

Client Information

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■ Reporting Obligation to German Transparency Register beginning October 1, 2017

As of October 1, 2017, legal representatives of corporate entities (companies, partnerships), other private law corporations (private law foundations, co-ops, associations) and trusts are obliged for the first time to report their beneficial owners to the newly established German transparency register. Reports must be filed electronically via the following website: www.transparenzregister.de.

With these recent amendments of the German Anti-Money Laundering Act (GwG) the German legislator implements the EU Fourth Anti-Money Laundering Directive, which directs all member states to establish a national transparency register (see also [Mandanteninformation vom 27.06.2017](#)). Similar regulations will therefore enter into force in other EU jurisdictions.

Overview of the new reporting obligations:

- Legal entities, registered partnerships, trusts, fiduciary entities, as well as incorporated foundations have the duty to initially 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 a certain other public register.
- 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.

We have summarized the most important changes in more detail below.

A. Fulfillment of Reporting Obligations

Legal representatives of legal entities, partnerships, trustees and custodians are obliged to report their beneficial owners or ownership to the transparency register.

The same applies for incorporated foundations, including charitable and private benefit foundations, each represented by their board.

B. Beneficial Owners

Beneficial owners are always and exclusively natural persons. They are obliged to provide the reporting legal entities and partnerships with any relevant information. Trustees should already be in possession of the information concerning beneficiaries of a trust.

I. Corporate Entities

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

If a corporate entity has no beneficial owner that meets the aforementioned control requirements, the legal representative, managing director and partner will be recorded in the transparency register as the beneficial owner.

II. Trusts and Fiduciary Entities

Each natural person that 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.

Trustees of dependent foundations must fulfill these reporting requirements only insofar as they administer private benefit foundations.

III. Incorporated Foundations

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.

Settlers of foundations should not automatically be treated as beneficial owners. In contrast to prior drafts, the final GwG amendments do not include settlers as beneficial owners.

Any beneficiary or group of beneficiaries of the foundation and any individual who can control distributions of profits or exercise control over investment or administrative decisions qualifies as a beneficial owner. At least in the case of charitable foundations or family foundations, it is in question which persons belong to the circle of (potential) beneficiaries and for whom reporting obligations have to be met.

C. Information subject to Notification

Reporting obligations imply the notification of full names, date of birth, place of residence, as well as the nature and extent of economic interest for every beneficial owner, which includes the percentage of shares and voting rights.

German resident trustees must also report the citizenship of the economic owners (e.g. beneficiaries) of the trusts they are managing.

D. Exemption from Reporting by Legal Fiction

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 (e.g. association register, register of cooperatives).

Hence, 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.

E. Inspection of Entries

Relevant authorities are allowed to inspect the entries. The transparency register is open to public access if a legitimate interest can be demonstrated. Details on this are still unknown.

If the beneficial owner wishes to limit the access to his information, e.g., an underage person, he must file a request showing that the interests worthy of protection prevail over the interests of access to the register.

F. Compliance

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.

Violation of the reporting duties is a misdemeanor and a fine can be imposed. The upper limit of administrative fines for violations of the GwG has been increased from EUR 100,000 to EUR 1,000,000.

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