

THE NEW ITALIAN REGISTER OF BENEFICIAL OWNERS

Foreword

The official register of beneficial owners of enterprises with legal personality (referred to as companies in the following), private legal entities, trusts, and similar legal arrangements has become operational at the Italian chamber of commerce (the "**Register**"). On 9 October 2023, the Ministry of Enterprises and Made in Italy confirmed the system's up and running status by issuing the final implementing provisions required by decree no. 55/2022 of the Ministry of Economy and Finance, which established the Register (pursuant to Article 21 of Legislative Decree no. 231/2007 and EU Directives no. 2015/849 and no. 2018/843 on the prevention of money laundering and terrorist financing). The Register comprises an "ordinary section" for companies and private legal entities and a "special section" for trusts and similar legal arrangements.

The Register represents an innovative and cutting-edge system in the fight against money laundering and terrorist financing, making the Italian legal framework one of the most advanced internationally. It will also be interconnected with the central registers of EU member States and the European Economic Area, enhancing the exchange of information on beneficial owners among competent authorities.

As a result, companies and managers of Italian and foreign entities having a qualified presence in Italy must promptly analyze their organizational structure, identify the obligations arising from these new rules concerning beneficial owners, and assess any other relevant consequences, including tax implications.

The beneficial owner

According to Italian anti-money laundering regulations, the beneficial owner of companies and entities is the natural person who directly or indirectly owns or controls or ultimately has the legal representation of the same. Other and more specific criteria may apply depending on the characteristics of the entity involved, such as for trusts and similar legal arrangements.

In other cases, such as Italian and foreign investment funds, a clear legal framework and established practices are still lacking. Finally, for complex and international corporate structures, the identification of the beneficial owner requires a detailed analysis of ownership chains, administrative rights of shareholdings, and the nature of the relevant investment vehicles.

At the international level, the identification of the beneficial owner also refers to the guidelines issued over the years by the Financial Action Task Force (FATF), one of the main instruments for interpreting anti-money laundering regulations.

Deadlines

The deadline for the first filing to the Register of the beneficial owner's identity is **11 December 2023**. This filing must be made by: (i) directors of companies; (ii) founder, if alive, or legal representatives for private legal entities; (iii) trustees for trusts and similar legal arrangements.

For companies, private legal entities, trusts, and similar arrangements established **after 9 October 2023**, the first filing should be made **within 30 days**.

Any changes in data and information regarding the beneficial owner must be filed **within 30 days** following the relevant deed/action. The data submitted to the Register should be confirmed **within 12 months** from the first filing or the last update (companies may make this confirmation upon the submission of their financial statements).

Information to be filed with the Register

For companies resident or established in Italy, the following information must be filed to the Register for each beneficial owner: personal details, citizenship, residence, domicile, tax registration number, and the percentage of ownership or the type of control or the legal representation powers.

For trusts with relevant effects in Italy and similar arrangements, established or resident in Italy, the following information must be filed:

- regarding each beneficial owner: personal details, citizenship, residence, domicile, tax registration number;
- regarding the trust or similar arrangements: name, tax registration number, date, place, and details of the deed of incorporation.

Additionally, exceptional circumstances justifying an exclusion or limitation of public access to data in the Register should be communicated if the beneficial owner is exposed to a disproportionate risk of fraud, harm, kidnapping, blackmail, extortion, harassment,

violence, or intimidation, or if they are a minor or incapacitated person (referred to as "counter-interested parties").

Data and information on beneficial ownership are communicated through a qualified self-declaration which must be filed with the competent office of the chamber of commerce holding the Register.

The communication of the beneficial owner must be filed electronically through specific applications allowing digital signature. A Delegation to third parties of the digital signature is not allowed.

Access to the Register – authorized persons

The information shown in the Register is accessible to:

- public authorities (including tax authorities);
- entities obliged to carry out anti-money laundering due diligence, after an identification procedure;
- the public that can demonstrate a legitimate interest (in line with recent case law from the Court of Justice of the European Union – joint cases C-37/20 and C-601/20).

Public access to the data of counter-interested parties is granted following an authorization procedure before the competent office of the chamber of commerce.

Moreover, through the European interconnection system known as "BORIS," the Register can be accessed by competent authorities and entities obliged to carry out anti-money laundering due diligence in other EU member States or the European Economic Area.

Penalties

At the administrative level, failure to communicate the data of the beneficial owner is subject to penalties up to Euro 1,032. Inspections are carried out by the competent office of the chamber of commerce which also applies the relevant penalties. Additionally, entities obliged to carry out anti-money laundering due diligence that identify mismatches in the data recorded in the Register are required to report these mismatches to the competent office of the chamber of commerce.

At the criminal level, since the communication of the beneficial owner to the Register is made through a qualified self-declaration, anyone providing false statements, creating false documents, or using them in cases prescribed by the law can be punished. Additionally, the use of a document containing false information corresponds to the use of a false document.

At the corporate level, directors, if unable to collect data on beneficial ownership, can request such information from shareholders. In the cases of inaction, unjustified refusal, or indications of manifestly fraudulent information, shareholders may lose their voting rights and resolutions taken with the decisive vote of these shareholders can be challenged.

How we can help

The new obligations concerning the Register add to the existing rules and best practices in place since years for the identification of beneficial owners of companies and entities for anti-money laundering regulations at the domestic and international level.

The increased level of compliance and disclosure regarding information about beneficial owners of companies and entities (such as trusts and investment funds) and the new penalties require Italian and foreign companies and asset managers to conduct a thorough legal analysis concerning their organizational structure and determine, among others:

- which entities are required to make communications to the Register;
- which trusts have significant effects in Italy;
- how to accurately identify the beneficial owner;
- how to adequately protect the information about the beneficial owner subject to disclosure to the Register;
- any potential implications in other areas of law, including domestic and international taxation for the parties involved.

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