

Newsletter

Practice Area Private Clients, Trusts and Estates

The main novelties of the MEF decree on the register of beneficial owners

On May 25, 2022, the Ministry of Economy and Finance ("MEF"), by means of Decree No. 55 of 11 March 2022 (hereinafter, the "Decree"), published the regulation containing provisions on the disclosure, access and consultation of data and information on the beneficial ownership of companies with legal personality, private legal persons, trusts producing legal effects relevant for tax purposes and legal institutions similar to trusts, in the Italian Official Gazette.

The Decree, which implements Article 21, paragraph 5, of Legislative Decree No. 231 of 21 November 2007 (hereinafter, the "Anti-Money Laundering Decree", or "AML Decree"), finally regulates an instrument considered to be of significant importance in order to prevent and counteract the use of the economic and financial system for the purpose of money laundering and the financing of terrorism.

In order to be effectively operational, however, it will be necessary to wait for (i) the issuance of a series of implementing measures; and (ii) the establishment of a suitable IT system set up by InfoCamere S.C.p.A (hereinafter, the "InfoCamere Company") through which the fulfilments set out in the Decree will have to be carried out.

The main amendments introduced by the Decree, which will enter into force on 9 June 2022, are explained in more detail.

I **Notifications: obliged parties and starting date**

Pursuant to Article 3(1) and (2) of the Decree, the persons obliged to communicate information on beneficial ownership to the Companies' Register of the territorially competent Chamber of Commerce are:

- (i) the directors of companies;
- (ii) the founder, if alive, or the persons holding the power to legally represent, manage and direct associations or foundations;
- (iii) trustees of trusts having relevant fiscal effects in Italy under Article 73 of the Italian Income Tax Code.

Such persons are also required to notify any changes in the data and information relating to beneficial ownership within thirty days of the completion of the act entailing the change and, on an annual basis, confirmation of the data and information within twelve months of the date of the first notification or the last notification of their change or confirmation. Companies may provide such confirmation at the same time as filing the balance sheet.

The relevant communication will be made through the single business communication model, in electronic format.

As mentioned, for the reporting obligations to become full effective, it will be necessary to await the adoption of the following implementing measures:

- (i) executive decree of the Ministry of Economic Development, to be adopted within sixty days from the date of entry into force of the Decree, shall provide the technical specifications of the electronic format of the single business communication shall be defined;
- (ii) resolution of the Ministry of Economic Development, to be published in the Italian Official Gazette within sixty days of the date of entry into force of the Decree, shall certify the operability of the system for reporting data and information on beneficial ownership.

Notifications on beneficial ownership shall be made within sixty days after the publication of the resolution referred to in item (ii) above. Obligated entities established after the resolution referred to in item (ii) above shall make the disclosure within thirty days following their establishment/incorporation. It should be noted that the deadlines are mandatory, as are those for amendments and annual confirmation of data and information.

II Data to be communicated

Article 4(1) of the Decree sets out the data and information to be disclosed, which include:

- (i) the identification data and nationality of the natural persons indicated as beneficial owners for companies, private legal persons and trusts or similar institutions;
- (ii) the possible indication of exceptional circumstances (*inter alia*, in case the access to the information may expose the beneficial owner to risks of fraud, kidnapping,

- extortion, violence or intimidation) for the purpose of excluding access to information on beneficial ownership and the subjects against whom access is denied;
- (iii) in the case of companies, the size of the shareholding in the entity's capital held by the natural person indicated as the beneficial owner and, where the beneficial owner is not identified by virtue of the size of the shareholding, the manner in which control is exercised or, ultimately, the powers of legal representation, administration or management of the entity exercised by the person indicated as the beneficial owner;
 - (iv) in case of associations and foundations, the tax code, the entity's name, the legal seat and the legal certified email address;
 - (v) in case of trusts, the tax code, the trust name and the details of the trust deed.

III Access to beneficial ownership information

Articles 5, 6 and 7 regulate access to data and information by Authorities, obliged parties and other parties respectively.

With particular reference to access by the obliged persons referred to in Article 3 of the Anti-Money Laundering Decree, it is provided that they, subject to accreditation¹, shall have access to the autonomous section and the special section of the Companies' Register to consult the data and information on beneficial ownership in support of customer due diligence requirements.

Where discrepancies emerge between the beneficial ownership information obtained as a result of the consultation of the autonomous and special sections of the Companies' Register and that acquired during customer due diligence, the accredited obliged persons shall promptly report them to the territorially competent Chamber of Commerce pursuant to Articles 18 and 19 of the AML Decree.

Concerning access by other persons, Article 7 provides that data and information on the beneficial ownership of undertakings having legal personality and private legal persons are accessible to the public upon request and without limitation, while data and information on the beneficial ownership of trusts and similar legal institutions are made available to any natural or legal person, including those having diffuse interests, who is entitled to access pursuant to Article 21(4)(d-*bis*) of the AML Decree (*i.e.*, has a legitimate interest in accessing the information), on the basis of the submission to the territorially competent Chamber of Commerce of a reasoned request for access certifying the existence of the prerequisites. The territorially competent Chamber of Commerce grants

¹ Accreditation allows access for two years from the date of the first accreditation or the date of its express renewal. Any changes in the *status of* obliged parties or its termination are communicated by the obliged parties within ten days.

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access or communicates its reasoned refusal to the applicant within twenty days from the request; in the absence of communication, within this term access is deemed to be refused.

Where exceptional circumstances have been indicated in the notice of beneficial ownership for the purpose of excluding access, the territorially competent Chamber of Commerce shall forward the request for access to the persons opposing access. Within ten days of receipt of the aforementioned communication, the party opposing access may send a reasoned objection by certified email. The Chamber of Commerce assesses the opposition and balances out the relevant interests.

The InfoCamere Company will be required to set up a suitable IT system to carry out these fulfilments, as well as, pursuant to Article 11 of the Decree, to draw up a technical specification for data processing and security, to be submitted to the prior verification of the Personal Data Protection Authority. The adoption of the technical specifications must take place within thirty days from the date of entry into force of the Decree and, in any event, prior to the processing of data.

For further information, please contact your usual contact person at Chiomenti.