

OBLIGATION TO NOTIFY ULTIMATE BENEFICIAL OWNER NOW IN FORCE IN ITALY

23 OCTOBER 2023 • ARTICLE



The detailed regulations concerning the “*beneficial ownership register*” in the Italian Companies’ Registers were originated by the Anti-Money Laundering Decree 231/2007 deferring it to implementing decrees, including the Ministerial Decree No. 55/2022 (on disclosing, accessing, and consulting data on beneficial ownership), and came into force on 9 October with the publication in the Official Gazette of the Ministerial Decree issued on 29 September 2023 and is now enforceable.

"Beneficial owners' are now required to disclose their status in the relevant Italian Business Register."

As a result, “*beneficial owners*” are now required to disclose their status in the relevant Italian Business Register.

Determining who is the beneficial owner differs depending on the type of person in question. Specifically, for:

- companies with legal personality, this will be the natural person(s) that direct or indirect ownership can be attributed to and who, in the case of corporations, will

meet any of the following criteria:

- directly or indirectly own a 25%+ stake in the business;
- control the majority of votes that can be exercised at an ordinary shareholders’ meeting or control enough votes to exercise a dominant influence at an ordinary shareholders’ meeting; or
- control enough votes to have a dominant influence based on the existence of specific contractual provisions or other arrangements ; or
- hold, in accordance with the relevant organisational structures, power of legal representation, administration or management of the company;

- partnerships, foundations and other institutions of a private nature which have legal personality (i.e. private legal entities), beneficial ownership is attributed to all founders, beneficiaries and holders of powers of legal representation, management and administration; and
- trusts and similar legal arrangements, beneficial ownership is attributed to all settlors, trustees and, where existing, beneficiaries and other natural persons exercising control over the trust or similar legal arrangement and any other natural person ultimately exercising control over the property vested in the trust or similar legal arrangement through direct or indirect ownership or through other means.

Individuals subject to disclosure obligations (i.e. directors of companies with legal personality, founders, individuals with representation and administration powers of private legal entities and trustees of trusts) must submit details identifying the beneficial owner along with further specific information for:

"All Italian companies that have already been incorporated are required to identify and then disclose their beneficial owner."

- (i) enterprises with legal personality (i.e. ownership interest, method of control, powers of representation, administration);
- (ii) private legal entities (i.e. tax code, name, registered/administrative office, certified email (PEC)); and
- (iii) trusts (i.e. tax code, name, date, place and certificate of incorporation).

Disclosure must be made by the beneficial owners themselves (no proxy being allowed) and must be submitted to the Italian Companies' Register electronically with a declaration in lieu of an affidavit (this can be done via the "Telemaco" service

using a single enterprise disclosure template in the new "DIRE" application), with a digital signature and the certified email (PEC) of the party subject to the obligation, and be made:

- (i) by 11 December 2023 for companies incorporated prior to 9 October 2023; and
- (ii) within 30 days of incorporation for companies incorporated on and after 10 October 2023.

The following are allowed access to information regarding beneficial owners in the Italian Companies' Register:

- (i) Italian public authorities;
- (ii) those permitted under the Anti-Money Laundering Decree upon application for accreditation to the Italian Companies' Register (e.g. professionals, financial advisors, banks, securities, asset management and trust companies, insurance companies etc.); and
- (iii) the public, upon request.

Financial penalties will be applied if these obligations are not complied with. As a result, all Italian companies that have already been incorporated are required to identify and then disclose their beneficial owner(s), whether Italian or foreign, as soon as possible. Shareholders and beneficial owners of newly incorporated companies will want to take these disclosure requirements into account during the incorporation process.

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