

# **Register of beneficial owners - Ministerial Decree no. 55 dated 11 March 2022**



# In evidenza

## Provisions on the submission, access and consultation of data and information on beneficial ownership

### Foreward

Ministerial Decree no. 55 dated 11 March 2022 introduced provisions on the submission of information on beneficial owners of businesses incorporated as legal entities required to register with the Companies' Register pursuant to art. 2188 of the Italian Civil Code, of private legal entities required to register with the Register under Presidential Decree no. 361/2000, of trusts having relevant legal effects for tax purposes and of legal arrangements similar to trusts.

The information submitted based on the abovementioned Decree will be kept in dedicated sections of the Companies' Register.

### Articles 20 and 21 of Legislative Decree no. 231/2007

Legislative Decree no. 125 dated 4 October 2019 introduced amendments to Legislative Decree no. 231/2007 (so-called Anti-Money Laundering Decree) and, in particular, it entirely replaced Section II (Obligations). For the purposes of this analysis, it is worth mentioning that Section I (Due Diligence Obligations) with articles 20, 21 and 22, introduced significant innovations regarding the need to collect accurate and up-to-date information on beneficial owners. This need is considered a crucial element to trace criminals who could otherwise conceal their identity behind a corporate structure and thus use the business for money-laundering and/or terrorist financing purposes.

In particular, Article 20 sets forth that the beneficial owner of clients other than individuals corresponds to the natural person or persons whom the direct or indirect ownership of the entity or its control can ultimately be attributed to.

In case of a joint-stock company, a direct ownership is identified when a natural person holds more than 25% of the company's capital, also through subsidiaries, trusts or individuals. Should it not be possible to unambiguously identify the direct or indirect ownership of an entity, the beneficial owner will be the person controlling the majority of voting rights in the shareholders' meeting, having sufficient voting rights to exercise a dominant influence on the ordinary shareholders' meeting, or exercising a dominant influence thanks to specific contractual obligations.

In case of a private legal entity, the beneficial owners are cumulatively identified as the founders, if still alive, the beneficiaries, when identified or easily identifiable, the holders of powers of legal representation, management and administration.



Should the application of the criteria above not allow to unambiguously identify one or more beneficial owners, then the beneficial owner will be the natural person or persons holding, in accordance with the relevant organisational or statutory structures, legal representation, administration or management powers of the company or client other than a natural person. Obligated entities must keep track of the checks performed to identify the beneficial owner as well as, with specific reference to the beneficial owners identified, evidence of the reasons which allowed to identify them, in compliance with the provisions above.

Article 21 provides for that businesses incorporated as legal entities required to register with the Companies' Register under art. 2188 of the Italian Civil Code and private legal entities other than companies, required to register with the Register of private legal entities under Presidential Decree no. 361 dated 10 February 2000, submit to the Companies' Register - electronically and without the application of stamp duties - information relevant to their beneficial owners, for the purposes of their storage in a dedicated section. Fines ranging from Euro 103 to Euro 1,032 apply in case of failure to proceed with the notification above, in compliance with art. 2630 of the Italian Civil Code.

### **Decree by the Ministry of Economics and Finance dated 11 March 2022 no. 55**

In order to implement the provisions of art. 21 of the Anti-Money Laundering Decree, Decree no. 55 by the Ministry of Economics and Finance dated 11 March 2022 was approved and published in the Official Journal no. 121 of 25 May 2022.

Said regulation, in order to "prevent and address the use of the economic and financial system for the purposes of money laundering and terrorist financing, sets forth provisions to be implemented only electronically".

The submission of information, as well as the notification of changes and confirmation of data and information on beneficial ownership, are to be made through a self-declaration pursuant to articles 46 and 47 of Presidential Decree no. 445/2000. All submission are to be made using the form called "Comunicazione Unica di impresa".

The full implementation of the provisions above is in any case subject to a series of decrees and provisions which will have to be adopted in the next months, and whose timing seem to be indicative rather than mandatory.

- within thirty days from the date of entry into force of the abovementioned Decree, the processor, on behalf of the data controller (the data controller is, in this case, the local Chamber of Commerce competent for the receipt of information), drafts technical guidelines on personal data protection;
- within sixty days from the date of entry into force of the abovementioned Decree, another Decree by the Ministry of Economics and Finance is to be issued, identifying and later amending and updating the items and amounts relevant to administration fees for the fulfilments indicated in the Decree itself;
- within sixty days from the date of entry into force of the same Decree, technical specifications on the electronic Comunicazione Unica form will be adopted with a managerial Decree by the Ministry of Economic Development;
- again, within sixty days from the date of entry into force of the Decree, and in any case further to the decrees and provisions above, the provision by the Ministry of Economic Development will be published in the Official Journal, certifying the functioning of the system for filing data and information on beneficial ownerships.

The submissions of data and information on beneficial ownership will be performed within sixty days following the publication of the latter Decree.

## Access by obliged entities

The obliged entities under art. 3 of the Anti-Money Laundering Decree, after accreditation, can access the autonomous section and the special section of the Companies' Register to consult data and information on the beneficial ownership supporting the fulfilments relevant to the customer due diligence.

The application for accreditation is filed by the obliged entity with the competent local Chamber of Commerce and it has to include:

1. evidence of the applicant's belonging to one or more categories among those included in art. 3 of the Anti-Money Laundering Decree;
2. its identifying data, including the certified electronic email address (so-called PEC) and those of the legal representative in case of a legal entity;
3. the indication of the competent supervisory authority or of the self-regulatory body and, if applicable, of the administrations and entities involved;
4. the purposes of the use of data and information on beneficial ownership to support customer due diligence fulfilments.

The accreditation grants access for two years starting from the date of the first accreditation or of its express renewal. Any possible change to the status of obliged entity or its termination are notified within ten days.

Once the accreditation is obtained, the obliged entity, without prejudice to its liability to comply with the purposes of the consultation, can appoint proxy holders within its organisation to access the system.

## Access by the authorities

Access is granted to:

1. the Ministry of Economics and Finance, the industry supervisory authority, the Italian Financial Intelligence Unit, the Anti-mafia Investigation Department, the Financial Police operating in the cases provided by the abovementioned Decree through the Currency Police Unit, without restrictions;

2. the national anti-mafia and counter-terrorism Directorate;
3. the courts, in accordance with their institutional responsibilities;
4. the authorities in charge of fighting tax evasion, according to access methods suitable to guarantee the attainment of said purpose, laid down in a dedicated Decree by the Ministry of Economics and Finance jointly with the Ministry of Economic Development.

As far as information relevant to the beneficial ownership of trusts is concerned, access is granted to:

1. the Ministry of Economics and Finance, the industry supervisory authority, the Italian Financial Intelligence Unit, the Anti-mafia Investigation Department and the national anti-mafia and counter-terrorism Directorate, without restrictions;
2. the courts in the performance of the relevant institutional tasks under the regulation currently in force;



3. the authorities in charge of fighting tax evasion, according to access methods suitable to guarantee the attainment of said purpose, laid down in a dedicated Decree by the Ministry of Economics and Finance jointly with the Ministry of Economic Development.

Le modalità tecniche e operative dell'accesso  
The technical and operational access methods are regulated by a dedicated convention undersigned by each authority with Unioncamere and the processor.

### Access by other subjects

The data and information on the beneficial ownership of businesses incorporated as legal entities and of private legal entities included in the autonomous section of the Companies' Register can be accessed by the public upon request and without limitations, except for those cases in which the obliged entity expressly required the confidentiality of said data occurring the exceptional circumstances under art. 21, para. 2, letter f) of the Anti-Money Laundering Decree.

In case of exceptional circumstances, access to information on the beneficial ownership of business incorporated as legal entities and of private legal entities can actually be prevented, wholly or in part, should it expose the beneficial owner to a disproportionate risk of fraud, abduction, ransom, extortion, harassment, violence or intimidation, or in case the beneficial owner is legally incapacitated or a minor.

The data and information on the beneficial ownership of trusts and of legal arrangements similar to trusts to be registered in the dedicated section are made available to any natural or legal person, including bearers of diffuse interests, authorised to access them based on art. 21, para. 4, letter d-bis) of the Anti-Money Laundering Decree, or when *“knowledge of information on the beneficial ownership is necessary to look after or to protect an interest corresponding to a legally protected situation, should there be concrete and documented evidence of discrepancies between beneficial ownership and legal ownership. The interest needs to be direct, concrete and current and, in case of entities bearing diffuse interests, it must not coincide with the interest of the individuals belonging to the represented category”*.

In exceptional circumstances, access to information on beneficial ownership of trusts and legal arrangements similar to trusts required to register with the dedicated section of the Companies' Register can be excluded, wholly or in part, should said access expose the beneficial owner to a disproportionate risk of fraud, abduction, ransom, extortion, harassment, violence or intimidation, or in case the beneficial owned is legally incapacitated or a minor, according on a case-by-case approach and further to a detailed evaluation of the exceptional nature of the circumstances.

Our professionals remain available for any further information requests.



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