



16 November 2023

Italian Ultimate Beneficial Owners Register (“UBOR”): Trusts and similar entities

As of September 29, 2023 the Register of Ultimate Beneficial Owners (UBOR) is operational in Italy (https://www.gop.it/doc_pubblicazioni/1093_vfok0qyow5_eng.pdf).

The Italian UBOR is divided into two sections:

- 1) the **Ordinary Section**, in which the ultimate beneficial owners of entities with legal status (*i.e.*, joint-stock companies, limited liability companies, limited partnerships limited by shares, cooperative companies, private legal entities) must be registered; and
- 2) the **Special Section**, in which the Ultimate Beneficial Owners of Trusts or of similar legal entities (“Trust-like Entities”) must be registered. Trust-like Entities are the entities established through legal instruments that have the effect of creating, on certain concerned and identified assets, separate ownership between the person who holds the legal title on such assets (“the Fiduciary”) and the person who is entitled to legal interest in the same assets (“the Beneficiary”). These instruments do not create the enrichment of the Fiduciary of the assets, being destinations established pursuant to article 2645 *ter* of the Italian Civil Code and the “*contratto di affidamento fiduciario*”, which do not have an organic reference in the Italian Legal System.

Who is the Trust and the Trust-Like Entity’s Ultimate Beneficial Owner?

In accordance with the provisions of the 2007 Legislative Decree No. 231 (the “Decree”), the Ultimate Beneficial Owner is the natural person, or persons, in whose interest a continuing relationship is established, or professional service is rendered. The Decree states that the Ultimate Beneficial Owners of a Trust are the Settlor (if he/she is still alive), the Trustee, the Protector, whenever appointed, the Beneficiaries or the living persons that are included in the Class of Beneficiaries, the other natural persons who have the power to exercise control over the Trust as well as any other person who ultimately exercises, directly or indirectly, control over the assets transferred to the Trust, including, if foreseen in the governing law of the Trust and regulated in the trust deed establishing the Trust, the Advisor(s) (see, for example, the Advisor regulated under the Delaware Statutory Trust Act § 3313 or WY Stat § 4-10-718 (2022)).

As stated above, the Ultimate Beneficial Owner may only be a natural person. We believe that in the case the Settlor, the Trustee(s) or the other persons who have the power to exercise control over the Trust and/or its assets are companies or similar entities, the Ultimate Beneficial Owner(s) to be indicated in the Register the Ultimate Beneficial Owner(s) of such entities. However, if the Trustee of a Trust or of a Trust-Like Entity is a company, the practice designates the director who legally represents such company as the beneficial owner, without any further steps (*i.e.*, does not follow all of the criteria envisaged with reference to entities with legal status provided for in Article 20 of the Decree).

Where should the information be sent?

The data and information on any entity’s ultimate beneficial ownership must be sent to the Register of Enterprises maintained in the territorially competent Chamber of Commerce. Any change that occurs after the initial filing must be reported within 30 days of the deed giving rise to the change. In addition, the data and information must be confirmed annually, within 12 months of the date of the first filing or alternatively, of the date of the last amendment or the last confirmation filed.

Who are the obliged persons?

The Trustee of a Trust (or the Fiduciary of a Trust-Like Entity) is the person committed to provide to the competent Register of Enterprises of the Italian Chamber of Commerce the data and information on the Ultimate Beneficial Owners through a self-declaration whenever:

- the Trust is established or is resident in Italy; and
- the Trust performs or is a party in activities which have legal effects for Italian tax purposes (*i.e.*, the Trust generates income in Italy, owns real estate properties located in Italy or is in any case subject to Italian taxation).

Pursuant to the applicable Italian regulations issued by the Italian Tax Authority, a Trust is an Italian established entity or an Italian resident if:

- (i) the Trustee is an Italian resident person/company and/or its organization (employees, offices, etc.) is located in Italy; or
- (ii) the Trust Fund is made up of a majority of assets (including real estate properties) located in Italy; or
- (iii) the Trustee, while managing the Trust Fund, performs activities which are mainly related to Italy. In this case, since several jurisdictions are concerned, it is necessary to take into consideration the provisions of the applicable double taxation treaties to which Italy is party (to date, to the best of our knowledge, the only treaty that explicitly includes Trusts among the persons to whom the treaty applies is the one signed between Italy and the USA).

The Italian Tax Authority has also defined certain additional criteria applicable to the so-called “Disregarded Trusts”, which have certain peculiar legal effects for Italian tax purposes. A Trust is disregarded if the Settlor or the Beneficiary have the “*de jure*” or “*de facto*” power to (i) control or influence the management of the Trust, or (ii) dispose of the Trust’s assets or income. In the case of a Disregarded Trust, the income generated by the Trust is taxed, according to the worldwide taxation system, directly on the Settlor and/or on the Beneficiary who are Italian residents, regardless of the residence of the Trustee or the jurisdiction in which the majority of the Trust’s assets are located.

Who has access to the Special Section of the UBOR?

Access to the information contained in the Special section regarding the Ultimate Beneficial Owners is restricted only to:

- Government and judicial authorities;
- entities and persons who are required by the laws or regulations to carry out anti-money laundering procedures (*i.e.*, banks, public notaries, certain professionals, etc.); such rule applies only to the direct clients of these entities and persons; and
- persons with a relevant, current, direct, and concrete interest (appropriately documented) in protecting or defending their legal position, *whenever there might be a discrepancy between beneficial ownership and legal title.*

Access to the information contained in the Register may be denied if it creates for the Ultimate Beneficial Owners a higher than reasonable risk of fraud, kidnapping, extortion, blackmail, harassment, violence, or intimidation. In addition, access may be granted only on a case-by-case basis if the Beneficial Owner is a minor or an incapacitated person.

Discrepancies...

It should be taken into consideration that the E.U. Fifth Anti-Money Laundering Directive provides that if a Trustee is resident or established in a Country outside the European Union, the same information should be recorded in the Member State where he/she “enters into business relations or acquires real property in the name of the Trust or related legal arrangement”.

Although this rule has not been included in the Decree, it is recommended, as a matter of prudence, that Trustees who are not resident or established in Italy should comply with the above provisions and proceed to render the relative information to the Register maintained by the Italian Chamber of Commerce, whenever they “enter into business relations or acquire real property (in Italy) on behalf of the Trust or related legal arrangement”.

...and Interferences

If the Trust (or the Trust-Like Entity) owns also a qualified participation (more than 25%) in an Italian company, then the latter is obliged to identify the Ultimate Beneficial Owners and, of course, there will be a perfect match in identity between the Ultimate Beneficial Owners of the Trust and the Ultimate Beneficial Owners of the Italian company. This means that the data and information of the Ultimate Beneficial Owners of the Trust shall also be sent by the Company to the Ordinary Section of the UBOR.

Access to the Ordinary section was initially meant to be granted to all “private” individuals. However, according to the ruling of the Court of Justice of the European Union dated 22 November 2022 - access to the data on the beneficial ownership of companies and private legal entities should be limited to those individuals who have a relevant and differentiated legal interest (see introduction to the MIMIT Decree - ‘Approval of the technical specifications of the electronic format of the single business communication’, 12 April 2023). Notwithstanding the above, the competent Italian Authorities have not yet issued a legislative measure implementing the European Court of Justice ruling.

This document is delivered for informative purposes only.
It does not constitute a reference for agreements and/or commitments of any nature.
For any further clarification or research please contact:

Emanuele Grippo
Partner
Co-Head of the
Financial Markets Department
Wealth and Trust
Milan
+39 02 763741
emgrippo@gop.it

Giovanni Marsili
Partner
Corporate/M&A

Milan
+39 02 763741
gmarsili@gop.it

Valentina Ottani Sconza
Counsel
Wealth and Trust

Milan
+39 02 763741
vottanisconza@gop.it



INFORMATION PURSUANT TO ARTICLE 13 OF EU REGULATION NO. 2016/679 (Data Protection Code)

The law firm Gianni & Origoni, (hereafter "the Firm") only processes personal data that is freely provided during the course of professional relations or meetings, events, workshops, etc., which are also processed for informative/divulgence purposes. This newsletter is sent exclusively to those subjects who have expressed an interest in receiving information about the Firm's activities. If it has been sent you by mistake, or should you have decided that you are no longer interested in receiving the above information, you may request that no further information be sent to you by sending an email to: relazionierne@gop.it. The personal data processor is the Firm Gianni & Origoni, whose administrative headquarters are located in Rome, at Via delle Quattro Fontane 20.