

As of October 1, 2017, pursuant to the modified German Money Laundering Act (*Geldwäschegesetz – Act*), legal representatives of corporate entities (companies, partnerships), other private law corporations and trusts are obliged for the first time to report their beneficial owners to the newly established German transparency register (*Transparenzregister*).

Reports must be filed electronically via the following website: [www.transparenzregister.de](http://www.transparenzregister.de). The transparency register is available for inspection as of December 27, 2017.

### Overview

Overview and summary of the main new reporting obligations are:

- Legal entities, registered partnerships, trusts, fiduciary entities and incorporated foundations have the duty to report their beneficial owners to the German transparency register as of October 1, 2017.
- The reporting obligation does not apply if the information has already been published in the German commercial register or certain other public registers.
- There are no exceptions for non-German beneficial owners, e.g., trustees resident in Germany have to fulfill the transparency duties for foreign trusts and their beneficiaries.

### Reporting Obligation

Legal representatives of legal entities (e.g., GmbH, AG, SE, KGaA), registered partnerships (e.g., OHG, KG, GmbH & CoKG), trustees and custodians are obliged to report their beneficial owners or ownership to the transparency register. A beneficial owner in this regard is any natural person who, directly or indirectly, (i) holds an equity interest of more than 25%, (ii) controls more than 25% of the voting rights or (iii) exercises control in a comparable way. The exercise of control in the latter sense is determined pursuant to section 290 (2) to (4) of the German Commercial Code (HGB), i.e., determined by the factual power of control in the company. In addition, the parties involved in trust relationships and holders of special voting rights are also classified as beneficial owners, which entails a corresponding obligation for the company to disclose information. The information regarding the beneficial owner that the obligor has to report is the full name, date of birth, place of residence and the nature and extent of the beneficial interest (e.g., shareholding and number of shares/voting rights or function as a managing shareholder or legal representative).

Consequently, in case of corporate entities, each natural person who ultimately owns or controls more than 25% of the shares or votes or who exercises similar control is considered a beneficial owner. The corporate entity must trace the ownership up to the top to a natural person who ultimately owns or controls the corporate entity.

If no such natural person is identifiable, managing directors, managing shareholders (*geschäftsführende Gesellschafter*) and any other legal representatives, such as a CEO or board members, are deemed beneficial owners.

Consequently, such legal representative, managing director and partner will be recorded in the transparency register as the beneficial owner. Likewise, shareholders who are beneficial owners or who are directly controlled by the beneficial owner also have the duty to report the information required to comply with the duty to report and any changes to this information without any undue delay to the company. Furthermore, the legislator demands that associations subject to reporting duties have to verify at least once a year whether the beneficial owners have changed and to document this. Changes must be reported immediately to the transparency register.

Further, each natural person who acts as custodian of a fiduciary entity, or is entitled as trustee or protector of a foreign trust, qualifies as beneficial owner. The same applies for beneficiaries of trusts and individuals who can control distributions of profits or exercise control over investment or administrative decisions. The same applies for incorporated foundations, including charitable and private benefit foundations, each represented by their board. Members of the foundation's board who are natural persons are always beneficial owners. There are no constraints with regard to possible control and influence of a single board member, so that any board member must be reported.

Transparency duties are deemed to be fulfilled if the respective information has already been published in the German commercial register or certain other public sources (i.e., association register, register of cooperatives). Furthermore, corporations with natural persons as sole shareholders are not required to register due to the compulsory filing of the shareholder list with the commercial register. In contrast, in the case of foundations, the federal states' registers of foundations are not considered to be sufficient, as they do not contain the complete information required.

Further, the registration obligation does not apply for stock corporations that are listed on an organized (not an open) market.

## Practical Challenges

The registration obligation presents a challenge in particular for legal entities with complex shareholder structures and/or non-resident shareholders. In this context, information on the shareholders has to be gathered, recorded and updated in a timely manner. Where necessary, careful checks need to be made to ascertain if there is in fact a beneficial owner to be reported. Further, legal entities are required to ensure that changes to the shareholder structure within a group are reported. In addition, vote pooling and pool arrangements are leading to levels of transparency at family-owned companies and shareholdings who may not have been observed for reporting in the past due to economic or personal reasons.

The legal requirements should be a reason for reassessing the entity's legal structure. Even so, the explanatory memorandum to the Act expressly denies that there is an obligation to carry out subsequent investigations; information that will become available in the future must be carefully managed.

Finally, care should also be taken to ensure that different data sources in circulation (in particular by banks, customers or other official registers) are consistent in order to avoid any reports regarding a suspicion of money laundering due to discrepancies in data sets. However, it should be noted that the entries in the transparency register have no constitutive effect.

## Compliance Violation

Legal representatives and beneficial owners should become acquainted with the reporting duties, taking into consideration the specific circumstances of their case. Subsequent changes in reported data have to be addressed and reported by the parties themselves. The reporting party is obliged to review the completeness and correctness of the reported information at least once per year.

Violations of this reporting requirement could be punished by a fine of up to €100,000. Severe, repeated or systematic violations of this requirement could be punished by a fine of up to €1 million.

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