20. Are nominee arrangements within the scope of the CRBOT?

If there is an express trust, established by deed or declaration in writing and identifiable assets have been placed on trust for the benefit of certain beneficiaries, the relevant trust must be registered on the CRBOT.

21. Is a declaration of trust within the scope of CRBOT?

If there is an express trust, established by deed or declaration in writing and identifiable assets have been placed on trust for the benefit of certain beneficiaries, the relevant trust must be registered on the CRBOT.

22. Can a sale contract or similar create an express trust?

Any written document can create an express trust. However, the settlor must clearly declare that identifiable assets have been placed on trust for the benefit of certain beneficiaries. The words relied on as creating the trust must have been used in an imperative sense so as to show an intention to create an obligation.

23. If the trust is in existence on 24 April 2021 but no longer in existence on 23 October 2021, is there an obligation to register the trust on CRBOT?

Yes. The trust must register on CRBOT.

Updating the CRBOT

24. What is the 'beneficial ownership register'?

This is a trust's 'internal register' where trustees must hold adequate, accurate and current information in respect of the trust's beneficial owners. Trustees must update the CRBOT with this beneficial ownership information (the 'initial filing obligation').

25. What if there is a change to a trust's beneficial owners, or the nature of a beneficial owner's interest or control changes?

If there are any changes to the beneficial ownership of a trust these changes must be updated on the Trust Register (and this obligation is referred to as the 'follow up obligation').

26. What steps must a trustee undertake to identify beneficial ownership information and how do trustees enter partial details on the CRBOT?

Trustees must take all reasonable steps to obtain and hold adequate, accurate and current information in respect of a trust's beneficial owners. **Regulation 8, 9, 10 and 11 of Statutory Instrument 194 of 2021** details the steps that must be undertaken by trustees on the identification of beneficial owners. These steps include the issue of a notice to persons believed to be or reasonably believed to be beneficial owners or believed to have information concerning beneficial ownership of a trust.

If a trustee has undertaken all reasonable steps to identify a beneficial owner and has met their legal obligations in this regard, the trustee must notify Revenue in writing via MyEnquiries, that they cannot identify a beneficial owner.

On CRBOT, for the moment, the beneficial owner can be input as a "Class of Beneficiary" and described as 'Unidentified by Trustee'. Confirmation that all reasonable steps have been taken by the trustee to identify the beneficial owner must be included in the free text box where the trustee provides a statement on the nature and extent of the interest held or control exercised. The available details on the beneficial owner must also be included.

27. Is there any guidance where a trust does not have a name? Is there a naming convention?

No there is no naming convention, it may be appropriate to use an inhouse reference that will allow trustees to identify the trust. Trusts registered on CRBOT must be provided with a name.

Accessing the CRBOT

28. What is regarded as a 'legitimate Interest', to allow access to the Register as a member of the public?

A member of the public must demonstrate that they have a legitimate interest to inspect the Register. This process is rigorous in its application and the following must be demonstrated to the Registrar in a relevant submission:

- that the person seeking the information is engaged in the prevention, detection or investigation of money laundering or terrorist financing offences,
- that this person is seeking to inspect the information referred to 19, for the purposes of an activity in which he or she is engaged, as referred to in subparagraph above (but such activity need not necessarily relate to cases of pending administrative or legal proceedings in respect of the relevant trust concerned), and
- that the relevant trust concerned is connected with persons convicted (whether in the State or elsewhere) of an offence consisting of money laundering or terrorist financing or holds assets in a high-risk third country.

The Registrar will consider this submission and may seek advice from the Revenue Solicitors Office before making their decision.

Legislation

29. What legislation introduced the obligations under CRBOT?

The 4th and 5th Anti-Money Laundering Directives¹ require each EU Member State to establish a Central Register of the Beneficial Owners of Trusts.

Legislation² introduced on 23 April 2021. transposed into Irish law, the requirements set out in the Directives relating to relevant trusts.

These requirements:

- Specify which types of trust are required to supply information
- Set out what information is to be submitted by trustees
- Give the Revenue Commissioners the authority to appoint a Revenue Officer as Registrar
- Require information on trusts established before 23 April 2021 to be filed by 23 October 2021. Trusts established after 23 April 2021 are obliged to file 6 months after their establishment.

Equivalent Registers exist in other Member States.

Legislation³ is already in place that transposes the elements of 4AMLD4 & 5AMLD5 that require companies, industrial and provident societies, certain financial vehicles such as ICAVs, Unit Trusts and Credit Unions to:

- Maintain an internal register of their beneficial owners and
- File this information with a Central Register

In addition, the Investment Limited Partnerships (Amendment) Act 2020 (No 31 of 2020) requires that Investment Limited Partnerships and Common Contractual Funds maintain an internal register of their beneficial owners and file this information with a Central Register.

¹ EU Directive 2015/849 and EU Directive 2018/843

² SI 194 of 2021 and the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 ³ SI 110 of 2019 and SI 233 of 2020