

Register of beneficial owners: transparency as a deterrent

Expert's opinion

The many interconnected aspects around the beneficial owner

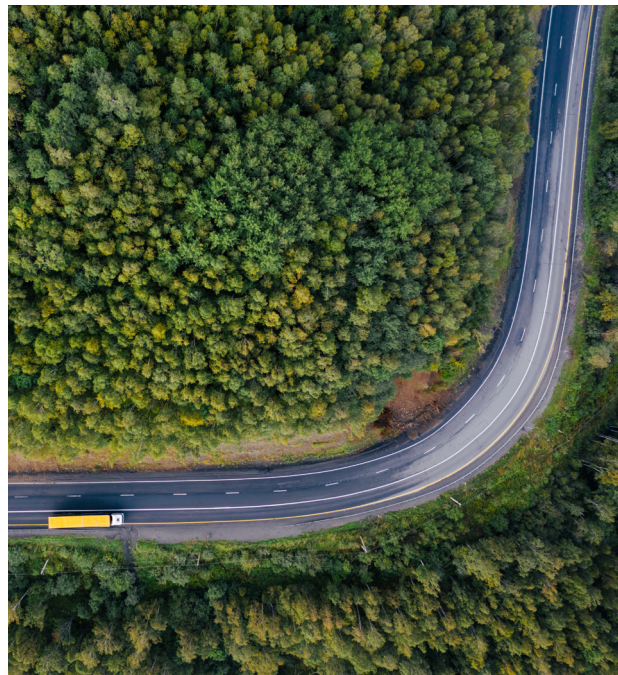
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The registration of the person identified as "beneficial owner" in a proper section of the companies' register is not a mere short-term fulfilment, but it rather implies interconnected and operating aspects. Both articles in this issue of TopHic point out specific technical aspects.

In this article, we would like to focus on the fact that the identification of the beneficial owner and the registration of the same in a proper section of the Companies' register is not a newly introduced provision, but it rather completes a process which started some years ago. This means that the regulation on beneficial owners has been already in force in our legal system and companies are already aware of the relevant disclosure obligations. Therefore, it is necessary to coordinate with former...

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Updates on the Register of Beneficial Owners

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Focus on

Register of the beneficial owners, the Ministry of Enterprises and Made in Italy will confirm its effectiveness

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A process aimed at optimizing instruments against money laundering of income from criminal activities and terrorist financing has been effective in all Member states for some years and Legislative Decree no. 231 dated 21 November 2007 and its further amendments and integration is part of this process. Ministerial Decree no. 55 dated 11 March 2022 introduced some provisions concerning the disclosure of information on beneficial owners of companies with legal personality which are subject to the obligation to register with the Companies' register under...

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Updates on the Register of Beneficial Owners

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Financial analyses and investigations carried out by the competent authorities show the increasing utilisation of complex corporate structures by organized crime and terrorist groups to hide the identity of the real beneficial owners of economic activities and financial flows.

Therefore, the distorted use of corporate structures qualifies as an important high-risk indicator.

While directive 2005/60/EC (third anti-money laundering directive, 3AMLD) focusses on the correct and accurate identification of the beneficial owner, the focus of directive (EU) 2015/849 (fourth anti-money laundering directive, 4AMLD) is transparency of information on beneficial owners.

3AMLD introduced more specific and detailed provisions on the identification and verification of the identity not only of the client, but also of the beneficial owner, and provides a precise definition of beneficial owner in order to facilitate the identification of the same.

Among the measures to reduce the risk of money laundering and terrorist financing, 4AMLD strengthens the rules for the identification of beneficial owners, on the one hand, and requires information on beneficial owners to be kept in proper centralized (and interconnected) registers in each Member state, on the other hand.

Acquiring, keeping and making adequate, precise, and updated information on beneficial owners available is crucial to identify criminals who could otherwise hide their identity behind opaque company structures.

After terrorist attacks in 2016, Directive (EU) 2018/843 (fifth anti-money laundering directive, 5AMLD), expressly identified transparency of companies as an unavoidable condition for the integrity of the EU financial system and strengthening of transparency as a powerful deterrent to money laundering and terrorist financing.

Hence access to information on beneficial owners of entities – including trusts and similar legal entities – must be extended as much as possible and consistently within EU countries through a system of dedicated central registers, such as commerce registers or companies' registers.

In particular, 5AMLD provides that information on beneficial owners must be always accessible to the public, to the competent authorities and to FIUs without any restriction, as well as to the entities subject to customer due diligence obligations.

However, the directive specifies that the public interest in transparency needs to be limited so to respect the fundamental rights of concerned persons, particularly, safeguard of private life and protection of personal data.



While the majority of Member states have already implemented the EU regulation in their domestic system, the establishment of the register of beneficial owners in Italy is going through a long and difficult process.

Legislative Decree no. 231/2007, modified by Legislative Decrees no. 90/2017 and 125/2019, which implement the fourth and fifth anti-money laundering directive, respectively, originally established the general rules concerning the filling in of and the access to the register of beneficial owners and referred to a proper decree of the Ministry of Economy and Finance together with the Ministry of Economic Development for the detailed regulation.

A first draft of the implementation decree was subject to a public consultation at the end of 2019, but the provision came to light only with the publication of Ministerial Decree no. 55/2022 in the Official Gazette on 25/05/2022, which became effective on 09/06/2022.

A further amendment was necessary following the judgment of the Court of Justice of the European Union dated 22/11/2022 in the joint WM (C-37/20) and Sovim SA (C-601/20) cases, which set aside the obligation introduced by 5AMLD, according to which Member states should make accessible to the public all information on the beneficial owners of legal persons included in central registers in any case.

According to the Luxembourg court, an unlimited public access represents a serious breach of the fundamental rights of safeguard of private life and protection of personal data provided under art. 7 and 8 of the Charter of Fundamental Rights of the European Union and does not represent a necessary and proportioned measure compared to the prevention objective pursued.

Pending a regulatory adjustment to the Court judgment, the Ministry of Enterprises and Made in Italy, in accordance with the Ministry of Economy and Finance, acknowledged the disapplication of the provisions concerning public access to data on beneficial owners of companies and of private legal entities and limited access to the same, as provided for trusts and similar legal entities, and adopted “simplified” certification models.

Currently, the good functioning of the Italian register of beneficial owners is subject to the preparation of the specifications of Infocamere S.c.p.a. on general data protection and the implementation of the order of the Ministry of Enterprises and Made in Italy attesting the effectiveness of the communication system.

For further details on the contents of Ministerial Decree no. 55/2022, [please refer to our alert on Clever Desk.](#)



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In this article, we would like to focus on the fact that the identification of the beneficial owner and the registration of the same in a proper section of the Companies’ register is not a newly introduced provision, but it rather completes a process which started some years ago.

This means that the regulation on beneficial owners has been already in force in our legal system and companies are already aware of the relevant disclosure obligations. Therefore, it is necessary to coordinate with former fulfilments before proceeding with the registration of the beneficial owner with the Companies’ Register.

The regulation on beneficial owners derives from Legislative Decree no. 231 of 2007, known as “anti-money laundering” law.

However, some specifications need to be made.



The beneficial owner is the individual who holds a share higher than 25% in the capital of companies, private legal persons, trusts producing legal effects being relevant for tax purposes, and, more generally, of entities (art. 3 of Ministerial Decree no. 55/2002). In other words, it is the person holding “control on management”.

As already mentioned, there are already some specific situations in which entities are obliged to declare their beneficial owner: the most frequent one is that requiring entities to notify banks and credit institutions the person qualified as beneficial owner. The same obligation is valid in case of advisory received from notaries, chartered accountants, lawyers, and other professionals that are required by law to identify the beneficial owner before starting their professional/commercial relationship.



Another important specification is that the law provides that the main effort to acquire data needed to identify the person qualified as beneficial owner is on the client who starts the relationship, who, as said above, needs to disclose the relevant information to banks, professionals, or other entities who are subject by law to the beneficial owner identification fulfilment. In other words, the main source of data and information needed to fulfil the obligations provided by law is represented by the declarations of clients under their personal liability (art. 22 of Legislative Decree no. 231/07).

Law specifically provides that should it not be possible to identify the beneficial owner, the legal representative of the concerned company or entity must be indicated.

Furthermore, the latest regulatory updates that have led to the obligation to register the beneficial owners in the proper section of the Companies' register imply for directors of companies the requirement to obtain proper, accurate and updated information on the beneficial owners and to keep them for at least 5 years. The collection of such information clearly give rise to the subsequent registration of the person identified as beneficial owner with the proper section of the Companies' register.

One last aspect we would like to specify regards the case in which the beneficial owner is on top of a participating chain of related companies, which is usually the case of groups.

In such cases, it is necessary to reach the top (e.g. in case the identification is on the last subsidiary at the bottom of the chain) and there is a doubt on whether the >25% share is to be calculated by dividing the share percentage at any level of the chain starting from the ultimate subsidiary up to the beneficial owner, or by only considering the >25% share, where present, without any reducing calculation; The prevailing opinion is that the >25% share should be calculated without any reduction and by tracing the beneficial owner "step by step", checking for the presence of a share higher than 25% at each step of the group, from the bottom to the top.

As it can be understood, the issue is quite complicated and involves corporate law, tax, as well as other principles, thus requiring a careful coordination.

In fact, the obligation to disclose information on the beneficial owner is provided for the first time (in some cases) starting from tax returns relevant to year 2022, to be filed within November 2023.

In compliance with the provisions of EU regulations for recovery and resilience to safeguard EU financial interests, information is required to identify the beneficial owners of recipients of funds, in compliance with the no double financing rule. Specifically, data on beneficial owners of funds must be indicated in a proper section of the tax return – the tax authorities specify that the beneficial owner is meant as the person qualified as such under the anti-money laundering regulation.



Therefore, a coordination between the corporate fulfilment relevant to the registration of the beneficial owner in the Companies' register and the tax fulfilment concerning the indication of the same beneficial owner in the tax return is required.

Moreover, the registration of the beneficial owner in the Companies' register must coordinate with the disclosure of data on the beneficial owner to credit institutions, banks, and professional advisors. This implies that these subjects will need to ascertain the correspondence between the beneficial owner declared at the beginning of the financial and/or professional relationship and the beneficial owner indicated in the proper section of the Companies' register.

Lastly, the registration of the beneficial owner with the Companies' register should also coordinate with corporate operating fulfilments. Specifically, the law provides that, starting from the registration of the beneficial owner in the Companies' register, the same beneficial owner must also be recorded in the minutes of shareholders' meetings (and also declared at the beginning of the meeting), since any possible irregularity makes it impossible to exercise the voting right and to contest resolutions under art. 2377 of the Italian Civil Code.

In the light of the above, is clear that the new fulfilment is not a mere registration with the Companies' register, but rather a more complex requirement involving corporate, tax, financial, and professional aspects, besides liability issues (related to the disclosure of required information by the concerned persons and the retention of information by directors) that need to be carefully coordinated.



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A process aimed at optimizing instruments against money laundering of income from criminal activities and terrorist financing has been effective in all Member states for some years and Legislative Decree no. 231 dated 21 November 2007 and its further amendments and integration is part of this process.

Ministerial Decree no. 55 dated 11 March 2022 introduced some provisions concerning the disclosure of information on beneficial owners of companies with legal personality which are subject to the obligation to register with the Companies' register under art. 2188 of the Italian Civil Code, of private legal persons subject to the obligation to register with the Companies' register under Presidential Decree no. 361/2000, of trusts producing legal effects being relevant for tax purposes, and of legal entities similar to trusts.

The effectiveness of the system has been subject to the issue of diverse implementation provisions, which have almost totally completed the application framework of the so-called "Register of beneficial owners".

To date, however, two provisions are still missing: i) a technical disciplinary provision, to be issued by InfoCamere S.C.p.A. and subject to a prior check by the Data Protection Supervisor, aimed to define proper technical and organizational measures to ensure a security level that is adequate to the relevant risk, pursuant to the domestic regulation on general data protection; ii) a provision by the Ministry of Enterprises and Made in Italy (MIMIT) to certify the effectiveness of the system, and all entities subject to the obligation will have to submit proper communications to the Companies' register within 60 days after its publication in the Official Gazette.

To date, the technical specifications of the electronic format for the disclosure of data on beneficial owners have been approved with decree by the Ministry of Enterprises and Made in Italy no. 93 dated 20 April 2023. This is one of the provisions under art. 3, para. 5 of Ministerial Decree no. 55/2022, establishing that communications relevant to beneficial owners must be submitted to the Office of the Companies' register through the so-called "Comunicazione unica d'impresa" form and include the technical specifications provided by the MIMIT.

Besides introducing the technical specifications, the above decree also provides indications on the accessibility of such information to the public. Judgment of the Court of Justice of the European Union dated 22 November 2022 declared as invalid art. 2, point 5, letter c) of Directive no. 2018/843, which provided that information on beneficial owners of companies and other legal entities are in any case accessible to the public.



In fact, there was no proof that public access to data included in the Register can allow achieving the objectives provided under the anti-money laundering regulation, but it can rather imply a breach of the right to safeguard private life, as well as of the right of general data protection provided under art. 7 and 8 of the Charter of fundamental rights of the European Union.

Through further decrees, published in Official Gazette no. 149 dated 20 June 2023 and dated 16 March 2023 and 20 April 2023, respectively, the forms for the issue of – even digital – certificates and copies relevant to information on beneficial owners and the amounts of administration fees for the fulfilments required at the Companies' Register office have been approved.

As mentioned above, the whole process is aimed at the identification of the beneficial owner, which represents the main difficulty that entities concerned by the anti-money laundering regulation must face – beyond following the technical operating procedures of the Register.

We would like to specify that the identification of the beneficial owner is not a consequence of the effectiveness of the Register, but it is an already established fulfilment, since it is one of the customer due diligence requirements under Legislative Decree no. 231/2007.

To this regard, Study 1_2023 B of the Anti-money laundering commission of the National Council of Notaries provides a synthesis of the complex and heterogeneous national and supranational regulation concerning beneficial owners.

A special note must be made on the procedure to identify the beneficial owner of private legal persons – which have legal personality as they are registered with the register provided under Presidential Decree dated 10 February 2000, no. 361 – also by virtue of what is provided for not-for-profit sector entities which, pursuant to art. 22 para. 1 del of Legislative Decree dated 3 July 2017, no. 117 acquire legal personality (departing from Presidential Decree no. 361/2000) through their registration in the Unified register of the not-for-profit sector (RUNTS - Registro Unico Nazionale Terzo Settore).

For such entities, the regulation identifies the following as possible beneficial owners:

- a) The founders, where alive;
- b) The beneficiaries, where identified or easily identifiable;
- c) The holders of legal representation, management and administration powers.

The above definitions, as specified in Study 1_2023 B previously mentioned, are more suited for foundations (where a still alive founder or explicit beneficiaries could be identified), while a beneficial owner could not be easily identifiable based on a quantitative or economic criterion.



Therefore, lacking easily identifiable beneficial owners, directors of associations should identify as beneficial owners all those persons holding legal representation, management, and administration powers, which is substantially the same result as that achieved based on a “residual” criterion (art. 20, para. 5 of Legislative Decree no. 231/2007), applicable to any non-natural person.

The same can be said for the identification of the beneficial owner of special entities, such as widely held cooperatives, where voting rights disregard the participating share held. In fact, since neither a >25% share, nor the


person holding control of the company can be determined, the beneficial owner is identified as the person holding representation or administration powers.

In conclusion, the Ministry of Enterprises and Made in Italy will soon make the Register of beneficial owners effective. Such register will include the information resulting from customer due diligence activities carried out by all entities subject to the application of the anti-money laundering regulation. The omitted communication of information on beneficial owners to the Companies’ register will be punished with a fine ranging from 103 to 1.032 Euro.

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