

# ITALY

## BENEFICIAL OWNERSHIP TRANSPARENCY

Italy is only fully compliant with one of the G20 Principles. The ability of competent authorities to access beneficial ownership could be significantly strengthened with the establishment of a beneficial ownership registry. Moreover, current rules on Designated Non-Financial Businesses and professions (DNFBPs) could be reinforced and enhanced due diligence requirements should also apply to domestic PEPs. Finally, Italy should prohibit the issuance of bearer shares.

### G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

Italy is fully compliant with the G20 Principle 1. The Legislative Decree n. 231/2007 defines that beneficial owner shall mean:

a) in the case of companies:

1) the natural person or persons who ultimately own or control a legal entity through direct or indirect ownership or control over a sufficient percentage of the capital stock or voting rights in that legal entity, including through bearer share holdings, provided that it is not a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 per cent plus one share shall be deemed sufficient to meet this criterion;

2) the natural person or persons who otherwise exercise control over the management of a legal entity.

b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

1) where the future beneficiaries have already been determined, the natural person or persons who are beneficiary of 25 per cent or more of the property of a legal entity;

2) where the individuals that benefit from the legal entity have yet to be determined, the control over 25 per cent or more of the property of a legal entity.

3) the natural person or persons who exercise control over 25 per cent or more of the property of a legal entity.

### G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 70%

The first comprehensive National Risk Assessment on money laundering risks was conducted in 2014. An executive summary containing an overview of the main findings was published in December 2014 and is available online. The final results were communicated to financial institutions and DNFBPs.

During the assessment, consultations with key stakeholders such as academics, financial institutions, private sector representatives and trade associations were held.

The assessment identified several areas / sectors considered as high-risk. For instance, the report identified that the risk of money laundering is particularly high in 13 Italian provinces where organised crime is deeply rooted and cash money for payments is excessively used. The assessments also found that while banks and the national postal service are high risk sectors, the current anti-money laundering rules are adequate. In the case of trusts, also considered as highly vulnerable to money laundering, the report recommended preventive measures to be strengthened.

Other areas and professions that require stronger implementation of preventive measures include lawyers, accountants, games sector, dealers in precious metals and real estate agents.

### G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 50%

Current laws and regulations do not require legal entities, other than those with anti-money laundering obligations to maintain information on beneficial ownership. Consequently, there is also no requirement that the beneficial ownership information is maintained within Italy by legal entities themselves.

Companies, with the exception of limited liability companies, are required to keep a shareholder register, containing the name of the shareholder, address, tax number, and type and number of shares held. This information relates to legal ownership and may not correspond to the beneficial ownership information. Limited liability companies must register in the business registry and provide shareholders' name and address and number of shares held.

Moreover, changes in share ownership need to be informed and recorded. The concept of nominee shareholder does not exist in Italy, but legal entities can appoint attorneys to represent them and in this case companies are informed.

## G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 39%

Timely access to beneficial ownership information by competent authorities in Italy is restricted. As there is no beneficial ownership registry and legal entities are not required to maintain beneficial ownership information, authorities have to rely on the information collected by financial institutions and DNFBPs or on basic information contained in the business registry.

The Financial Intelligence Unit, Financial Police (Guardia di Finanza) Antimafia Investigative Unit (Direzione Investigativa Antimafia – DIA), and the Judicial Authority may access information held by obliged entities, including beneficial ownership information. Nevertheless, there is no legal guarantee that the access is provided in a timely manner.

As mentioned, authorities can also consult basic information on legal ownership recorded in the business registry. All legal entities are required to register with a public notary who after verifying whether the information provided is accurate passes it on to the registry authority. Notaries in Italy are subject to anti-money laundering rules and therefore should conduct due diligence when registering legal entities.

The business registry includes the company's name, legal form and statute, proof of incorporation, list of

directors, name of shareholders, as well as the names of any company representatives. The registry should be kept up to date. The information is available online and can be accessed upon registration and payment of a fee.

Limited liability companies are also required to submit the information contained in the business registry to tax authorities within 30 days.

Access to beneficial ownership information is likely to improve when Italy implements Fourth EU Directive on Anti-Money Laundering approved in May 2015, which requires the creation of a beneficial ownership registry.

## G20 PRINCIPLE 5: TRUSTS

Score: 33%

Italy does not have a domestic trust law, but is a signatory to the Convention on the Law Applicable to Trusts and on their Recognition and therefore foreign trusts may be created in Italy under another jurisdiction's law. The law also does not prohibit an Italian from being the trustee, settlor or beneficiary of a trust created abroad.

There is no legal requirement for trustees of a trust to retain records on the beneficiaries or settlors of the trust.

Trust corporate service providers are subject to anti-money laundering rules and therefore compelled to identify the beneficial owner of clients.

## G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 33%

There is no registry of trusts and trustees are not required to maintain information on the parties to the trust, therefore competent authorities have to rely on the information collected by financial institutions that had engaged on a business relationship with a trust or on information collected by trust corporate service provider if the trust is managed by a professional. In these cases, the Financial Intelligence Unit, Financial Police (Guardia di Finanza) Antimafia Investigative Unit (Direzione Investigativa Antimafia – DIA), and the Judicial Authority can access information.

## G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 83%

### Financial Institutions

Score: 81%

Current laws and regulations require financial institutions to identify and verify the beneficial owner of customers when conducting customer due diligence. Based on assessed risk, financial institutions need to adopt adequate measures to understand the ownership and control structure of legal entities, trusts and other arrangements. The identification and verification of the beneficial owner may be done by cross-checking the information with data available on public registries, lists, acts or publicly available documents, asking the customers for the pertinent data or otherwise obtain the information. However, as there is no beneficial ownership registry financial institutions do not have access to beneficial ownership information collected by the government.

The law also states that enhanced due diligence requirements should be applied in certain circumstances, including when there are doubts about the veracity or adequacy of previously obtained customer identification data.

Enhanced due diligence is also required in case of continuous relationships or professional services with politically exposed persons (PEPs). The law provides that financial institutions have to establish adequate mechanisms to determine whether a customer is a domestic or a foreign PEP, in which case an authorisation of the general manager before establishing a continuous relationship with such customers is necessary. Other measures to identify the source of wealth and source of funds that are involved in the transaction are also necessary.

According to the law, if the financial institution does not manage to identify the beneficial owner of a customer, the relationship should not be established or should be terminated. In the latter case, the financial intelligence unit should be informed, but is no legal requirement to submit a suspicious transaction report, unless there is suspicion of wrongdoing.

The Financial Intelligence Unit, the Bank of Italy, the Financial Police, as well as internal audit bodies are responsible for overseeing financial institutions. Administrative, civil and criminal sanctions can be applied to both financial institutions and senior management. The majority of sanctions that have been applied so far relate to financial institutions'

failure to submit suspicious transaction reports (STRs). During the period between 2011 and 2014 the Financial Intelligence Unit applied sanctions to 164 entities/persons for violations of the obligation to file STRs.

### DNFBPs

Score: 85%

DNFBPs covered by the anti-money laundering law are required to conduct customer due diligence and identify the beneficial owner under certain circumstances.

DNFBPs with anti-money laundering obligations in Italy include:

- Trusts and corporate service providers (TCSPs);
- Lawyers
- Accountants
- Auditors
- Real estate agents;
- Casinos.
- Dealers in precious metals and stones (cash payments above 1,000 Euros is not allowed although there is a proposal to raise this to 3000 Euros in 2016)
- Notaries

In the case of TCSPS, lawyers, accountants, professionals and external auditors in performing their professional activity on an individual, partnership or incorporated basis customer due diligence is required in the following cases:

- a) when the professional service involves means of payment, goods or services worth €15,000 or more;
- b) when they perform occasional professional services involving the transmission or transfer of means of payment amounting to €15,000 or more, regardless of whether the transaction is carried out in a single operation or in several operations which appear to be related or split;
- c) whenever a transaction is of indeterminate or indeterminable amount. For the purposes of the customer due diligence requirement, the establishment, management or administration of companies, entities, trusts or similar legal persons shall always be treated as a transaction of indeterminable amount;
- d) when there is a suspicion of money laundering or terrorist financing, regardless of any applicable derogation, exemption or threshold;

e) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

In the case of casinos, identification and verification of the identity of customers who purchase or exchange gambling chips or other means of gambling amounting to €2,000 is required.

Enhanced due diligence is also required when DNFBPs enter in a business relationship with a foreign politically exposed person (PEP). As opposed to rules on financial institutions, domestic PEPs, are not covered by anti-money laundering rules applied to DNFBPs.

The law mandates that DNFBPs should not proceed with a business transaction if the beneficial owner has not been identified. There is no requirement however that a suspicious transaction report (STRs) need to be filed if the beneficial owner has not been identified. STRs should only be submitted if DNFBPs suspect or have reasonable grounds for knowing or suspecting of wrongdoing.

The anti-money laundering law provides for proportionate sanctions, including administrative and criminal sanctions to be applied to DNFBPs as well as senior managers.

## G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 63%

Investigations into corruption and money laundering require that authorities have access to relevant information, including beneficial ownership. In Italy, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. Domestic authorities can consult available registries containing information on legal ownership or request information held by the financial intelligence unit (FIU) and other financial supervisory bodies.

There are no significant restrictions to share information across domestic authorities. By way of derogation from the obligation of professional secrecy, financial sector supervisory authorities shall cooperate with each other and with the FIU, including by exchanging information, in order to facilitate the performance of their respective functions. However, in the framework of the Working Group established in

2013 by the Ministry of Justice on money-laundering, the need for improvements on the legal and organisational framework have been highlighted. In particular, improvements on information sources at the disposal of the FIU, enhanced information sharing and collaboration between investigative and law enforcement authorities are necessary.

Italian authorities usually share beneficial ownership or other relevant information with foreign counterparts through mutual legal assistance requests, letter of rogatory or based on bilateral agreements / memorandum of understanding. For instance, the FIU may exchange information and cooperate with foreign counterparts, subject to reciprocity also as regards confidentiality of information, and may conclude memoranda of understanding to this end. Competent authorities in Italy are allowed to use their powers and investigative techniques to attend a request from a foreign authority.

The Ministry of Justice, the Financial Intelligence Unit, and other competent supervisory bodies may receive requests for exchange of information, but there are no clear guidelines on the process to submit such requests according to the law and specific agreements may set these guidelines.

## G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in Italy do not have direct access to beneficial ownership information. They are however allowed to request information from legal entities, trusts, financial institutions and DNFBPs and other bodies/competent authorities holding the info

There are no statutory bank or professional secrecy provisions in place that restrict effective exchange of information.

Italy is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and has also signed tax information exchange agreements with 10 countries.

## G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 75%

Bearer shares

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Score: 50%

The issuance of bearer shares is allowed under two circumstances: (i) "saving shares" of companies listed in Italy or in another EU country. These shares do not provide voting rights (article 145 of the LD n. 58/1998), and (ii) shares of investment companies with variable capital (SICAV), which include one vote per shareholder, irrespective of the number of shares held (article 45 of the LD 56/1998).

In both cases dematerialisation is required and bearer shares need to be converted into registered shares or share warrants.

#### **Nominee shareholders and directors**

Score: 100%

The concept of nominee shareholder does not exist in the Italian legal framework.