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Beneficial owner *disclosure*: the register is operational

The **Register of Beneficial Owners** (the '**Register**') is **finally operational**: the final and long-awaited act necessary for the launch of the Register (MIMIT Decree of 29 September 2023), which certifies the operation of the system for transmission of data and information on beneficial ownership, has been published in the *Gazzetta Ufficiale*.

By the mandatory deadline of 11 December 2023 (60 days from the date of publication of the MIMIT Decree) joint-stock companies, limited liability companies, limited partnerships limited by shares, cooperative societies, private legal entities, trustees of *trusts* or similar legal entities will have to disclose data and information on their beneficial owners. Enterprises with legal personality and private entities incorporated after the date of the above-mentioned MIMIT Decree, must complete the disclosure within the shortest period of 30 days from their enrolment in the respective registers (or from the date of incorporation, in the case of *trusts* or trust mandates).

The communication must be made - by means of an appropriate self-declaration to be transmitted electronically to the Companies Register office of the competent Chamber of Commerce - by directors, persons entrusted with the representation and administration of private legal entities, as well as trustees of *trusts* or legal institutions. It is not possible to delegate the fulfilment of these duties to third parties.

Failure to comply will result in an administrative sanction for "failure to file, communicate or deposit", ranging from Euro 103 to Euro 1,032, as referred to in Article 2360 of the Italian Civil Code.

The identification of the beneficial owner(s) must be carried out in accordance with the provisions of Article 20 of the Legislative Decree No. 231/2007, which outlines a specific and clear 'scaled' path of criteria to be followed.

We should point out however that the above-mentioned provisions have been the subject of various conflicting interpretations, also within EU Member States, and that application of the criteria in the regulations therefore requires particular attention. Furthermore, inconsistent interpretations and methodologies continue to be found in practice, especially in the case of complex chains of participation.

For example, Directors of companies within complex group structures, which may involve foreign entities, will need to gather appropriate information upstream of the entire corporate chain of control, to identify the natural person who is the beneficial owner.

The beneficial owners will be only those identified and reported to the Register.

In the event that supervised and accredited entities, while consulting the Register in support of *anti-money laundering* (e.g., the banks with which the companies maintain current account relationships) detect discrepancies between the information thus obtained and that acquired during customer due diligence, they are required to promptly report the inconsistencies to the 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. It should be noted, for instance, that it may not always be easy for directors of companies subject to disclosure obligations to be informed in a timely manner of changes at the top of the shareholding chain.

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. In the case of legal entities, the duty to confirm the data may be fulfilled together with the filing of the annual financial statements.

With regard to access to the Register by the 'public', it is recalled that - according to the ruling of the Court of Justice of the European Union dated 22 November 2022, and pending the legislative measures necessary for the full implementation of the ruling - 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).

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