

TRUST REGISTRATION SERVICE LEGAL SECTOR (CORPORATE) GUIDANCE

Guidance status

This guidance is intended to flag relevant issues and obligations for UK legal professionals, particularly those who advise trust related to companies, arising out of the extended Trust Registration Service (the 'TRS') regime, at a high level. It is not intended to be an exhaustive treatment of the extended TRS regime nor as a resource citing relevant legislative and other provisions, which can be used for advisory or compliance purposes.

Legal professionals are referred to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (the 'MLR17'), HM Revenue & Customs' ('HMRC') own [guidance](#) and the [Trust Registration Manual](#) for those purposes. Private client lawyers are also referred to the Law Society's separate guidance on 'Trust Registration issues in non-Corporate Transactions'.

Background

The existing HM Revenue and Customs Trusts Registration Service ("**TRS**")¹² has been extended to bring trusts that are not subject to UK tax within the scope of registration and disclosure.

This extension is broadly to non-taxable trusts that are:

- UK express trusts, unless specifically excluded
- non-UK express trusts, unless specifically excluded, which
 - acquire land or property in the UK; or
 - have at least one trustee resident in the UK and enter into a 'business relationship' within the UK;

(each, an "**In Scope Trust**").

Non-taxable trusts may arise in a range of circumstances in transactions on which corporate lawyers advise. This means that many more of the trusts used or which arise in commercial contexts must be registered with HMRC's TRS and/or an analysis conducted to determine an applicable exclusion.

The deadline for registration for non-taxable trusts that fell within one of the above categories before 4 June 2022 is 1 September 2022. Non-taxable trusts created after 4 June 2022 must be registered with HMRC's TRS within 90 days of the later of: (i) creation; or (ii) the trust becoming an In Scope Trust.

There is also an obligation on the trustee to keep certain records on the beneficiaries of such trusts and the trusts themselves.

The table on page 2 below identifies trust arrangements that occur in transactions on which corporate lawyers advise together with our view on whether those trusts are likely to fall to be registered under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (the "**AML Regulations**").

What exclusions are available to the trust registration requirements?

[Schedule 3A](#) of the AML Regulations was introduced by [The Money Laundering and Terrorist Financing \(Amendment\) \(EU Exit\) Regulations 2020 \(legislation.gov.uk\)](#) (which give effect to

¹ For more details follow hyperlink [Manage your trust's details - GOV.UK \(www.gov.uk\)](#)

² The timetable for registration was announced by HMRC on 2 September 2021 in its [HMRC Trusts and Estates Newsletter: September 2021 - GOV.UK \(www.gov.uk\)](#). Changes made with effect from 9 March 2022 have altered the dates.

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AMLDV). The relevant provisions have been most recently amended by [The Money Laundering and Terrorist Financing \(Amendment\) Regulations 2022 \(legislation.gov.uk\)](#) (in force with effect from 9 March 2022).

Schedule 3A of the AML Regulations lists a series of exclusions to the definition of "relevant trust" contained in regulation 42(2)(b) of the Regulations. Where a non-taxable trust is excluded, the registration requirements do not apply. However, the exclusions do not extend to the record-keeping obligations of the trustee.

We consider that the most common relevant exclusions for corporate and other commercial transactions are as follows.

Paragraph 1 – Legislative trusts	A trust imposed or required by an enactment (and see various examples set out in paragraphs 16 to 22, including share incentive plans and share option schemes under the Income Tax Act 2003).
Paragraph 2 - Trusts imposed by court	A trust created by, or in order to satisfy the terms of, an order of a court or tribunal.
Paragraph 9 – Co-ownership	A trust of jointly held property where the trustees and the beneficiaries are the same persons.
Paragraph 10(1)(b) - Financial markets infrastructure	A trust— (a)[...] (b) relating to the creation of a beneficial interest in securities belonging to a person whose name and address are maintained on a register of securities (within the meaning of regulation 3(1) of the Uncertificated Securities Regulations 2001).
Paragraph 11 – Professional services (a) Authorised person acting as custodian	Carrying on by way of business the activity specified in article 40 (safeguarding and administering investments) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
Paragraph 11 – Professional services (c) Acting as an escrow agent	Acting by way of business as an agent holding sums, assets or documents in escrow until the performance of a contractual condition agreed between two or more other persons, including the person for whom the sums, assets or documents are being held.
Paragraph 12 - Client money etc. 12.	A trust created by a relevant supervised person for the purpose of holding client money, securities or other assets, where that trust is incidental to the carrying on of business by the relevant supervised person.
Paragraph 14 – Commercial transactions	A trust created for the purpose of: (a) enabling or facilitating a transaction effected for genuine commercial reasons; or (b) protecting or enforcing rights relating to such a transaction, where the use of the trust is incidental to the principal purpose of the transaction (“ Commercial Transaction Exclusion ”).
Paragraph 15 – Registration of assets	A trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust for

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	the person to whom the transfer or disposal is being made until the time when the procedure required by law to effect the transfer or disposal of legal title is completed.
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What is the record-keeping requirement?

In addition to the trust registration requirements, regulation 44 of the AML Regulations requires trustees of 'relevant trusts' to maintain accurate and up-to-date written records of all beneficial owners of the trust and provide such records on request to any law enforcement body before the end of any reasonable period specified by such body. The definition of 'relevant trust' includes UK express trusts, whether or not they are excluded from the trust registration requirements (and certain non-UK trusts that are not excluded from the trust registration requirements under Schedule 3A). This means a UK trust could be excluded from the trust registration requirement under regulation 45ZA (because it is a trust listed in new Schedule 3A), but the trustees would still be required to keep written records of the beneficial owners of the trust under regulation 44.

These records must include the following details. Some of these details may be available via the transaction documents (e.g. name and address) but others (e.g. national insurance number) may need to be specifically requested in order for the trustee to be able to meet their obligations.

For individual beneficiaries: name, date of birth, national insurance number or Unique Taxpayer Reference (if available, or usual residential address if not), passport or ID number if the address is not in the UK and the nature of the individual's role in relation to the trust.

For corporate beneficiaries: corporate or firm name, Unique Taxpayer Reference, if any, registered office address, legal form, governing law, any register of companies on which the entity is registered and registration number, the nature of the entity's role in relation to the trust and in some cases, details of ultimate beneficial owners.

For a class of beneficiaries not all of whom have been determined: a description of the class of persons who are beneficiaries or potential beneficiaries under the trust.

Trustees should take all reasonable effort and steps to obtain the relevant information and ensure accurate and up to date written records are maintained of all the beneficial owners.

Trustees must also keep records in relation to the trust itself. This includes: the full name of the trust; the date it was set up; a statement of accounts for the trust; the country where the trust is considered to be resident for tax purposes; the place where the trust is administered; a contact address for the trustees; and the full name of any advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust.

What is an express trust?

It is notable that there is no definition of **express trust** within the key definition of **relevant trust** (regulation 42(2) of the AML Regulations) or within the Directive which such regulations implement. Understanding what is an express trust is key to determining whether a trust falls within the TRS regime in the first place. HMRC elaborates on its understanding of the term express trust within its Trust Registration Service Manual [TRS21030](#). (see below)³:

³ [TRSM21030 - Trust Registration Service Manual - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

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TRSM21030 - Types of trust that need to be registered: contents: introduction and definitions: contents: what is an express trust

An express trust is a trust created deliberately by a settlor, usually in the form of a document such as a written deed or declaration of trust. Express trusts can be created:

- to take effect during the settlor’s lifetime, or
- by will, to take effect on death.

Express trusts can be contrasted with trusts that come into being through the operation of the law and that do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangement (for example, implied or constructive trusts).

See [TSEM9500](#) for further guidance on express trusts.

TSEM9510 - Ownership and income tax - express trusts

An express trust is usually created by a declaration of trust which is made by the legal owner. This declaration can be written or oral (sometimes called ‘parol’) except in the case of land where the trust needs to be evidenced in writing under S53(1)(b) Law of Property Act 1925.

In a claim that an express trust exists, the first thing to ask is whether there is a written trust.

A written trust is usually made by deed, but it does not have to be. It may be made by a declaration. [TSEM9520](#) explains written declarations of trust, and [TSEM9530](#) explains deeds.

Application of requirements to corporate and commercial arrangements

Set out below is a generic analysis of common corporate and commercial arrangements and our analysis as to whether we consider such arrangements are to be treated as (i) express trusts and, if so, (ii) whether there is any registration requirement or if an exclusion applies. This is not to be treated as advice or a definitive statement of the position. The below assumes that the transaction or trust in question has no unusual features and is intended to act as a general guide to the most common forms of such arrangements. A case-by-case analysis will be required.

Note that the below assumes the trust in question is non-taxable. Where a trust is or becomes taxable, the exclusions will not apply.

Type of arrangement	Express trust?	Registration requirement? Paragraph numbers refer to paragraphs in Sch. 3A
Shares held on trust by seller pending registration of transfer	Varies – may be express trust within SPA or separate declaration of trust or resulting trust by virtue of sale becoming unconditional.	No. Out of scope if not "express"; otherwise exclusion in para 15.

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Type of arrangement	Express trust?	Registration requirement? Paragraph numbers refer to paragraphs in Sch. 3A
Shares held by a nominee entity on behalf of individuals or other entities (on an ongoing basis)	Yes	Yes unless: <ul style="list-style-type: none"> - the shares are held by a custodian or other intermediary in CREST – exclusion in para 10(1)(b) or 11(a); or - the nominee is an authorised person under the Financial Services and Markets Act 2000 (“FSMA”) carrying on the business of safeguarding and administering investments – exclusion in para 11(a)
Shares held by an employee benefit trust on behalf of employees	Yes	Yes unless: <ul style="list-style-type: none"> - the nominee is an authorised person under FSMA carrying on the business of safeguarding and administering investments – exclusion in para 11(a); or - the trust is in relation to a share incentive plan which meets the requirements of Part 9 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 – para 20; or - the trust is created under a share option scheme that meets the requirements of Parts 2 to 7 of Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 – exclusion in para 21
Sums held in an escrow account or retention amounts held by buyer(s) under SPAs	Depends on escrow arrangement. Some escrow agents will accept an express	No. Exclusion in para 11(c) – acting as escrow agent.

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Type of arrangement	Express trust?	Registration requirement? Paragraph numbers refer to paragraphs in Sch. 3A
	declaration of trust; others will not.	
Declaration of trust over shares to facilitate same day transfers (where legal and beneficial title are split)	Yes	No. Exclusion in para 14 applies.
Trust arrangements on business sales: <ul style="list-style-type: none"> • Seller holds benefit of contracts on trust for purchaser pending third party consents in business sale • receipts of cash by one party which relate to the other's period of ownership held on trust pending payment to that other party • receivables collected in by buyer held on trust for seller • 'wrong pockets' provisions assigning ownership of assets held by one party but rightfully belonging to the other 	Yes	No. Exclusion in para 14 – incidental part of genuine commercial transaction.
Shares held and then sold on behalf of shareholders in "difficult" overseas jurisdictions to avoid securities law problems, plus proceeds of sale pending transfer to underlying shareholders	Yes	No. Exclusion in para 14 – incidental part of genuine commercial transaction.
Trusts arising on a Rights issue or open offer by a company. <ul style="list-style-type: none"> • company may sell shares allotted to a shareholder when payment for the shares is not received or is treated as invalid - proceeds of sale held on trust for relevant shareholder • when a receiving agent needs to verify the identity of a 	Yes	No. Exclusion in para 14 – incidental part of genuine commercial transaction.

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Type of arrangement	Express trust?	Registration requirement? Paragraph numbers refer to paragraphs in Sch. 3A
<p>person lodging a provisional allotment letter, the company may sell the ordinary shares as part of the rights issue and hold the proceeds of sale on trust where the acceptance proves invalid</p> <ul style="list-style-type: none"> where shareholders do not (or cannot) take up their rights and the underwriter sells shares in the market at a price in excess of the rights issue price, the excess is held on trust for such non-accepting shareholders 		
On an initial public offering/listing of a company's shares, certain shares sold as part of the IPO are held in trust by a CREST nominee first on behalf of the seller and then on behalf of the buyer pending the shares being dematerialised.	Yes	No. Exclusion in para 10(1)(b) for securities held on a register of securities.
Shares held due to fractional entitlements and then sold (assuming the fractions aren't just rounded down), plus proceeds of sale pending transfer to underlying shareholders	Yes	No. Exclusion in para 14 – incidental part of genuine commercial transaction.
Consideration paid on squeeze out of minorities held on trust under section 981(9) CA 2006	Yes	No. Exclusion in para 1 – trust required by legislation.
Holding in escrow of shares accepted in a takeover offer	Yes	No. Exclusion in para 11(c) - acting as escrow agent.
Court approved reductions of capital – company may set aside a cash sum in a blocked bank account of which the company is bare trustee only for the benefit of creditors.	Yes	No. Exclusion in para 14 – incidental part of genuine commercial transaction.

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Type of arrangement	Express trust?	Registration requirement? Paragraph numbers refer to paragraphs in Sch. 3A
Uncashed cheques (for dividends under Articles of Association etc or for proceeds under a scheme)	Yes	No. Exclusion in para 14 – incidental part of genuine commercial transaction or, in the context of a scheme of arrangement or Court-approved reduction of capital, exclusion in para 2 – trusts imposed by the Court.
Benefit of contractual rights for a party's group companies or affiliates i.e. agent and trustee arrangement used in contracts to protect third party rights. For example, indemnities to financial advisers in an underwriting agreement given for the benefit of the adviser's affiliates, or restrictive covenants in an SPA given for the benefit of the buyer's group.	Yes	No. Exclusion in para. 14 - incidental part of genuine commercial transaction.
Holding assets (e.g. shares) on trust for a minor	Yes	Yes. Unless: (i) the very limited exclusion in para 6A in respect of a trust of a cash sum (but not any other asset) which is created solely as a requirement of opening a bank accounts for a minor, applies; or (ii) the trust arises on death and falls under the exclusion in para 7 (it will be important to be aware of the 2 years from death window for this exclusion).
Trusts created within a partnership or limited partnership arrangement	Yes	Although trusts in partnerships arise by operation of law (which would not be an express trust), often the

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Type of arrangement	Express trust?	Registration requirement? Paragraph numbers refer to paragraphs in Sch. 3A
		<p>partnership deed will create an express trust as well.</p> <p>[The exclusion in para 9 (a trust of jointly held property where the trustees and the beneficiaries are the same persons) might apply depending on the facts and whether the trustees and beneficiaries are in fact all the same.]</p>
<p>Holding security granted in connection with secured loan notes</p>	<p>Yes</p>	<p>[The exclusion in para 12 might apply depending on the facts and whether at least one lender is a relevant supervised person.]</p>
<p>Declarations of trust in respect of limited partnerships:</p> <ul style="list-style-type: none"> - general partner selling defaulting limited partner's interest will hold any amounts which would have been for the account of the defaulting limited partner on trust for a purchaser of the interest - transferor limited partner holds money or property on trust for substitute limited partner where that money or property relates to the substitute limited partner's period of membership rather than its own 	<p>Yes</p>	<p>No. Exclusion in para 14 – incidental part of genuine commercial transaction.</p>

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Appendix: Working Group Members

Edward Craft	Wedlake Bell LLP
Juliet McKean	Clifford Chance LLP
Leah Parry	Linklaters LLP
Ellie Radburn	Linklaters LLP
Edward Reed	Macfarlanes LLP
Lucy Reeve	Linklaters LLP
Dominic Sedghi	Macfarlanes LLP
Sally Spicer	Wedlake Bell LLP