



An Roinn Airgeadais
Department of Finance

Legal Persons and Legal Arrangements Risk Assessment

As approved by AMLSC sub-committee

Update of Ireland's National Risk Assessment

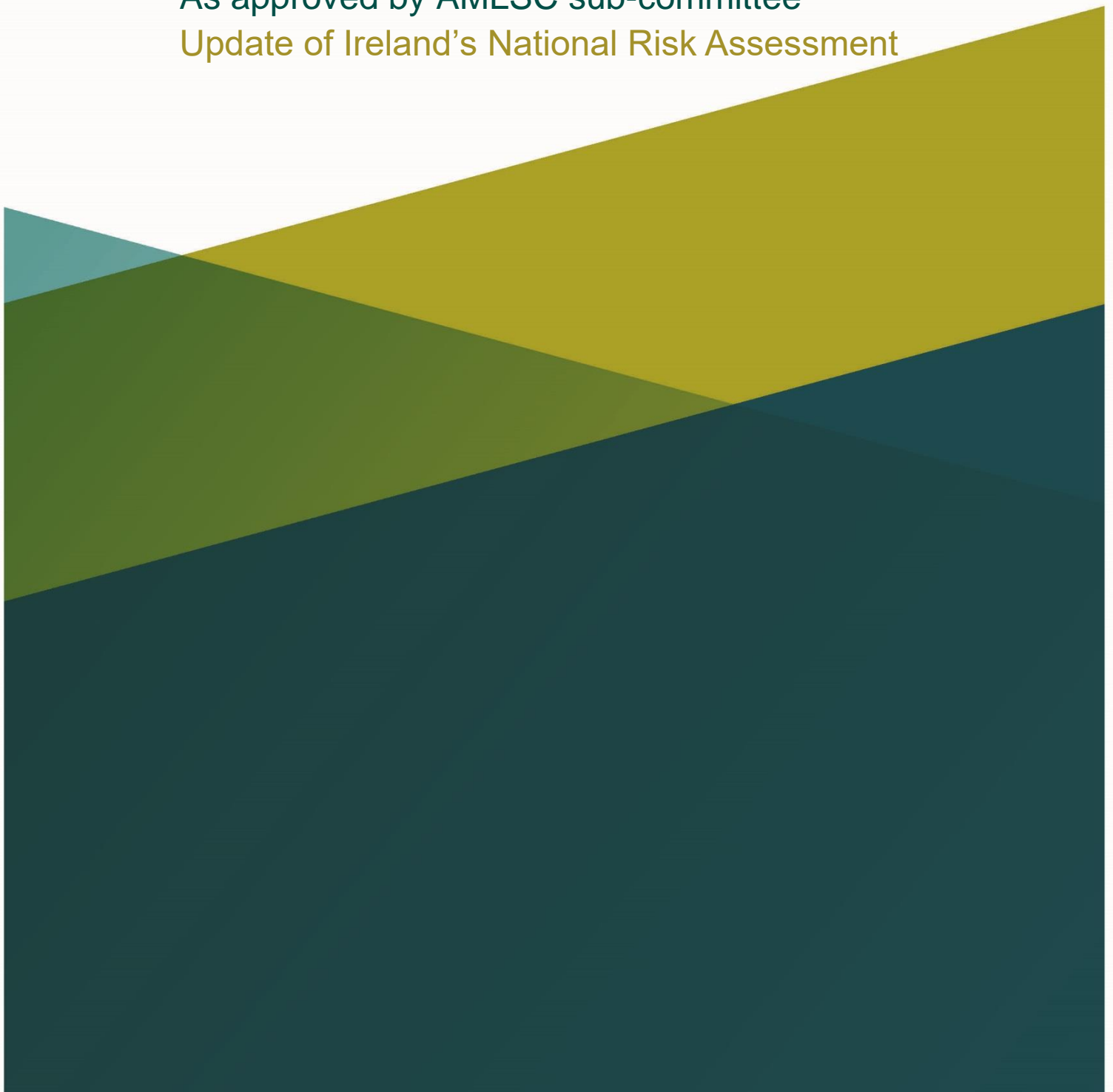


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Main Acronyms

4AMLD	EU 4th Anti-Money Laundering Directive
5AMLD	EU 5th Anti-Money Laundering Directive
AMLSC	Anti-Money Laundering Steering Committee
AML	Anti-Money Laundering
ARF	Approved Retirement Fund
AMRF	Approved Minimum Retirement Fund
AIF	Alternative Investment Funds
AIFMD	Alternative Investment Fund Managers Directive
APSS	Approved Profit-Sharing Scheme
BO	Beneficial Ownership
CRA	Charities Regulatory Authority
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CCF	Common Contractual Funds
CRO	Companies Registration Office
CMBS	Commercial Mortgage-Backed Securities
CJA 2010	Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
DAC	Designated Activity Company
DTC	Deposit Taking Corporations
EC	European Commission
EEIG	European Economic Interest Groupings
ESOT	Employee Share Ownership Trust
FATF	Financial Action Task Force
FAU	Financial Auxiliaries
FIU	Financial Intelligence Unit
FVC	Financial Vehicle Corporation
GNECB	Garda National Economic Crime Bureau.
ICAV	Irish Collective Asset Management Vehicle
ISIF	Ireland Strategic Investment Fund

ILP	Investment Limited Partnership
LEA	Law Enforcement Agency
LSRA	Legal Services Regulatory Authority
LLP	Limited Liability Partnership
LTD	Private Company Limited by Shares
ML	Money-Laundering
NRA	National Risk Assessment
NPO	Non-Profit Organisation
OCG	Organised Criminal Group
PLC	Public Limited Company
PRSA	Personal Retirement Savings Account
RA	Registered Administrator
RAC	Retirement Annuity Contract
RBO	Register of Beneficial Ownership
RMBS	Residential Mortgage-Backed Securities
RSA	Restricted Share Award
STR	Suspicious Transaction Report
SNRA	EU Supranational Risk Assessment
SPE	Special Purpose Entity
SSAP	Small Self-Administered Pension
SLP	Scottish Limited partnership
TF	Terrorist Financing
TBML	Trade-Based Money Laundering
TCSP	Trust and Company Service Provider
UCITS	Undertakings for Collective Investment in Transferable Securities

Introduction

This report updates and replaces the section of Ireland's National Risk Assessment (NRA) of 2019, which considered the Money Laundering/Terrorist Financing (ML/TF) risks of legal persons and legal arrangements.¹ This assessment applies specific risk scorings to different legal persons and legal arrangements, as well as considering the international ML/TF threat.

This report was prepared by the Department of Finance AML Unit and draws heavily on the expertise and knowledge of the Anti-Money Laundering Steering Committee (AMLSC) – an inter-Departmental/inter-Agency Group that has expertise in AML/CFT matters.

The AMLSC is Ireland's national coordination committee for Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) matters. It has been established to facilitate the collaboration and coordination between national competent authorities, government departments and law enforcement authorities, in order to ensure the effective combatting of ML/TF.

The AMLSC's members include the Department of Finance (Chair); the Department of Justice and Equality; the Financial Intelligence Unit; the Criminal Assets Bureau; the Revenue Commissioners; the Department of Business, Enterprise and Innovation; the Central Bank of Ireland; and the Office of the Director of Public Prosecutions.

The analysis and conclusions drawn in this report are the collective assessments of the NRA sub-committee of the AMLSC, which also approved this report.

The report is part of Ireland's ongoing obligations under Article 7 of the 4th Anti-Money Laundering Directive (4AMLD) to take, "*appropriate steps to identify, assess, understand and mitigate the risks of money laundering and terrorist financing affecting and ...keep that risk assessment up to date*".²

It also addresses the FATF recommendation, made in Ireland's Mutual Evaluation Report, that Ireland conduct a "*more comprehensive ML/TF risk assessment of how legal persons and arrangements could be abused*".³ The assessment has been undertaken in accordance with Recommendations 24 and 25 of the Financial Action Task Force (FATF), and recent FATF guidance.

Scope and structure of the assessment

The legal structures that are subject to this assessment have been grouped into categories, which, where appropriate, are further divided into sub-categories.

Categories:

- 1. Companies**
- 2. Legal Structures used in the Funds Sector**
- 3. Special Purpose Entities**
- 4. Trusts**
- 5. Partnerships**

¹ <https://assets.gov.ie/8242/80ab9a41b1354405adcec66bfb1c0715.pdf>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015L0849-20180709>

³ <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Ireland-2017.pdf>, page 31.

Each chapter considers a separate category and examines the nature and scale of that category in Ireland.

Risk scenarios and Money-Laundering/Terrorist Financing vulnerabilities are then examined to determine the ML and TF threat ratings.

Established and Potential Mitigants are then examined. A ML and TF vulnerability rating is determined following consideration of those mitigating factors.

Finally, an overall ML/TF risk (known as the Residual ML/TF risk) is calculated using the methodology described in the following paragraph.

Methodology

The Methodology applied in this assessment is the methodology recommended by the EC, as applied in the EC's supra-national risk assessment (SNRA).⁴

For each category of legal structure, following assessment, a rating has been assigned relevant to its threat level and vulnerability level. Those ratings were determined on a scale from 1 to 4 as follows:

- Lowly significant (value: 1)
- Moderately significant (value: 2)
- Significant (value: 3)
- Very significant (value: 4)

The methodology rates the level of residual risk as a weighted combination of the threat versus vulnerability. It is important to note that the ML and TF vulnerability ratings are determined following consideration of all mitigating factors. The final risk level is based on a weighting of 40% (threat)/ 60% (vulnerability) – as the methodology requires that the vulnerability component be given more weight when determining the overall risk level.⁵

The risk rating scale employed in the Commission's SNRA methodology is set out on the next page.

⁴ European Commission 2017, Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations, accessed 7 May 2020., See page 225 for SNRA methodology.
https://eur-lex.europa.eu/resource.html?uri=cellar:d4d7d30e-5a5a-11e7-954d-01aa75ed71a1.0001.02/DOC_1&format=PDF;

Where a "sector/area" is referenced in Table 3 of the SNRA Annex, it should be taken as referring to a group of legal structures.

⁵ Ibid.

EU's Supra-National Risk Assessment (SNRA) Rating scale

THREAT	Very significant	2,2	2,8	3,4	4
	Significant	1,8	2,4	3	3,6
	Moderately significant	1,4	2	2,6	3,2
	Lowly significant	1	1,6	2,2	2,8
		Lowly significant	Moderately significant	Significant	Very significant
VULNERABILITY					

RISK	
1-1,5	Lowly significant LOW
1,6-2,5	Moderately significant MEDIUM
2,6-3,5	Significant HIGH
3,5-4	Very significant VERY HIGH

National Risk Assessment (NRA) Rating scale

The rating scale set out in this assessment, while based on the Commission's SNRA methodology, uses slightly different language to ensure consistency with Ireland's NRA and other published sectoral risk assessments, undertaken prior to the development of the SNRA methodology.

Once a rating is calculated using the SNRA methodology, it is assigned a rating of low, medium-low, medium-high or high, as per Ireland's NRA rating scale.

SNRA Rating Scale	NRA Rating Scale
Lowly significant (value: 1-1.5) LOW	Low
Moderately significant (value: 1.6-2.5) MEDIUM	Medium-Low
Significant (value: 2.6-3.5) HIGH	Medium-High
Very Significant – (value 3.5-4) VERY HIGH	High

Companies

Nature

In Ireland, all companies are registered upon incorporation; the relevant legislation is the Companies Act 2014 and provides for the incorporation of “*private companies limited by shares, companies limited by guarantee, designated activity companies, unlimited companies and public limited companies*”.⁶ The majority of companies registered in Ireland are private companies and, of those, most are small companies consisting of only one or two members.

The Companies Act 2014 allows one or more persons to form a private company for any lawful purpose by subscribing to a constitution. A private company may have a maximum of 149 members; there is no limit on the number of members of a public company.

All company types, except for the Private Company Limited by Shares (Ltd), must have one secretary and a minimum of two directors (Single director Ltd. must have a separate secretary). Formal qualifications are not required to be a company director. All company officers have wide responsibilities in law as set out in the Companies Act 2014.⁷

Basic information must be held by companies at their head offices and by the Companies Registration Office (CRO).⁸ The information is publicly available on the company search section of the CRO website.⁹

⁶ The Irish Collective Asset-management Vehicles Act, 2015 provides for the incorporation of a limited number of legal persons called ICAVs - (Section 6) and registration (Section 9). Their ML/TF risks are assessed in the following Chapter “Legal Structures used in the Investment Funds Sector”.

⁷ <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/html>.

⁸ The Companies Registration Office is the central repository of public statutory information on Irish companies and business names. The CRO operates under the aegis of the Department of Business, Enterprise and Innovation.

⁹ CRO Company Search, <http://search.cro.ie/company/>

Scale

Private Company Limited by Shares (LTDs)

The majority of legal persons created in Ireland are Private Company Limited by Shares (LTDs) and are mainly small domestic enterprises.

LTD companies can engage in any lawful activity but may not carry on the activity of a credit institution or an insurance undertaking. LTD companies cannot issue securities to the public.¹⁰ From 1st December 2016, all remaining private limited by shares companies were converted to the new LTD company type and are now governed by Part 2 of the Companies Act 2014.

Total numbers incorporated at end 2019 are below:

Year	Numbers incorporated
2019	205,494

Companies Limited by Guarantee (CLG) are the second most common form of legal person incorporated in Ireland. These are governed by Part 18 of the Companies Act 2014. CLGs do not have a share capital and are principally used by not-for-profit organisations, owner management companies and charities.

Year	Numbers incorporated
2019	16,535

Unlimited companies and **Designated Activity Companies (DAC)** are the third and fourth most common form of a legal person in Ireland.

Unlimited Companies are governed by Part 19 of the Companies Act 2014 and can be either private or public. Private unlimited companies must have a share capital. Public unlimited companies may have no share capital. Private unlimited companies do not have to file financial statements with the CRO unless all members of the company are themselves limited.

Year	Numbers incorporated (Unlimited companies)
2019	4,644 (private) 38 (public)

Designated Activity Companies: There are two types of DAC: (DAC) (limited by shares) and (DAC) (limited by guarantee). The majority of DACs are limited by shares, with 5,069 incorporated in 2019. 100 DAC (limited by guarantee) were incorporated in 2019. In both cases, DACs are governed by Part 16 of the Companies Act 2014.

¹⁰ Section 68 of the Companies Acts 2014 states that LTD companies cannot issue securities to the public, although exceptions are listed

Year	Numbers incorporated (Designated Activity Company– (limited by shares))
2019	5,069

Other forms of body corporate exist in smaller numbers. Examples of these are Public Limited Company (PLCs) and European Economic Interest Groupings (EEIGs).

Public Limited Company (PLC): PLCs are governed by Part 17 of the Companies Act 2014. Societas Europaea and investment companies are also forms of Public Limited Companies. Investment companies are governed by Part 24 of the Companies Act 2014.

European Economic Interest Groupings (EEIG): EEIGs are not companies registered under the Companies Act 2014. Instead, they are body corporates registered under the European Communities (European Economic Interest Groupings) Regulations, 1989 (SI 191 of 1989). They are unregistered companies under the 2014 Act. They must have members from at least two different EU States. EEIGs do not file financial statements with the CRO and are not permitted to invite investment from the public.

Company Type	Incorporated at end 2019
Public Limited Company (PLC)	454
European Economic Interest Grouping (EEIG)	24

Risk scenarios and ML/TF Vulnerabilities

The EC's 2019 SNRA identifies a number of risk scenarios whereby companies can be misused for the purposes of ML or TF.¹¹ These scenarios are examined in this section. The measures to mitigate those risks are set-out in the subsequent section.

Companies may be misused to hide and obscure beneficial ownership. The most widespread misuse of companies by organised crime groups (OCGs) involve Trade-Based Money Laundering (TBML) and false invoicing.

In virtually all cases, OCGs use companies to launder their criminal proceeds. Cash-intensive companies, such as catering or retail, can be misused to provide cover for the source of otherwise inexplicable quantities of cash. In most cases, such businesses are used as a legitimate source of income to facilitate the co-mingling of illicit funds with legal proceeds.¹²

Perpetrators use TBML to justify the movement of criminal proceeds through banking channels, for example, via letters of credit and invoices, or through the use of global transactions, often using false documents for the trade of goods and services. It can potentially allow the rapid transfer of large sums camouflaged as a legitimate economic transaction.¹³

These illicit operations allow funds to be taken out of a company's cash flow by:

- using false records, such as false invoices;
- reducing the base for tax calculation;
- laundering illegitimate proceeds by withdrawing cash from another company's account using intermediaries.¹⁴

Such a company may be involved in legitimate trading activity. The primary risk indicator is the cash-intensive nature of the company – where goods and commodities would be mostly paid for in cash and exported before being re-exported between different countries.¹⁵ In these cases, the services of a complicit bookkeeper or accountant may be used to legitimise criminal cash flows through false invoices, receipts and accounts. Financial statements can also be falsified to account for the cash flows.¹⁶

Law enforcement authorities and financial intelligence units (FIUs) consider that while a TBML scheme may require moderate levels of technical expertise and knowledge, OCGs have used this method frequently because it is generally quite accessible, has a low cost and is relatively easy to exploit.¹⁷

¹¹ European Commission 2017, Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations, accessed 7 May 2020., See pages 106-123.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Another ML risk indicator is how a company conducts its transactions and general business activity. After an assessment of these it may be appropriate to conclude that a company has a lower risk of engaging in ML.

¹⁶ European Commission 2017, Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations, accessed 7 May 2020., See pages 106-123

¹⁷ Ibid.

This method of ML involves several sectors. For example, transfers of money through companies' structures are generally processed through the banking sector.¹⁸

International Threat

There is potential for companies incorporated in Ireland to be misused to facilitate international TBML.

Recent analysis has suggested that where OCGs have connections to a jurisdiction, they may seek to move illicit proceeds to and from that jurisdiction to facilitate offending, often in relation to drug offences.¹⁹

A number of the OCGs in Ireland have international links with other OCGs, in regions such as the Netherlands, Spain, West Africa and the United Kingdom.²⁰

Foreign OCGs engage in multi-jurisdictional crime such as human trafficking and drug smuggling and distribution, with the level of multi-jurisdictional OCG activity increasing in recent years. Domestic OCGs are closely linked to International OCGs in relation to drug smuggling and distribution.²¹

OCGs involved in illicit trade, such as counterfeiting and intellectual property theft, operate as part of international criminal networks with links to the other OCGs and suppliers in the Middle East and Asia. Counterfeit products are imported into Ireland through established and legitimate trade routes, with consignments often disguised as legitimate products to conceal their nature.²²

Criminals may have vague intentions to exploit these structures for International TF purposes. However, there has been little evidence of their misuse in Ireland to date.

Domestic Threat

The principle risk scenario identified in Ireland is where companies are being used as "fronts" to launder the proceeds of crime through business accounts held in Irish banks. This is considered to be a significant ML threat by the FIU. The FIU is a national reception point for Suspicious Transaction Reports (STR) submitted under Irish Money Laundering legislation, and is embedded within the Garda National Economic Crime Bureau (GNECB). TBML is also a key risk scenario in Ireland.

Designated persons should also note that criminal groups often register companies and business names, sometimes with false named directors/secretaries. This is in order to set up bank accounts in the names of legal persons to give an air of legitimacy to "business-type transactions" when, in fact, these companies do not trade and are used as a front to launder proceeds of crime.

Transactions appear as if they are between legitimate companies. Criminal groups may also "takeover" the bank account of a company/business so they can use it to launder funds –

¹⁸ Ibid.

¹⁹ See page 14 of New Zealand NRA 2019. <https://www.police.govt.nz/sites/default/files/publications/fiu-nra-2019.pdf>

²⁰ The numbers of OCGs referenced in Ireland's ML/TF NRA, section 4.3, are now considered to be out of date. The Garda National Crime and Security Intelligence Service (GNCSIS) are currently working with their European and National colleagues to empirically assess the level of organised crime in Ireland.

²¹ Ireland ML/TF NRA section 4.5

²² Ireland ML/TF NRA section 4.62

sometimes, these bank accounts have been dormant. In the latter case, designated persons, in the course of ongoing monitoring, should be able to detect a change in transaction patterns.

There have been instances where companies have been abused for TF purposes in Ireland. Funds generated by criminal activities have been laundered through cash enterprises, such as licensed premises and security companies or in the form of “loans” to businesses. These were often fronted by persons with no obvious affiliations to terrorist groups and whose involvement in TF was only found after investigation.

In light of this, the overall level of ML, from both domestic and international sources for this group of legal structures, is considered **significant**.

The overall level of TF threat, from both domestic and international sources for this group of legal structures, is considered **moderately significant**.

Established and Potential Mitigants

There are a range of mitigants that act together to reduce the threat of ML and TF posed by companies.

Beneficial ownership

One of the primary motivations for criminals to create and use companies is to obscure their control of assets. In this regard, legal obligations, such as those created by Article 30 of the 4th 4AMLD which aim to identify who are the beneficial owners of companies, are significant mitigants.

Ireland has transposed Article 30 of the 4th AMLD and its subsequent amendment by the 5th AMLD.

Under the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110/2019), companies must file beneficial ownership information with the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (RBO).²³

A company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information, is not required to file beneficial ownership data with the RBO.

The RBO opened to accept filings from 29 July 2019.²⁴

The accuracy of information in the RBO is increased by the cross-referencing of the supplied owner's name with his/her Personal Public Service Number (PPSN). Where a PPSN is not available, an owner must provide a signed affidavit confirming his/her identity.

Authorities authorised to access the information in the RBO include An Garda Síochána (FIU), the Central Bank, the Revenue Commissioners, the Department of Justice and Equality, the Law Society and Accountancy supervisors. Significant penalties may be imposed for breaches of the regulations. Penalties range from a class A fine, i.e. €5,000 on summary conviction to imprisonment for a term not exceeding 12 months or both, or on conviction on indictment to a fine not exceeding €500,000 or imprisonment for a term not exceeding 12 months or both. Restricted access is also available to the general public.

Company law

There are a wide range of obligations on companies and a variety of enforcement powers to ensure companies comply with them.

Section 223 of the Companies Act 2014 expressly states that it is the duty of each director of a company to ensure that the company complies with the requirements of the Companies Act.²⁵

To form a company, the following documents, together with a registration fee, must be sent to the CRO.

²³ <http://www.irishstatutebook.ie/eli/2019/si/110/made/en/pdf>

²⁴ Further information is available at <https://rbo.gov.ie/>.

²⁵ For further information on directors' requirements, please see Information Leaflet No. 36 / April 2019, <https://www.cro.ie/Portals/0/Leaflets/Leaflet%2036%20v2.1.pdf>

- A Constitution which sets out the conditions upon which the company is granted incorporation and the rules under which the company proposes to regulate its affairs.
- A Form A1 gives details of the company name, its registered office, its email address, details of its secretary and directors, their consent to acting as such, the subscribers and details of their shares (if any). It incorporates a declaration that the requirements of the Companies Act 2014 have been complied with and as to which activity in which the company is being formed to engage.²⁶

Every company, whether trading or not, must also file an annual return to the CRO. In general financial statements must be attached to that return. Failure to file an annual return on time will result in the immediate imposition of late filing fees and loss of an entitlement to any potential future audit exemption. In addition, the following enforcement options are open to the CRO in respect of non-filing of annual returns:

- Prosecution,
- court injunction, and
- strike off.²⁷

There are also statutory requirements as regards liquidations, receiverships & examinerships.²⁸

Under section 764 of the Companies Act 2014, the Director of Corporate Enforcement may appoint one or more competent inspectors to investigate and report on the membership of a company or on any other matter concerning the company to determine the true persons who are or have been—

- (a) financially interested in the success or failure (real or apparent) of the company, or
- (b) able to control or materially to influence the policy of the company.

In addition, specific prohibitions reduce the attractiveness of companies as ML vehicles. For example, Section 66 of the 2014 Companies Act prohibits bearer shares and warrants.

Recent legislative changes have also increased controls on companies.

There have been two significant amendments to the Companies Act 2014 relating to accounting and audit arising from the transposition of the EU Accounting Directive and the EU Audit Directive and Regulation.²⁹

In relation to accounting, some relevant aspects include:

- an increase in reporting requirements for medium companies,
- strengthened rules regarding the filing of financial statements by certain unlimited companies, and

²⁶ <https://www.cro.ie/Portals/0/Companies%20Act%202014%20New%20Forms/A1%20v2.5%20black%20fillable.pdf>

²⁷ For further information on annual return filing, see CRO Information Leaflet No. 23, “Annual Return and Financial Statements Requirements”, <https://www.cro.ie/Portals/0/Leaflets/Info%20Leaflet%2023%20v3.1.pdf>

²⁸ For further information, please see CRO Information Leaflet No. 38 / April 2019, <https://www.cro.ie/Portals/0/Leaflets/Leaflet%2038%20v2.1.pdf>

²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034>

- new transparency measures were introduced for payments to governments by companies active in mining, quarrying and logging of primary forests.³⁰

In respect to audit, the powers of IAASA (Irish Auditing and Accounting Supervisory Authority), the competent authority with ultimate responsibility for oversight of audit, were enhanced. The EU Audit Regulation has direct effect and applies to banks, insurance companies and listed entities.³¹ Some of the key changes introduced are:

- a limit on the duration of the audit engagement in Ireland's case to a maximum of ten years,
- limits on the provision of non-audit services by auditors to audited entities, and
- strengthened requirements in relation to audit committees.

Auditors have obligations to report offences and other matters to the authorities once they become aware of those offences. It is a criminal offence to knowingly or recklessly make a false return or lodge a false document with the CRO in purported compliance with any provision of the Companies Act 2014 (sections. 406 and 876).

Engaging in false accounting is prohibited pursuant to section 406 of the Companies Act 2014 and section 10 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Domestic Policy and Co-ordination measures

The number of Irish corporate entities is relatively unproblematic from an oversight perspective, as Ireland's system is constructed around an efficient 'file and publish' regime which encourages public use and examination of data held in the CRO database.

Open public access to and download of CRO data effectively validates and enhances CRO data in the public arena. CRO also validates data as it is filed and has established an effective system to fine and ultimately strike off companies that do not file their legal ownership and accounts data annually.

Ireland has achieved the OECD's top compliance-rating in relation to the exchange of tax-related information; it is assumed persons considering possible misuses of Irish legal persons and vehicles may be discouraged by the fact.

As noted in the Financial Action Task Force's Best Practices paper on beneficial ownership for legal persons, Ireland has established domestic data interfaces between relevant authorities – the CRO and the Office of the Revenue Commissioners – which enhances the monitoring of Irish corporates.³²

³⁰ https://ptfs-oireachtas.s3.amazonaws.com/DriveH/AWDData/Library3/DBEIdocId190319_111211.pdf

³¹ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32014R0537>

³² <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

Ireland

Data interfaces have been established between the Companies Registration Office (CRO) and Revenue, as the two key data repositories of corporate information in Ireland. Such interfaces allow the authorities to conduct ongoing red-flag monitoring and some verification of the information held. For example, Ireland has assessed that higher ML/TF and tax evasion risks attach to entities which, although incorporated through CRO, fail to engage with Revenue. The interface between CRO and the Revenue combats risks associated with 'non-engaged' entities and enquiry letters are generated.

Taking account of the mitigants set out above, the level of ML/TF vulnerability related to companies is considered to be **significant**.

Residual Risk

Companies are assessed as holding a residual risk of **medium-high**, for ML.

Companies are assessed as holding a residual risk of **medium-high**, for TF.

Legal Structures used in the Investment Funds Sector

Nature

Introduction

Investment funds are established for the purpose of investing the pooled funds of investors (held as units or shares) in assets in accordance with investment objectives and investment policies.

Ireland has several investment fund legal structures or vehicles that investors can use when establishing a fund in Ireland.³³ Currently there are five vehicles available:

1. **Investment Company,**
2. **Unit Trust,**
3. **Investment Limited Partnership (ILP),**
4. **The Irish Collective Asset Management Vehicle (ICAV), and**
5. **Common Contractual Fund (CCF).**

The five vehicles represent distinct legal structures and are subject to different legal provisions. These legal structures are established under Irish company, partnership or trust laws and as such, are subject to the relevant provisions in Irish law such as the Companies Act 2014 (for investment public limited companies), the Irish Collective Asset Management Vehicles Act 2015 (for ICAVs), the Unit Trusts Act 1990 (for unit trusts), the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and the Investment Limited Partnerships Act 1994.

While there are notable differences between the various legal structures, the sole purpose of each structure is to facilitate the collective investment of funds. As a result, irrespective of legal structure utilised, it must first be authorised by the Central Bank as either a UCITS or an AIF.³⁴ In practice, this means that all investment companies, ICAVs, Unit Trusts, ILPs and CCFs are all subject to authorisation by the Central Bank.

Irish Registrars

Other than Investment Companies, the Central Bank is the Registrar for all the structures set out in Table 2 below. The Central Bank has a suite of powers under the relevant legislation and must approve any changes to the structures, such as changes in the Partnership Agreement under the UCIT and AIF Regulations.

³³ **Establishing an Investment Fund**

When setting up a fund in Ireland there are three discrete steps to be taken.

1. **Selection of Fund Type: AIF or UCITS**

There are a range of factors to consider when making this decision, including the location of target investors and the investment policy of the fund.

2. **Selection of Legal Structure:**

This will be dependent on the needs of the investors and the type of fund it will be the vehicle for, UCITS or AIF.

3. **Request approval for fund from the Central Bank**

³⁴ Undertakings for collective investment in transferable securities; Alternative investment funds.

TABLE 2: KEY CHARACTERISTICS OF IRISH INVESTMENT FUNDS' LEGAL STRUCTURES

	ICAV	Investment company	Unit Trust	CCF	ILP
Structure	Variable capital vehicle designed specifically for Irish investment funds	Variable capital investment company incorporated as a public limited company	Unit trust constituted by a trust deed entered into between a management company and a trustee	An unincorporated body constituted under contract by a deed of constitution between a management company and a depositary	A partnership between one or more general partners and one or more limited partners constituted by a partnership agreement
Single stand-alone fund or umbrella fund	✓	✓	✓	✓	✗
Separate legal personality	✓	✓	✗	✗	✗
Legislation	ICAV Act 2015	Companies Act 2014	Unit Trusts Act 1990	Investment Funds, Companies and Miscellaneous Provisions Act 2005	ILP Act 1994
Board responsible for management	Board of directors of ICAV	Board of directors of the investment company	Board of directors of the management company	Board of Directors of the management company	Board of directors of the General Partner

Investment Company or “Part 24 Companies”

Investment companies/variable capital companies are registered in Ireland under the Companies Act 2014 – specifically Part 24. Investment companies are PLCs that are permitted to have variable capital, their sole objective being the collective investment of their funds to spread investment risk and give members the benefit of the results. These companies have a separate legal identity, a board of directors and the shareholders of the company have limited liability.

Investment companies are a key constituent of the set of legal structures under which the investment funds industry operates in Ireland. Investment companies are often set up as PLCs in order to facilitate marketing to the public.

Investment companies can be authorised as UCITS or AIFs.

The Registrar for Investment Companies is the CRO.

Irish Collective Asset-management Vehicle (ICAV)

An ICAV is a corporate structure designed specifically for investment funds. ICAVs are incorporated under the ICAV Act 2015, ICAVs can be authorised as either UCITS or AIFs by the Central Bank. Since the ICAV was established in 2015, approximately 70% of all new funds have been set up using this structure.³⁵

The Central Bank is both the Registrar and supervisor for ICAVs.

Unit Trust

A Unit Trust is a contractual fund structure constituted by a trust deed between a trustee and a management company (manager) under the Unit Trusts Act 1990. A Unit Trust does not have separate legal personality, and therefore the trustee acts as the legal owner of the fund's assets on behalf of the investors. Since the Unit Trust does not have legal personality, it cannot enter into contracts.

A separate management company is always required and managerial responsibility rests with the Board of Directors of the management company. The trust deed is the primary legal document which constitutes the trust and it sets out the various rights and obligations of the trustee, the management company and the unit holders.

Under the investment fund legislation, the Central Bank is the Registrar for Unit Trusts.

Unit trust schemes behave effectively as corporate vehicles and cannot be constituted without the existence of a corporate entity. For this reason, Ireland has defined them as corporate entities for beneficial ownership purposes as provided for in Recital 27 of 5AMLD which states *“Due to the wide range of types of trusts that currently exists in the Union ... the decision on whether or not a trust or a similar legal arrangement is comparably similar to corporate and other legal entities should be taken by Member States.”*

Unit Trusts schemes will be required to file their beneficial ownership information with the Central Bank.

Investment Limited Partnership (ILP)

The Investment Limited Partnership is a funds vehicle created by the Investment Limited Partnership Act 1994.

An ILP is a partnership between one or more general partners and one or more limited partners, the principal business of which is the investment of its funds in assets.³⁶ An ILP has no separate legal personality. A general partner in an ILP has unlimited liability for the debts and obligations of the ILP. In contrast, a limited partner is not liable beyond the amount of their capital contribution. A limited partner must not take part in any of the conduct of the business of the ILP or risk losing their limited liability.³⁷

Take-up of the structure since its inception has been low: there are only six ILPs registered in Ireland at the time of writing.³⁸

³⁵ Central Bank ICAV register as of 25 April 2017.

³⁶ Investment Limited Partnerships Act 1994

³⁷ Ibid.

³⁸ Central Bank (2019). <http://registers.centralbank.ie/DownloadsPage.aspx> [Accessed 28 Mar. 2019].

ILPs are authorised by the Central Bank as AIFs.

Common Contractual Fund (CCF)

The CCF vehicle was established in 2003 to enable asset managers and asset owners pool their investments (primarily in the context of pension fund assets) in a tax-efficient manner.

A CCF, similar to a Unit Trust and investment limited partnership, does not have a separate legal personality. It is a contractual arrangement established under a deed, which provides that investors participate as co-owners of the assets of the fund. The ownership interests of investors are represented by 'units', which are issued and redeemed in a manner similar to a unit trust.

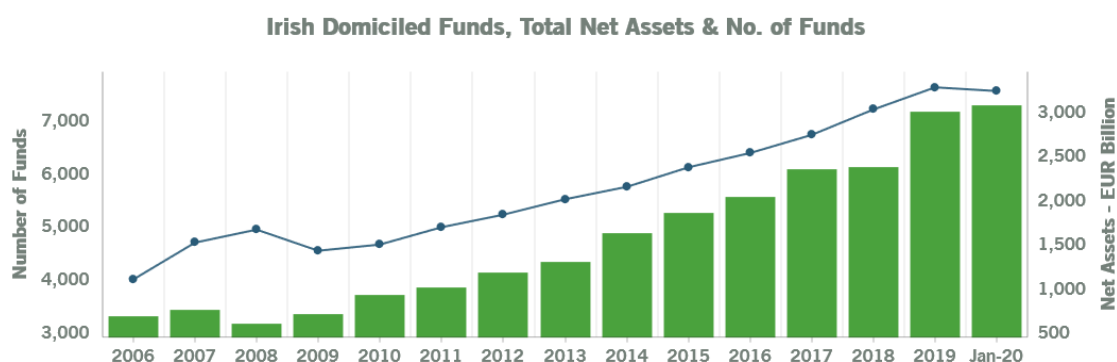
CCFs can be established as UCITS or AIFs, both of which must be authorised by the Central Bank.

Scale

Ireland has a significant funds industry which has developed over the last 30 years. Ireland services 40% of global hedge fund assets, making it the largest hedge fund administration centre in the world.

Assets in Irish domiciled funds increased from approximately €650 billion in 2008 to approximately €3 trillion at end 2019. Assets under administration have increased from around €1.4 trillion to nearly €5.2 trillion during the same period.³⁹ Ireland is the domicile for 5% of worldwide investment fund assets and is the third-largest centre in the world.

FIGURE 1: IRISH DOMICILED FUNDS, TOTAL NET ASSETS AND NUMBER OF FUNDS.⁴⁰



³⁹ Investment funds administered in Ireland include Irish-domiciled funds as well as non-domiciled funds. Irish-domiciled investment funds are established under the applicable domestic legislation whereas non-domiciled funds are authorised and regulated/supervised in other jurisdictions; See Central Bank: Fit for the future: some current issues in the regulation of Irish investment funds: <https://www.centralbank.ie/news/article/fit-for-future-current-issues-regulation-irish-investment-funds-gerry-cross-4-october-2018>.

⁴⁰ See Irish Funds: Irish Domiciled Funds January 2020. <https://www.irishfunds.ie/facts-figures/irish-domiciled-funds>.

FIGURE 2: TOTAL ASSETS UNDER ADMINISTRATION IN IRELAND TO DEC 2019.⁴¹

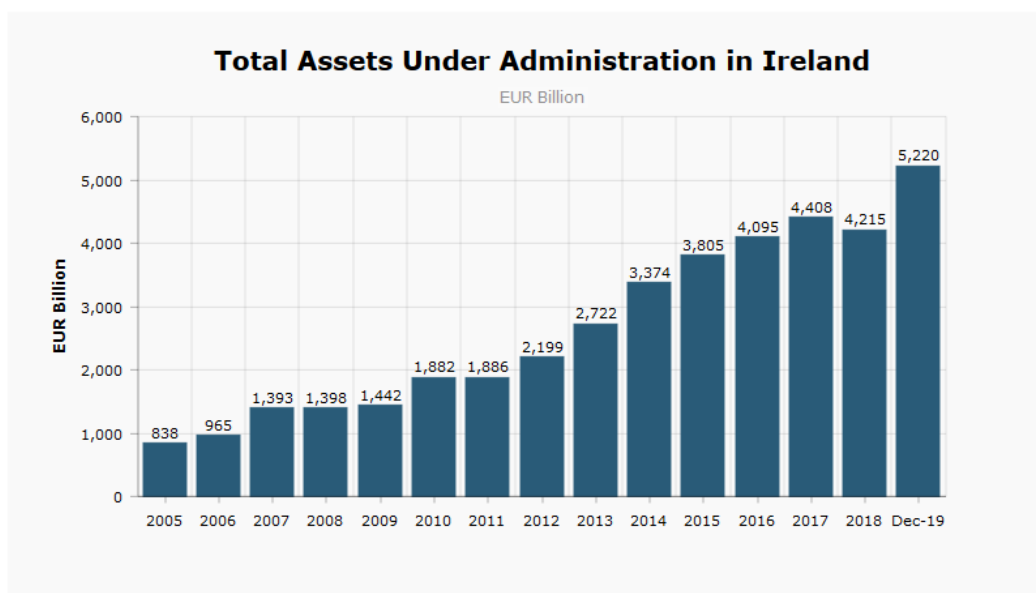


FIGURE 3: FUND NUMBERS AND NET ASSET VALUE ⁴²

2019		
	Number	Net Asset Value € Million
UCITS	4759	2,315,291
AIFs	3030	737,695
Total	7789	3,052,986

⁴¹ <https://www.irishfunds.ie/facts-figures>

⁴² Latest data provided by the Central Bank.

Risk scenarios and ML/TF Vulnerabilities

International Threat

These legal structures may pose an International ML threat due to the difficulties involved in establishing the source, destination and purpose of funds used. The investor base, which includes high net worth individuals, Politically Exposed Persons (PEPs) and complex-structured corporate customers, also poses an increased international ML threat.

These structures may be abused in the layering stage of ML where they could be part of a network of complex transactions, involving multiple banks or accounts and/or other companies or trusts. They may also be abused during the integration stage of ML, where illicit funds are invested in the legal vehicles used in the funds sector, in a similar way that illicit funds may be invested in other high-value assets such as property.

There is a potential ML threat from transnational criminal organisations, not generally connected to Ireland, who may seek to move funds through Ireland or Ireland's legal structures. International criminals or OCGs are thought to have the necessary capabilities to exploit these structures for ML. The use of these structures requires sophisticated planning, knowledge and/or high technical expertise than other money laundering methods. There has been limited evidence of their misuse to date.

There has been no evidence of the misuse of these structures for International TF purposes and no indicators that criminals have the intention to exploit these structures. There is little indication that criminals have the ability to exploit these structures for International TF, given the sophisticated planning, knowledge and/or high technical expertise necessary to exploit these structures.

Domestic Threat

There are no indicators that domestic OCGs have the intention to exploit these structures for ML. These structures are difficult to access, cost more than other options and are perceived as unattractive. The use of these structures requires sophisticated planning, knowledge and higher technical expertise than other options. There has been very little evidence of their misuse to date.

There has been no evidence of the misuse of these structures for domestic TF purposes and no indicators that criminals have the intention to exploit these structures. There is little indication that criminals have the ability to exploit these structures for domestic TF, given the sophisticated planning, knowledge and/or high technical expertise necessary, to exploit these structures.

Other ML/TF Vulnerabilities

Legal structures used in the Funds Industry, similar to other legal entities and legal arrangements, by their very nature create a layer of separation between the corporate entity and the ultimate owner and/or controller of the entity. This layer of separation can make legal entities and legal arrangements susceptible to being used to facilitate money laundering and terrorist financing.

- As is the case with all companies, the corporate structure of the ICAV allows for the strict separation of the natural person investing in the company and the legal personality of the company itself.

- The trust structure employed by a unit trust means that legal title to investments of the trust rests with the management company. Beneficial interest is with the unit holders (investors).
- Similar to a unit trust, the trust structure employed in setting up a CCF means that the legal title and control of the assets of the fund are separated from the equitable interests in the fund.
- An ILP does not have an independent legal existence and all of the assets and liabilities belong jointly to the individual partners in the proportions agreed in the partnership deed. As ownership and control are exercised by all partners specified in the partnership contract and there is no segregation between the natural and legal persons, Identifying the ultimate owners of the fund utilising the ILP structure is not an issue as all of this information is contained in the partnership contract

These Irish legal structures can be used in conjunction with a fund whose bank and custodian accounts are held in offshore jurisdictions, particularly those with stringent bank secrecy laws.

Customers with complex ownership structures are a particular feature of the funds industry. The complexity of certain corporate investors, investments from holding companies based in off-shore jurisdictions, and nominee investments can increase the difficulty in establishing the ultimate beneficial ownership of invested moneys. In light of this, the overall level of ML, from both domestic and international sources, for this group of legal structures is considered as **significant**.

In light of this, the overall level of TF, from both domestic and international sources, for this group of legal structures is considered as **lowly significant**.

Established and potential mitigants

Beneficial Ownership

Central Beneficial Ownership registers will capture any UCITS or AIFs using Investment Companies, Unit Trusts and ICAVs. The relevant legislation has already been put in place for Investment Companies and is imminent for Unit Trusts and ICAVs. A requirement to centrally file beneficial ownership information on CCF and ILPs will be introduced via primary legislation, which is currently being progressed.

Designated Persons

The Central Bank is responsible for the authorisation and supervision of investment funds established in Ireland.⁴³ Investment Funds (defined as credit institutions and financial institutions) are designated persons under Section 25 of the 2010 Criminal Justice (Money Laundering /Terrorist Financing) Act ('2010 Act') and obliged to comply with all associated AML/CFT obligations under the Act. The Central Bank is responsible for the AML/CFT supervision of such investment funds.

In addition to the above, all investment funds, irrespective of their legal structure, appoint management companies. These management companies bear ultimate responsibility for the management of the fund and must be authorised by the Central Bank. Management companies, by virtue of their authorisation, are designated persons under Section 25 of the 2010 Act and are obliged to comply with all associated AML/CFT obligations under the Act.

In practice, the management companies outsource responsibility for the day-to-day administration of funds to fund administrators. The fund administrators are authorised by the Central Bank and are designated persons under Section 25 of the 2010 Act and are obliged to comply with all associated AML/CFT obligations under the Act.

Setup and on-going provision of services

All Irish solicitors and barristers, auditors, tax advisers, credit and financial institutions, trust and company service providers and other fund service providers are designated persons under the 2010 Act are obliged to report knowledge, suspicions or reasonable grounds for suspicion of money laundering and terrorist financing to An Garda Síochána and to the Revenue Commissioners.

Taking account of the mitigants set out above, the overall level of ML vulnerability related to this group of legal structures is considered to be **significant**.

Taking account of the mitigants set out above, the overall level of TF vulnerability related to this group of legal structures is considered to be **moderately significant**.

⁴³ <https://www.centralbank.ie/regulation/industry-market-sectors/funds>

Residual risk

As these legal structures form the legal basis for the fund investment sector in Ireland, they face a similar risk to the Funds/Funds Administrators Sector, including a customer base which includes complex legal structures, with associated challenges in establishing beneficial ownership. There is a high level of outsourcing in the sector and significant reliance on third parties to conduct CDD.⁴⁴

These legal structures are assessed as holding a residual risk of **medium-high**, for ML.

Due to the moderately significant TF vulnerability, these legal structures are assessed as holding a residual risk of **medium-low**, for TF.

⁴⁴ Ireland ML/TF NRA section 5.77

Special Purpose Entities

Nature

Special Purpose Entities (SPEs) form a substantial component of the Irish-resident financial sector and play an important role in risk dispersion within the global financial system.⁴⁵

SPEs span a wide range of activities and often form part of cross-border, multi-entity corporate structures.⁴⁶

An SPE is often, though not exclusively, a satellite company of another financial entity and forms an ancillary part of the associate entity's business by warehousing particular assets or risks.⁴⁷ SPEs incorporated in Ireland held €872 billion in assets at the end of 2019 (€731 billion in assets at the end of 2018).⁴⁸ This figure covers all SPEs that engage in securitisation but only those other SPEs that avail of tax provisions under Section 110 of the Taxes Consolidation Act 1997.⁴⁹ SPEs not included in this figure primarily relate to treasury operations, aircraft leasing activity and limited partnerships.

In terms of ML and TF, one of the key concepts of an SPE is its sponsor. Its sponsor is the entity on whose behalf an SPE was established and is usually the ultimate beneficial owner of the SPE. Tables 3 and 4 below identify the top 3 sponsors of SPEs in Ireland.

SPEs are usually divided into **two main sub-types**, which undertake a range of business activities:

These are: -

1. **Securitisation SPEs** – or Financial Vehicle Corporations (FVCs).⁵⁰
2. **Non-securitisation SPEs** (“Other SPEs”). Also described as Other SPEs / Other Financial Intermediaries.

⁴⁵ [https://centralbank.ie/docs/default-source/publications/economic-letters/vol-2018-no-11-shining-a-light-on-special-purpose-entities-in-ireland-\(golden-and-hughes\).pdf?sfvrsn=4](https://centralbank.ie/docs/default-source/publications/economic-letters/vol-2018-no-11-shining-a-light-on-special-purpose-entities-in-ireland-(golden-and-hughes).pdf?sfvrsn=4)

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ <https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/other-financial-sector-statistics/financial-vehicle-corporations/spe-statistical-release-q4-2019.pdf?sfvrsn=6>

⁴⁹ <https://www.revenue.ie/en/companies-and-charities/financial-services/qualifying-companies/index.aspx>

⁵⁰ Securitisation SPEs are referred to as “Financial Vehicle Corporations” in ECB statistical aggregates.

1. Securitisation SPEs

Securitisation is the financial engineering practice of repackaging pools of relatively illiquid assets into more liquid assets.

Securitisation generally has two distinct components. Firstly, a company identifies assets and associated risks that it wants to remove from its balance sheet, packages them together and transfers ownership to an SPE. This pool of assets generates a cash flow and these assets are most commonly some form of debt, such as mortgages.⁵¹

Secondly, the SPE issues bonds that are backed by the newly-acquired assets and sells these to investors.⁵²

The investor receives regular payments of interest but also takes on the risk of default associated with the assets. The pool of assets in the SPE is normally difficult to trade while the debt securities issued by the SPE are usually more liquid.⁵³

In a traditional securitisation, the performance of an investment is linked to that of the underlying assets. Investors who have purchased securities will receive repayments on these securities based on the income from the underlying assets. Different tranches with varying risk/return profiles will be offered to different investors, depending on their investment objectives.

Securitisation SPEs engage in a number of different business models and activities, determined by the types of assets that underpin the cash flows (Table 1).

Common forms of business models are:

a) Residential Mortgage-Backed Securities (RMBS)

RMBS are estimated to account for 11% of the assets under management by Securitisation SPEs in Ireland.⁵⁴

RMBS are a debt-based security (similar to a bond), backed by the interest paid on loans for residences. Generally speaking, mortgages are considered to have a comparatively low rate of default though a recent trend has seen securitisation of non-performing mortgages. Investors are attracted to this kind of security but also want to be protected from the risk of default inherent with individual loans of this kind. This risk is mitigated by pooling many such loans to minimise the risk of an individual default.

b) Commercial Mortgage-Backed Securities (CMBS)

CMBS are estimated to account for 9% of the assets under management by Securitisation SPEs in Ireland.

Commercial mortgage-backed securities (CMBS) are a type of mortgage-backed security backed by commercial mortgages rather than residential real estate. CMBS may be more complex and volatile than RMBS due to the nature of the underlying property assets.

⁵¹ [https://centralbank.ie/docs/default-source/publications/economic-letters/vol-2018-no-11-shining-a-light-on-special-purpose-entities-in-ireland-\(golden-and-hughes\).pdf?sfvrsn=4](https://centralbank.ie/docs/default-source/publications/economic-letters/vol-2018-no-11-shining-a-light-on-special-purpose-entities-in-ireland-(golden-and-hughes).pdf?sfvrsn=4)

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

c) Aircraft Leasing Sector

It is estimated that this sector accounts for approximately 8 billion of the assets held by SPEs in Ireland.⁵⁵ Aircraft Asset Backed Securities (ABS) and Aircraft Lease Portfolio Securitisation are frequently used business models. The sector makes use of both companies and trusts as part of their business model/ business structure.⁵⁶

TABLE 1 COMMON SECURITISATION SPE'S BUSINESS MODELS.⁵⁷

Business Models	SPE Activity Description
RMBS	Residential Mortgage-Backed Securities are securities backed by cash flow resulting from mortgage loans that have been secured on residential properties.
CMBS	Commercial Mortgage-Backed Securities are securities backed by cash flow resulting from mortgage loans that have been secured by commercial properties, such as multi-family dwelling, malls, offices, shops, restaurants, etc.
Aircraft ABS	The securitisation vehicle purchases aircraft (normally sold to it by an aircraft leasing company known as an operating lessor) and financed through the issuance of debt instruments to the market. Returns to investors are primarily based on rentals of aircraft to airlines and subsequent disposals of aircraft.
Aircraft Lease Portfolio Securitisation	A portfolio securitization relies on a diversified portfolio of aircraft on operating leases to a number of airlines, based on the existence of a worldwide aircraft leasing market and the projected residual values of the aircraft in the portfolio.
Lease Securitisation	Vehicles where the primary assets are lease agreements, typically on aircraft or other operating equipment, including EETC (Enhanced Equipment Trust Certificate) and Portfolio Securitisation.
Aircraft Enhanced Equipment Trust Certification	An EETC securitization enhances the creditworthiness of traditional equipment trust certificates ("ETCs") secured by lease receivables and the leased aircraft.

⁵⁵ Ibid.

⁵⁶ See "The Aircraft Leasing Industry in Ireland: Cross Border Flows and Statistical Treatment", <https://www.centralbank.ie/docs/default-source/publications/quarterly-bulletins/quarterly-bulletin-signed-articles/the-aircraft-leasing-industry-in-ireland.pdf?sfvrsn=6>

⁵⁷ Provided by the Central Bank.

2. Non-Securitisation SPEs

SPEs not engaged in securitisation have a much wider range of functions. The key distinction from securitisation SPEs is that credit risk does not pass to purchasers of loans or debt securities issued by the SPE. There is no specific model for “other SPEs”, though most issue debt securities or loan instruments. In a small number of cases, they are merely cash conduits. (Table 2).

TABLE 2 COMMON NON-SECURITISATION SPE’S BUSINESS MODELS.⁵⁸

Business Models	SPV Activity Description
External Financing	Funding obtained from external sources furthered as a loan to the parent.
Loan Origination	Funding obtained from the parent and furthered to external sources.
Intra-Group Financing	Loan funding from, and to, inter-group companies.
Holding Company	A vehicle set up to hold the equity of a company, or group of companies.
Financial Leasing	Engaged in lease-in lease-out agreements or as a financial intermediary in a chain of vehicles in which the end vehicle is involved in the leasing of equipment or fixed assets.
Operational Leasing	Hold fixed assets such as plant and machinery for the purposes of leasing them out.

⁵⁸ Provided by the Central Bank.

Scale

The Central Bank has introduced statistical reporting requirements for SPEs. These cover all securitisation SPEs and most of the other SPE population, as measured by assets.

Securitisation SPEs are governed by an ECB regulation ECB/2013/40 (which refers to these SPEs as Financial Vehicle Corporations, or “FVCs”) for statistical purposes and must report quarterly balance sheet data to their National Central Bank (“NCB”), as from Q4 2009.⁵⁹

The Central Bank imposes additional data requirements, such as details on the characteristics and structure of the entity. Therefore, securitisation data is also collected under the provisions of the Central Bank Acts 1942-2013 with particular reference to Section 18 of the consolidated version of the Central Bank Act 1971.

For other SPEs, those availing of Section 110 report the same data as securitisation SPEs to the Central Bank since Q3 2015. The Central Bank used this definition as a practical measure, to define the reporting population. The legal basis for data collection is purely national and, in this respect, the same as for securitisation SPEs

While there are some non-securitisation SPEs outside of S110, industry sources suggest that the majority of such entities, as measured by assets use S110, given the tax advantages.⁶⁰ Section 110 provides a neutral tax regime for securitisation transactions provided certain conditions are met. A Section 110 company qualifies for the benefits of Ireland’s double tax treaty network which can reduce or eliminate withholding taxes on income flows and capital gains in treaty jurisdictions.

For securitisation SPEs, sponsors tend to be Deposit Taking Corporations (DTC) and Financial Auxiliaries (FAU) (Table 3).

TABLE 3 SCALE OF SECURITISATION SPES.⁶¹

Securitisation SPEs	2019
Number of Companies	1,116
Total Assets in €Bn	479
Top Sponsors 1 st	UK DTC
Top Sponsors 2 nd	US FAU
Top Sponsors 3 rd	UK FAU

For non-securitisation SPEs, FAU and DTC are also the prominent sponsors, (Table 4).

⁵⁹ Central Bank 2011

⁶⁰ Section 110 is a provision under Irish tax law where SPVs that meet the certain qualifying criteria can avail of a specific tax regime for certain specified transactions. See <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-04/04-09-01.pdf>; Central Bank 2016

⁶¹ Provided by the Central Bank.

TABLE 4 SCALE OF NON-SECURITISATION SPEs.⁶²

Non-Securitisation SPEs	2019
Number of Companies	1,487
Total Assets in €Bn	393
Top Sponsors 1 st	US FAU
Top Sponsors 2 nd	UK FAU
Top Sponsors 3 rd	GR DTC

⁶² Provided by the Central Bank.

Risk scenarios and ML/TF Vulnerabilities

International Threat

SPEs pose a similar level of international ML and TF to that of the legal structures used in the Investment Funds Sector.

SPEs can be used for ML, particularly if they have a complex ownership structure and they are engaging in transactions with jurisdictions with unreliable information on legal and/or beneficial ownership. Some SPEs exist within corporate structures that span multiple jurisdictions which can reduce transparency, particularly where such jurisdictions guarantee relatively high levels of client confidentiality.

SPEs may be used in the layering stage of ML where they could be part of a network of complex transactions, involving multiple banks or accounts and/or other companies or trusts. SPEs may also be used during the integration stage of ML, where illicit funds are invested in SPEs, in a similar way that illicit funds may be invested in other high-value assets such as property. There is a potential ML threat from transnational criminal organisations not generally connected to Ireland, who may seek to move funds through Ireland's financial system or via the use of Ireland's legal structures.

International criminals or OCGs are thought to have the necessary capabilities to exploit these structures. The use of these structures requires sophisticated planning, knowledge and/or high technical expertise than other options. There has been limited evidence of their misuse to date.

There has been little evidence of the misuse of these structures for international TF purposes. There is little indication that criminals have the ability to exploit these structures for International TF, given the sophisticated planning, knowledge and/or high technical expertise necessary to exploit these structures.

Domestic Threat

There are limited indicators that domestic OCGs intend to exploit these structures for ML. SPEs are generally perceived as unattractive for the purposes of ML. There are indicators that criminals have the necessary capabilities to exploit these structures in Ireland. The use of these structures requires sophisticated planning, knowledge and higher technical expertise than other options. There has been very little evidence of their misuse to date.

There has been no evidence of the misuse of these structures for domestic TF purposes and no indicators that criminals have the intention to exploit these structures for these purposes.

Overall ML/TF Vulnerabilities

Due to the often complex and opaque structures that both **Securitisation SPEs** and **Non-securitisation SPEs** form part of, it is difficult to discern the ultimate beneficiary in many transactions. Some **Securitisation SPEs** and **Non-securitisation SPEs** vehicles make use of non-domestic financial or credit institutions for services that are not subject to the 2010 Act or equivalent regulation.

In light of this, the overall level of ML, from both domestic and international sources for this group of legal structures is considered as **significant**.

In light of this, the overall level of TF, from both domestic and international sources for this group of legal structures is considered as **lowly significant**.

Established and potential mitigants

Beneficial Ownership

Both **Securitisation SPEs** and **non-Securitisation SPEs**, which are incorporated in Ireland, are required to provide beneficial ownership information to the RBO.

Designated Persons

SPEs engaged in certain of the activities listed in Schedule 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (CJA 2010) are included in the definition of 'financial institution' under section 24 (a) of that Act (Schedule 2 firms). As such, they are considered designated persons for the purposes of the CJA 2010. As designated persons, they are obliged to comply with AML/CFT requirements contained in Part 4 of the CJA 2010 and are subject to ongoing supervision for AML/CFT purposes by the Central Bank.

As of November 2018, an additional obligation was imposed on Schedule 2 firms not otherwise regulated/authorised by the Central Bank to register with the Central Bank for AML/CFT purposes. This additional obligation assists the Central Bank in the identification of Schedule 2 firms coming within its AML/CFT supervisory remit.

On Establishment and On-Going Monitoring

Irish solicitors and barristers, auditors, tax advisers, credit and financial institutions, trust and company service providers who provide services to SPEs, are designated persons under the CJA 2010 and therefore are obliged to report suspicions of money laundering and terrorist financing to An Garda Síochána and the Revenue Commissioners.

Taking account of the mitigants set out above the level of ML vulnerability for **Securitisation SPEs** is considered to be **significant**.

Taking account of the mitigants set out above, as **Non-Securitisation SPEs** have a more diverse range of business models and are not fully covered by statistical reporting to the Central Bank unlike, Securitisation SPEs. Therefore their level of ML vulnerability is considered to be **very significant**.

Taking account of the mitigants set out above, the level of TF vulnerability related to the **Securitisation SPEs and Non-securitisation SPEs** is considered to be **moderately significant**.

Residual risk

Securitisation SPEs are assessed as holding a residual risk of **medium-high**, for ML.

Non-Securitisation SPEs are assessed as holding a residual risk of **high**, for ML.

Securitisation SPEs and Non-Securitisation SPEs are assessed as holding a residual risk of **medium-low**, for TF.

Trusts

Scope

There is extensive use of express trusts in Ireland due to our common law legal system.

AML/CFT efforts in relation to trusts focus on the risks attached to express trusts, i.e. those expressly formed with clear intent by a settlor to vest assets in a trustee.

FATF defines an express trust as “*a trust clearly created by the settlor, usually in the form of a document, e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).*”

Trusts imposed or arising by operation of law, which are variously described under Irish law as “resulting” or “constructive” trusts, pose a very limited risk of misuse for ML or TF. Statutory trusts, such as those established under the Succession Act 1965, are not considered as trusts which can pose an ML or TF risk.

Furthermore, the following arrangements are not considered as express trusts for the purposes of this assessment:

- agency arrangements,
- power of attorney arrangements,
- personal representatives in the capacity of personal representatives,
- receivership in the area of insolvency, and
- arrangements of extremely limited duration which are only in existence during the conveyancing process, e.g. the temporary holding of moneys by solicitors pending closure of a sale.

There is no evidence that such arrangements have been used for ML/TF in Ireland and they are considered to have a limited and low risk of misuse for ML/TF.

This assessment will now examine express trusts and the uses of express trusts in Ireland.

Nature and Scale

Express trusts are normally created in Ireland through a professional trustee i.e. a lawyer, an accountant or a Trust and Company Service Provider (TCSP), who are designated persons under CJA 2010 and subject to AML/CFT Obligations. However, trusts can also be set up and managed by non-professionals and are used for a wide variety of purposes.

Trusts are commonly created as part of the administrative arrangements for pensions. The Pensions Authority supervises compliance with the requirements of the Pensions Act by trustees of occupational pension schemes and personal pensions (trust RACs), Personal Retirement Savings Account (PRSA) providers, Registered Administrators (RAs) and employers.⁶³

TABLE 1. NUMBER OF PENSION TRUSTS AND ASSETS IN IRELAND.⁶⁴

Scheme Size	Other, Excluding SSAPs	Trust RAC	SSAPs ⁶⁵	Assets
Frozen	63,558	0	293	17,842,694,011.34
In Wind-Up	464	2	149	1,312,497,757.04
Non-Group	55,864	0	7,138	5,146,988,063.10
Group	8,224	8	1,555	71,120,254,734.87
	128,110	10	9,135	95,422,434,566.35

The office of the Revenue Commissioners maintains statistics on trusts which have tax liabilities, with 4,628 Trusts requested to file a return in 2018.⁶⁶ A smaller number of trusts have been established for charitable purposes, with 621 Charitable Trusts supervised by the Charities Regulatory Authority (CRA).⁶⁷

Trusts face different ML/TF threats and have different ML/TF vulnerabilities depending on their reasons for establishment and any supervision measures and legislation with which they must comply.

On that basis, this paper assesses the ML and TF risks of trusts established for

1. **welfare and community purposes**
2. **pension purposes**
3. **employee share schemes and**
4. **charitable purposes**

in addition to the assessment of ML/TF risk for express trusts in a general sense.

⁶³ A Retirement Annuity Contract (RAC) is the formal name for what is more commonly called a personal pension. An RAC is a particular type of insurance contract approved by Revenue to allow tax relief on contributions made by an individual. An RAC provides a tax-free lump sum, within certain limits, and a pension or other benefits at retirement. RACs can be obtained directly from life assurance companies, and through financial advisers.

An RAC is generally a contract between an individual and a life assurance company.

⁶⁴ As of end 2018. Latest available figures provided by the Pension Authority.

⁶⁵ The Small Self-Administered Pensions (SSAPs) flag is as per indicated by Registered Administrators but is subject to inaccuracies

⁶⁶ Revenue customers with customer type Trust, as of end 2018, Revenue Commissioners.

⁶⁷ As of end 2019, provided by the Charities Regulatory Authority.

1. Welfare trusts and community trusts

For the purposes of this assessment, **welfare trusts and community trusts** include:

- Trusts established for incapacitated persons. These include qualifying trusts within the meaning of section 189A of the Taxes Consolidation Act 1997, which are notified to the Revenue Commissioners. This category includes all trusts which create 'power of attorney' arrangements for incapacitated persons;
- Trusts which exist only during the course of the administration of estates of deceased persons.
- Trusts which come into effect on the death of a person with life assurance and whose only property is a life assurance contract.
- Trusts which are established for wards of court.
- Trusts that govern amateur sports clubs. These include trusts which are approved bodies of persons granted exemptions from income or corporation tax under section 235 Taxes Consolidation Act 1997, but which are not registered with the Charities Regulatory Authority (CRA).

2. Pension Trusts:

For the purposes of this assessment, **pension trusts** include:

- Occupational pension schemes formed as irrevocable trusts under Chapter 1 Part 30 Taxes Consolidation Act 1997. These include small self-administered pension schemes as described in Revenue guidance.⁶⁸
- Pension schemes under the Pensions Act 1990.
- Trust Retirement Annuity Contracts (trust RACs)
- Approved Retirement Funds (ARFs).
- Approved Minimum Retirement Funds (AMRFs).
- Personal Retirement Savings Accounts (PRSAs).

3. Employee Share Schemes:

For the purposes of this assessment, **employee share schemes** include:

- Employee Share Ownership Trusts (ESOTs). These include qualifying trusts within the meaning of part 17 of the Taxes Consolidation Act 1997.
- Restricted Share Awards (RSAs) including those that fall within section 128D of Taxes Consolidation Act 1997.
- Approved Profit-Sharing Schemes (APSSs) including those established under Chapter 1, Part 17 of the Taxes Consolidation Act 1997.
- Nominee holdings of employee shares.

⁶⁸ <https://www.revenue.ie/en/tax-professionals/tdm/pensions/chapter-19.pdf>

4. Charitable Trusts:

For the purposes of this assessment **charitable trusts** are defined as those supervised by the CRA.

Risk scenarios and ML/TF Vulnerabilities -

Welfare and Community Trusts

Threat assessment

The level of both International and Domestic ML and TF threat for **welfare and community trusts** is considered as **lowly significant**. There are no indicators that criminals have the intention and/or the ability to exploit these trusts for either ML or TF.

Established and potential mitigants

When **welfare trusts** and **community trusts** are considered, deterrence measures and controls exist which are effective at deterring money laundering and financing terrorism. The sub-sector shows a positive organisational framework and a negligible exposure to the risk of ML/TF:

- In the case of Trusts established for incapacitated persons, trustees must provide details such as medical records to obtain an exemption from Discretionary Trust Tax.
- Executors of a will are required to report detailed information on the trust created by a will to the Probate office.
- Life assurance contracts are subject to stringent AML requirements, both at the point of sale and in the event of a claim.
- A person may only become a ward of court following an order made by the President of the High Court.
- Trusts governing amateur sports clubs face negligible exposure to the risk of ML/TF.

These measures are in addition to the mitigants provided by Designated Persons and Professional Obligations to all Trusts, which are discussed in the section on “Risk Scenarios and ML/TF Vulnerabilities - Express Trusts (Other)” (page 43).

Vulnerability assessment

Taking account of the mitigants set out above, the level of ML/TF vulnerability for **welfare trust and community trusts** is considered as **lowly-significant**.

Residual risk

Welfare and community trusts are assessed as holding a **low** residual risk for both ML and TF.

Risk Scenarios and ML/TF Vulnerabilities - Pension Trusts

Threat assessment

The level of both International and Domestic ML and TF threat for **pension trusts** is considered as **lowly significant**. There are no indicators that criminals have the intention and/or the ability to exploit these trusts for either ML or TF.

Established and potential mitigants

When **pension trusts** are considered, deterrence measures and controls exist and are effective at deterring money laundering and financing terrorism. The sub-sector shows a positive organisational framework and a negligible exposure to the risk of ML/TF. Revenue approval is required for tax exemption (“exempt approved status”) to apply to occupational pension schemes established in the form of trusts, including schemes for individual employees or directors.

As noted in the introduction, the Pensions Authority supervises compliance with the requirements of the Pensions Act by trustees of occupational pension schemes and trust RACs, PRSA providers, RAs and employers.

It investigates suspected breaches of the Pensions Act, conducts on-site inspections and compliance audits and instigates prosecutions and other sanctions where breaches of the Pensions Act are found to have occurred.

These measures are in addition to the mitigants provided by Designated Persons and Professional Obligations to all Trusts, which are discussed in the section on “Risk Scenarios and ML/TF Vulnerabilities - Express Trusts (Other)”(page 43).

Taking account of the mitigants set out above, the level of ML/TF vulnerability for **pension trusts** is considered as **lowly-significant**.

Residual risk

Pension trusts are assessed as holding a **low** residual risk for both ML and TF.

Risk Scenarios and ML/TF Vulnerabilities - Employee share schemes

Threat assessment

The level of both International and Domestic ML and TF threat for **employee share schemes** is considered as **lowly significant**. Authorities have not identified indicators that criminals have the intention and/or the ability to exploit these trusts for either ML or TF.

Established and potential mitigants

When **employee share schemes** are considered, deterrence measures and controls exist and are effective at deterring money laundering and financing terrorism. The sub-sector shows a positive organisational framework and a negligible exposure to the risk of ML/TF.

Share purchases are typically funded from the resources of the employee company. Irish tax legislation specifically mandates the establishment of a trust for the ESOTs, APSSs and RSAs. These trusts must be funded by the employer companies (or the parent company) and in some cases may receive employee contributions for the purchase of shares.

In the case of ESOTs and APSSs, an application to Revenue for approval of the scheme is required and there are detailed and ongoing reporting obligations on the trustees.

These measures are in addition to the mitigants provided by Designated Persons and Professional Obligations to all Trusts, which are discussed in the section on “Risk Scenarios and ML/TF Vulnerabilities - Express Trusts (Other)” (page 43).

Taking account of the mitigants set out above, the level of ML/TF vulnerability for **employee share schemes** is considered as **lowly-significant**.

Residual risk

Employee share schemes are assessed as holding a **low** residual risk for both ML and TF.

Risk Scenarios and ML/TF Vulnerabilities - Charitable Trusts

Threat assessment

The level of both International and Domestic ML threat for **charitable trusts** is considered as **moderately significant**.

The level of both International and Domestic TF threat for **charitable trusts** is considered **significant**, in line with the earlier assessments of the ML/TF risks of Non-Profit Organisations (NPOs). NPOs and the charitable trusts which frequently form their legal basis, have a significant TF risk.

Established and potential mitigants

When **charitable trusts** are considered, deterrence measures and controls exist and are reasonably effective at deterring ML/TF.

The CRA is responsible for ensuring charities comply with the Charities Act 2009 and has a range of powers under that Act to ensure this, including the ability to appoint inspectors. The sub-sector has an organisational framework to address ML/TF risks but has some exposure to the risks of ML/TF.

These measures are in addition to the mitigants provided by Designated Persons and Professional Obligations to all Trusts, which are discussed in the section on “Risk Scenarios and ML/TF Vulnerabilities - Express Trusts (Other)” (page 43).

Taking account of the mitigants set out above, the level of ML/TF vulnerability related to **charitable trusts** is considered to be **moderately-significant**.

Residual risk

Charitable trusts are assessed as holding a **medium-low** residual risk for both ML and TF.

Risk Scenarios and ML/TF Vulnerabilities - Express Trusts (Other)

International Threat

Recent analysis suggests that trusts are used internationally to facilitate high-end money laundering by hiding beneficial ownership, undermining due diligence checks and frustrating law enforcement investigations.⁶⁹ Trusts may be used by criminals as part of complex and opaque structures, comprising multiple legal entities and arrangements across multiple jurisdictions, which can be used to obscure who owns and controls assets.

International criminals or OCGs may have vague intentions to exploit Irish trusts (those governed by Irish law and/or administered in Ireland) for ML. Criminals have some of the necessary capabilities to exploit these structures. The use of these structures requires more planning, knowledge and/or technical expertise than other options.

There has been little evidence of the misuse of these structures for international TF purposes.

Domestic Threat

Domestic criminals or OCGs may have vague intentions to exploit trusts in Ireland for ML. These structures are difficult to access and/or may cost more than other options and may be perceived as unattractive. Criminals have some of the necessary capabilities to exploit these structures. The use of these structures requires more planning, knowledge and/or technical expertise than other options.

There has been little evidence of the misuse of these structures for domestic TF purposes.

On the basis of the above, the general level of both International and Domestic ML threat for trusts is considered as **moderately significant**. The general level of both International and Domestic TF threat for trusts is considered as **lowly significant**.

⁶⁹ UK ML/TF NRA page 59

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf

Established and potential mitigants

Beneficial Ownership

Elements of 4AMLD relating to the transparency of beneficial ownership for Trusts were transposed by SI 16 of 2019. This Regulation codified and extended obligations on trustees to hold information on their trust's beneficial ownership. As required by the 4AMLD, trustees must provide information on their trust's beneficial ownership to competent authorities in a timely manner. Authorities authorised for this information include An Garda Síochána, the Central Bank, the Revenue Commissioners, the Department of Justice and Equality, the Law Society and Accountancy supervisors.

Furthermore, legislation is being progressed that will designate the Registrar for the central register for trusts and establishing the central register to which this cohort must file.

Designated Persons and Professional Obligations

Risks of misuse of Irish trusts, (other than those assessed separately) for ML or TF are mitigated in Ireland, as information on the ownership, control and objectives of Irish trusts is accessible to law enforcement authorities.

As a consequence of Irish trust law, for an express trust to be valid statutorily, one or more instruments or documents (trust deed, associated documents) must provide certainty of intention, certainty of subject matter and certainty of objects.⁷⁰

Under AML/CFT law, professional trustees in Ireland are 'designated persons' (as either legal or accounting service providers, or TCSPs) subject to all preventative requirements of part 4 the CJA 2010.

Trustees (professional or otherwise) need to systematically maintain information to present it to other designated persons when seeking services for the trust. For example, when opening a bank account for the trust, the trustee (professional or not) will be required by any bank to provide information allowing the bank to fulfil its duty to satisfy itself as to the beneficial ownership of the trust under CDD Section 33 (2) and associated Section 28 of the Act.

The relevant authorities – An Garda Síochána, the FIU and the Revenue Commissioners have the necessary powers of investigation to compel any information they may require on trusts.

When **express trusts** in general are considered, deterrence measures and controls exist and are reasonably effective at deterring money laundering and the financing of terrorism. The sector has an organisational framework to address ML/TF risks, as outlined above although it has some exposure to the risks of ML/TF.

Taking account of the mitigants set out above, the level of ML/TF vulnerability related to all other trusts is considered to be **moderately-significant**.

Residual risk

All other Trusts are assessed as holding a **medium-low** residual risk for both ML and TF.

⁷⁰ These do not have to be in writing.

Partnerships

Nature and Scale

A partnership is a "default" form of business organisation in Ireland - whenever two or more people carry on a business venture without forming a company, without necessarily documenting their relationship (in a partnership deed etc.) an "ordinary" partnership arises.

Established partnerships in Ireland will typically operate on the basis of a drafted partnership agreement which sets out the rights and obligations of the partners among themselves.

Categories of Partnership in Ireland:

Ordinary partnership.

The principal legislation dealing with partnerships in Ireland is the Partnership Act 1890. A partnership is defined in the 1890 Act as "*the relation which subsists between persons carrying on business in common with a view to profit.*" Unless another legal form is established, a partnership is the default form of the legal relationship between two or more persons who carry on business together.

The consequences of entering into a partnership are that each partner is jointly liable for the debts and obligations of the partnership and for any loss or injury caused to any third party by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership. Unlike companies, partnerships do not have a separate legal personality.

TABLE 1 ORDINARY PARTNERSHIPS REPORTED TO REVENUE AT END 2018.⁷¹

No. Returns 2018	No. Foreign Income declared 2018
16,552	140

Limited Partnerships

Limited partnerships have been an option for Irish businesses since their introduction in the Limited Partnerships Act 1907 ("1907 Act"). Overall, until more recent years, their use was characterised by a steady but relatively very small stream of annual registrations compared to company registrations.

The 1907 Act came into effect on 1 January 1908. Its purpose is to allow for partnerships where some members may have limited liability. The 1907 Act is subject to the provisions of the Partnership Act 1890.

It is a requirement of the 1907 Act that limited partnerships must register with the CRO. A limited partnership may have up to 20 partners with some exceptions. There must be at least one general partner with unlimited liability. The general partner may be an individual or a company. A limited partner may be an individual or a company. Limited partners must make a capital contribution to the partnership and their liability is limited up to that amount.

⁷¹ Provided by the Revenue Commissioners

Limited partners may not be a part of the management of the firm and retain their limited liability. Where a limited partner is part of the management of the firm he/she/it is liable as if a general partner. A limited partnership does not have a separate legal personality.

Limited partnerships are tax transparent; that is the partners rather than the partnership are taxable. Limited partnerships are generally not required to file accounts. However, limited partnerships that have effectively limited their liability through the use of limited liability companies in their structures are required to file annual accounts with the CRO.

The limited partnerships listed on the register carry out a range of activities including property investment, filmmaking, fund management, aviation and general and wholesale trading. A limited partnership can be simple, with a small number of partners or one element of a multi-layered structure.⁷²

Several investment funds use the 1907 Act. These funds do not require full authorisation from the Central Bank under the Alternative Investment Fund Managers Directive (AIFMD) but, subject to specific requirements, are required to register the fund with the Bank.⁷³

Many venture capital funds operating in Ireland are structured as limited partnerships. Enterprise Ireland and the Ireland Strategic Investment Fund (ISIF) have invested significant amounts in such structures in partnership with the private sector.

TABLE 2 LIMITED PARTNERSHIPS REGISTERED TO CRO 2019.⁷⁴

Up to Year End	Number
2019	2,926

Limited liability partnerships

The Minister for Justice and Equality signed the relevant order to commence Chapter 3 of Part 8 of the Legal Services Regulation Act 2015 on the 7th of October 2019 which enables limited liability partnerships (LLPs). The Legal Services Regulatory Authority (LSRA) issued the supporting Legal Services Regulation Act 2015 (Limited Liability Partnerships) (Section 130) Regulations under S.I. No. 519 on the 23rd of October 2019. These can be accessed on the Irish Statute Book website alongside the main provisions of the 2015 Act. The LSRA began accepting applications from solicitor partnerships (which are able to function under existing law) to operate as LLPs on 1st November 2019. As at 20 April 2020, 133 partnerships of solicitors have been authorised to operate as limited liability partnerships.

While section 99 of the Legal Services Regulation Act 2015 defines a 'relevant business' which can opt for limited liability status as either (a) a partnership of solicitors, or, (b) a legal partnership, only limited liability partnerships for solicitors are in operation at this time. This is because a technical amendment is necessary to the 2015 Act to enable the wider introduction of legal partnerships, the original provision having run out of time. This amendment forms part of the General Scheme for a new Courts and Civil Law Miscellaneous Bill recently agreed by

⁷² DEBI Consultation Paper on Limited Partnerships. <https://dbei.gov.ie/en/Consultations/Consultations-files/Review-of-Limited-Partnerships-Act-1907.pdf>

⁷³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0061>

⁷⁴ Provided by the Revenue Commissioners

Government and submitted to the Office of the Parliamentary Counsel for detailed drafting with a view to introducing it to the Houses of the Oireachtas during 2020.

Legal Partnerships (between barristers themselves or between barristers and solicitors) will not come into operation until the relevant amendment and commencement have been made. They will have to operate under specific new regulations for Legal Partnerships to be issued by the Legal Services Regulatory Authority. They will also be subject to the new requirements for the operation of limited liability partnerships should they apply to the Authority to function in that capacity.

Given the recent creation of this legal structure, relevant ML/TF risks have not been assessed at this time.

Investment Limited Partnerships have been considered earlier in the report.

Risk Scenarios and ML/TF Vulnerabilities

International Threat

The SNRA notes that criminals may seek to create complex structures involving many jurisdictions, in particular using jurisdictions with secretive chains of ownership where the owner of another company or another legal structure is registered elsewhere.

The UK NRA in 2015 and 2017 noted that criminals had exploited Scottish limited partnerships (SLPs) as part of ML schemes.⁷⁵

It is worth noting that SLPs have separate legal personality and the UK NRA concluded these structures were attractive to criminals due in part to this fact.

As Limited Partnerships in Ireland do not have a separate legal personality, they face the same risk of international threat of misuse to ordinary partnerships.

International criminals or OCGs may have vague intentions to exploit ordinary partnerships and limited partnerships in Ireland for ML. These structures are difficult to access and/or may cost more than other options and could be perceived as unattractive and/or insecure. Criminals have some of the necessary capabilities to exploit these structures. The use of these structures requires more planning, knowledge and/or technical expertise than other options.

There has been no evidence of the misuse of these structures for International TF purposes.

Domestic Threat

Domestic criminals or OCGs may have vague intentions to exploit these legal structures in Ireland for ML. These structures are difficult to access and/or may cost more than other options and could be perceived as unattractive and/or insecure. Criminals have some of the necessary capabilities to exploit these structures. The use of these structures requires more planning, knowledge and/or technical expertise than other options.

There has been no evidence of the misuse of these structures for domestic TF purposes.

The overall level of both International and Domestic ML threat for these legal structures considered as **moderately significant**.

The level of both International and Domestic TF threat for these legal structures is considered as **lowly significant**.

⁷⁵ UK 2017 NRA, pages 7 and 62,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf

Established and potential mitigants

Ordinary partnerships must register for tax purposes with the Revenue Commissioners.

Limited partnerships must be registered with the Registrar of Companies in accordance with the 1907 Act. There are additional requirements as part of the registration process where the general partner is a non-EEA national and where the general partner or limited partner is a company which is not registered on the Irish register of companies.

Changes in registration details should be notified to the Registrar within seven days, including changes in the firm name, general nature of the business, principal place of business and the name of any partner. Failure to do so is subject to a fine on summary conviction under the Act. The business name of the limited partnership should also be registered in accordance with the Business Names Act 1963.

It is a requirement of the 1907 Act that each limited partnership statement of registration and any changes, which includes names of partners, principal place of business, duration of partnership etc. is publicly available. These and other filings by limited partnerships may be sought from the Companies Registration Office (CRO).⁷⁶

In 2019, the Department of Business, Enterprise and Innovation carried out a public consultation seeking views on the Limited Partnerships Act 1907, given the significant developments in laws governing business activity since its enactment and the recent increase in registrations. Views were sought on a range of proposals. Arising from the public consultation, that Department is currently developing draft legislative proposals in relation to limited partnerships.⁷⁷

When these legal structures are considered, deterrence measures and controls exist and are reasonably effective at deterring money laundering and financing terrorism. The sector has an organisational framework to address ML/TF risks, as outlined above, although it has some exposure to the risks of ML/TF.

Taking account of the mitigants set out above, the level of ML vulnerability related to these legal structures is considered to be **moderately significant**.

Taking account of the mitigants set out above, the level of TF vulnerability related to these legal structures is considered to be **lowly significant**.

Residual risk

These legal structures are assessed as holding a **medium-low** residual risk for ML

These legal structures are assessed as holding a **low** residual risk for TF.

⁷⁶ <https://www.cro.ie/Publications/LTD-Partnerships>

⁷⁷ <https://dbei.gov.ie/en/Consultations/Public-Consultation-on-the-Limited-Partnerships-Act-1907.html>

Conclusions

This assessment considered the overall residual risks of the legal structures capable of being established in Ireland being misused for the purposes of money laundering and terrorist financing (Table 1).

It assessed the domestic and international ML and TF threats facing a legal structure (or group of structures as appropriate). It evaluated the particular vulnerabilities and mitigating measures to those threats. (Table 2) The findings of the SNRA were considered when making these assessments.

The residual risk ratings assigned in this assessment may well change when they are next reviewed, either due to changes in regulation or changes in the misuse of legal structures by criminals. Criminals may change behaviour due to changes in the legal environment of a given jurisdiction, the perpetrators' type of expertise and convenience purposes.

The interconnection of central beneficial ownership registers is an upcoming development under the fifth Anti-Money Laundering Directive. Future assessments will consider the effectiveness of these measures in reducing the vulnerabilities of some of the legal structures discussed in this assessment.

TABLE 1. RESIDUAL (FINAL) RISK RATINGS:

ML and TF Ratings / Structure	Residual (Final) Money Laundering Risk Rating	Residual (Final) Terrorist Financing Risk Rating
Companies	Medium High	Medium High
Funds Structures	Medium High	Medium Low
SPE Securitization	Medium High	Medium Low
SPE Non-Securitization	High	Medium Low
Express Trusts (Other)	Medium Low	Medium Low
Charitable trusts	Medium Low	Medium Low
Welfare and Community Trusts	Low	Low
Pension Trusts	Low	Low
Employee Share Schemes	Low	Low
Partnerships	Medium Low	Low

TABLE 2. THREAT AND VULNERABILITY RATINGS:

ML and TF Ratings/ Structure	ML Threat Rating	TF Threat Rating	ML Vulnerability Rating	TF Vulnerability Rating
Companies	Significant	Moderately Significant	Significant	Significant
Funds Structures	Significant	Lowly Significant	Significant	Moderately Significant
SPE Securitization	Significant	Lowly Significant	Significant	Moderately Significant
SPE Non-Securitization	Significant	Lowly Significant	Very Significant	Moderately Significant
Express Trusts (Other)	Moderately Significant	Lowly Significant	Moderately Significant	Moderately Significant
Charitable trusts	Moderately Significant	Significant	Moderately Significant	Moderately Significant
Welfare and Community Trusts	Lowly Significant	Lowly Significant	Lowly Significant	Lowly Significant
Pension Trusts	Lowly Significant	Lowly Significant	Lowly Significant	Lowly Significant
Employee Share Schemes	Lowly Significant	Lowly Significant	Lowly Significant	Lowly Significant
Partnerships	Moderately Significant	Lowly Significant	Moderately Significant	Lowly Significant



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