

Modification of the Transparency Register to a "comprehensive register" as of 1 August 2021

The purpose of the Transparency Register (hereinafter also referred to as the "**Register**") is to create greater transparency with regard to ownership and control relationships, especially in the case of companies (the law refers to associations). This Register therefore requires the disclosure of certain minimum information on (natural) persons with significant voting rights/shareholdings (influencing factors). Thereby, direct and indirect participations are to be taken into account. Under the Money Laundering Act (GwG), these persons are defined as "**beneficial owners**".

Until now, there has only been a limited reporting obligation. Reportable entities were those whose beneficial owners could not be traced through publicly accessible documents and registers in Germany (e.g. commercial register) or whose shareholders were not a European listed companies.

Due to the new regulation effective from **1 August, 2021**, this notification fiction will no longer apply. From now on, almost all domestic companies that fulfil the share or voting rights regulation are subject to the notification requirement. In addition, there is an expansion of the reporting requirements for **foreign companies** in case of **real estate transactions** in Germany.

A breach of this obligation to provide information results in a fine; definitive measures and decisions on fines are also **published on the website of the competent authority**.

Given the above, as of **1 August 2021**, almost all domestic companies, as well as some foreign companies, are required to make the following notifications, among others:

- **Notification of information on so-called beneficial owners** to the Transparency Register such as name, date of birth, place of residence and **now all nationalities**.
- Beneficial owners include, in particular, **any natural person who directly or indirectly holds more than 25% of the capital shares, controls more than 25% of the voting rights** or exercises control in a comparable manner, the **personally liable partners** as well as **trustors** and **administrators of trusts** who exercise a controlling influence over an association.
- If **no** actual beneficial owner exists or can be determined, the **legal representatives** of the company must be reported to the Transparency Register as **fictitious beneficial owners**.

In case there is first a reporting obligation due to the change in the law, the legislator has provided the following transitional arrangements for the required subsequent reports in the transparency register (extended reporting obligation):

- **31 March 2022** for stock corporations (AG), partnerships limited by shares (KGaA) and Societas Europea (SE);
- **30 June 2022** for limited liability companies (GmbH), cooperatives and partnership companies;
- **31 December 2022** for all other companies subject to transparency requirements, e.g. GmbH & Co. KG.

In addition, fines can be imposed after the expiry of a further transitional period:

- **31 March 2023 for the AG, SE or KGaA**
- **30 June 2023** in the case of a GmbH, cooperative, partnership
- **31 December 2023** in all other cases.

It is therefore **recommended** that all companies subject to the transparency obligation, which have so far invoked the notification fiction, be entered in the transparency register as soon as possible. In the case of companies for which the notification fiction has not yet applied, there are **no transitional periods**, and the entries must be made **immediately**.

If legal entities have already reported their beneficial owners to the transparency register, there is no active obligation to report **an additional nationality**, but the nationality must be reported subsequently in the event of a subsequently required update.

In addition, the notifications submitted must always be checked and any changes must be reported. In the future, **changes** in the (fictitious) beneficial owners must therefore be reported to both the commercial register and the transparency register.

In particular, actions are consequently required in the case of:

- 1** Companies for which the notification fiction has applied up to now (especially limited liability companies whose shareholders can be found in the commercial
- 2** European listed companies (and their subsidiaries)
- 3** Foreign companies in real estate transactions in Germany or their participation in companies with real estate in Germany
- 4** Trusts, trustors and comparable legal structures
- 5** Dual/multiple nationality not previously reported for the beneficial owner.
- 6** Inconsistencies between the information on beneficial owners in the transparency register and the information available to the obliged entities.

We will be happy to assist you with the implementation of the new transparency requirements or answer any questions you may have.

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