



Obligations of disclosure and notification of the beneficial owners to the Companies' Register. Is your company ready to comply with the new formalities required by the Italian Law?

The new obligations under the Italian Law for companies, non-commercial organizations and other entities to disclose the Beneficial Owners to the Companies' Register should come into force within the following months, when the implementing ministerial decree of MEF and MISE (Ministry of the Economy and Finance and Ministry of Economic Development) will be finally published.

The aim of this memorandum is to provide a general overview of the obligations of disclosure and notification of the information on the Beneficial Owners under the Italian Law in order to allow the companies and individuals falling within the scope of those rules to be ready to comply with them in due time.

- **The Italian legislation on anti-money laundering and the scope of the new obligations**

The Italian Legislative Decree no. 231 / 2007 (hereinafter also the "**Decree no. 231/2007**") provides the main provisions on the Italian legislation on anti-money laundering. The Decree n. 231/2007 has been amended recently in order to implement in Italy the related EU Anti-Money Laundering Directives.

Art. 21 para. I of the mentioned Decree no. 231/2007 listed the entities obliged to notify the information regarding their Beneficial Owners to the Companies' Register where they will be recorded in a special section: (i) companies (corporations, not partnerships), such as limited liability companies (S.r.l.), joint stock companies (S.p.A.), (ii) other entities (such as foundations and associations, enrolled in an ad hoc Register) and (iii) certain type of trusts (hereinafter the "**Obligated Entities**").

With respect to the companies, the directors shall have the obligation to notify the information on the Beneficial Owners to the Companies' Register. The directors shall collect the information from: (i) the accounting records; (ii) the financial statements; (iii) shareholders' book; (iv) communications received from shareholders; (v) communications to the ownership or control structure of the entity; (vi) any other suitable document in their possession; (vii) communications to the ownership or control structure of the entity; (viii) any other suitable document in their possession. In case of doubts on the identity of the beneficial owners, the directors shall have to submit a formal request for the information to the shareholders.

- **The definition of Beneficial Owner under the Italian Law**

The Decree n. 231/2007 defines the beneficial owner as the individual or individuals whom, ultimately, the direct or indirect ownership of the entity or the relevant control can be attributed.

The mentioned Decree clarifies that shareholding exceeding 25%, held by an individual in a company either directly or indirectly (i.e. through controlled companies, trust companies, or third parties) constitutes an indication of ownership.

If not unequivocally identified by those criteria, the beneficial owner(s) shall be identified with the individual(s) ultimately controlling the company by means of: (a) the control of the majority of the voting rights that can be exercised in the ordinary shareholders' meeting; (b) the control of a number of voting rights allowing to exercise a significant influence in the ordinary shareholders' meeting; (c) the existence of any shareholders' agreement allowing to exercise an ultimate influence in the company.

When the criteria referred to in the above paragraphs do not permit the identification of one or more beneficial owners, the beneficial owner(s) shall be individual(s) having the powers of legal representation, administration or management of the company.

- **The formalities to comply with the obligations of disclosure and notification of beneficial owners**

The information regarding the beneficial owner(s) shall be provided by the Obligated Entities to the Companies' Register only by electronic means and no stamp duty is due.

The information to be provided must include: (i) the identification data and nationality of the individual(s) indicated as beneficial owner(s); (ii) in case of companies, the extent of the shareholdings held by the beneficial owner(s) or the powers of legal representation administration or management of the entity of the same.

Any variation of the information on the Beneficial Owners shall be notified to the Companies' register within 30 days of the same. The information must be confirmed every year by the Obligated Entities.

In case of violation of the obligations of disclosure and notification of the information on the Beneficial Owners, fines can be applied. The Chambers of Commerce shall supervise the fulfillment of those obligations by the Obligated Entities and notify any infringement to the same.

- **Who will have access to the information regarding beneficial owner?**

The information will be accessible to the Obligated Entities and certain public authorities listed by art 21 of the Decree n. 231/2007. Any other individual can request access to the information on companies' beneficial owners, upon the payment of a secretarial fees. In case of trusts, the public access is not allowed, but for the specific reasons listed by art. 21 para 4 lett. (D) of Decree no. 231/2007.

For more information, don't hesitate to [get in touch with our team in Milano](#).