

Duty to Communicate Beneficial Owner/s by December 11, 2023

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The Decree of September 29, 2023 of the Ministry of Enterprises and Made in Italy, validating the operation of the communication system for data and information on beneficial ownership, was published in the Official Gazette.

This concludes the long and troubled regulatory process for the establishment of the Register of Beneficial Owners introduced by Legislative Decree no. 90 of May 25, 2017, implementing Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

As required by the Joint Decree of the Ministry of Finance and the Ministry of Economic Development no. 55/2002, within **60 days from the publication of the attestation, those who are obliged must communicate the data and information required by law to the Business Register.**

Now and therefore by **December 11, 2023:**

- (i) the directors of companies with legal personality,
- (ii) the founder (if still alive), or the persons responsible for the representation and administration of private legal entities (Foundations, Associations and recognized Committees);
- (iii) trustees or representatives of similar legal institutes.

must communicate the following data and information electronically through the DIRE system (the web service of the Chambers of Commerce for filing online Submissions and Requests to the Business Register) pursuant to art. 4 of Ministerial Decree 55/2022:

Companies:

identification data and citizenship of the natural persons identified as beneficial owner ("BO"), and based on the methods for defining the identification of ownership pursuant to art. 20 of Legislative Decree 231/2007, the following information must be provided:

- (i) the amount of the share capital owned by the BO(s); or
- (ii) the methods of exercising control; or
- (iii) the powers of legal representation, administration or management of the entity, exercised by the natural person identified as BO.

Foundations, Associations and recognized Committees:

- a) identification data and citizenship of the natural persons identified as BO;



- b) tax identification code of the entity;
- c) name of the entity;
- d) registered office and, if different, administrative office of the entity;
- e) certified e-mail address.

Trusts and similar legal institutes:

- a) identification data and citizenship of the natural persons identified as BO;
- b) tax identification code of the entity;
- c) name of the trust or similar legal institute;
- d) date, place and details of the deed of incorporation of the trust or legal institute.

The communication shall be made by filling in the "BO" form, approved by Decree of the Ministry of Enterprise and Made in Italy of April 12, 2023, which must be digitally signed by the obliged subject. **The transmission and digital signature of the communication cannot be delegated to a professional or service company.**

In the event of failure to submit the communication within the prescribed deadlines (unless they are reopened), the Chambers of Commerce will proceed with ascertaining and contesting the violation of the obligation to communicate data and information on beneficial ownership and with the imposition of the related administrative sanction, pursuant to Article 2630 of the Civil Code, according to the provisions of art. 5 of Law 689/91. Therefore, a fine ranging from €103 to €1,032 will be charged to each director.

Identification of the beneficial owner

The beneficial owner, pursuant to art. 1, paragraph 2, point pp) of Legislative Decree 231/2007, is defined as "*the natural person or persons who, other than the customer, ultimately own or control the customer and/or the natural person on whose behalf a transaction or activity is being conducted*". For entities other than natural persons, the BO is identified according to the procedures established by art. 20 of Legislative Decree 231/2007.

In particular, paragraph 2 of the aforementioned art. 20 of Legislative Decree 231/2007 establishes that for companies the beneficial owner is the natural person or persons who:

- (a) hold direct ownership of more than 25 percent of the capital of the entity;
- (b) own more than 25 percent of the shares of the entity through controlled companies, fiduciary companies or nominees.

The following paragraph 3 specifies that "*[i]n cases where the examination of the ownership structure does not allow the unambiguous identification of the natural person or persons to whom the direct or indirect ownership of the entity is attributable, the beneficial owner coincides with the natural person or persons to whom the control of the entity is ultimately attributable by virtue of: a) control of the majority of the votes exercisable in ordinary shareholders' meeting; b) control of votes sufficient to exercise a dominant*



influence in ordinary shareholders' meeting; c) the existence of particular contractual constraints that allow the exercise of a dominant influence". Finally, paragraph 5 provides that, as a last resort, "[i]f the application of the criteria set out in the preceding paragraphs does not allow to univocally identify one or more beneficial owners, the beneficial owner coincides with the natural person or persons who, in accordance with the respective organizational or statutory structures, hold powers of legal representation, administration or management of the company or client other than the natural person".

Pursuant to paragraph 4 of art. 20 of Legislative Decree 231/2007, with regard to "private legal entities", the following are cumulatively identified as BOs:

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

If, on the other hand, the BO is not identifiable in the above persons, pursuant to the aforementioned paragraph 5, the BO coincides with the natural person or persons who, in accordance with the respective organizational or statutory structures, hold powers of legal representation, administration or management of the entity.

Although the above, the identification of the BO can be complex and must be the subject of careful analysis, also in light of interpretations, some of which are unfortunately unofficial, which lead to differing conclusions.

Access to the Register

The register of beneficial owners can be accessed by the authorities, all subjects required to comply with anti-money laundering legislation, as well as the public and any natural or legal person. Access to information on beneficial ownership may only be denied in exceptional cases, in particular where such access would expose the beneficial owner to disproportionate risks or where the beneficial owner is an incapable person or a minor.

Quorum is available to provide all necessary assistance in relation to the new legislation, the identification of relevant information for the communication of beneficial ownership and the completion of related filings.