

# THE NEW TRANSPARENCY REGISTER IN GERMANY

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As of October 1, 2017, corporate entities (*i.e.*, companies and partnerships), other private law corporations (*i.e.*, private law foundations, co-ops, and associations), and trusts are required to report their beneficial owners to the newly-established German transparency register. The reports should have already been filed electronically.<sup>1</sup> The transparency register will be open to inspection from December 27, 2017.

With amendments to the German Anti-Money Laundering Act (“*Geldwäschegesetz*,” hereinafter referred to as “GwG”) the German Parliament has implemented the Fourth E.U. Anti-Money Laundering Directive, which directs all Member States to establish a national transparency register.<sup>2</sup> The purpose of this directive and the associated registers is to identify the beneficial owners of legal entities in order to prevent money laundering, in general, and terrorist financing, in particular.

## FULFILLMENT OF REPORTING OBLIGATIONS

Legal representatives of legal entities and partnerships, trustees, and custodians are required to report beneficial owners or ownership to the transparency register.<sup>3</sup> The same applies for incorporated foundations, including charitable and private benefit foundations, each represented by their boards. Accordingly, practically all legal entities and partnerships, except for partnerships under the German Civil Code, are affected. However, the registration obligation does not apply to stock corporations that are listed on an organized (not an open) market.

Subsequent changes in ownership must be addressed and reported as well. The reporting party is required to review the completeness and correctness of all reported information at least once per year, and beneficial owners are required to provide reporting legal entities and partnerships with any relevant information.<sup>4</sup>

## THE BENEFICIAL OWNER

For the purposes of the transparency register, beneficial owners are always and

<sup>1</sup> Via [this website](#).

<sup>2</sup> Directive (E.U.) 2015/849 of the European Parliament and of the Council of May 20, 2015 on the prevention of the use of of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (E.U.) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/E.C. of the European Parliament and of the Council and Commission Directive 2006/70/E.C.

<sup>3</sup> Sec. 20 Para. 1 and Sec. 21 Para. 1 and 2 GwG.

<sup>4</sup> Sec. 20 Para. 3 GwG.

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exclusively individuals. In the case of a corporate entity, each individual who ultimately owns or controls more than 25% of the shares or votes, or exercises similar control, is considered a beneficial owner.<sup>5</sup> If a corporate entity has no beneficial owner that meets the aforementioned criteria, the legal representative, managing director, or partner will be recorded in the transparency register as the beneficial owner.

In the case of a fiduciary entity or trust, a beneficial owner is each individual that acts as a custodian of a fiduciary entity, or is appointed as a trustee or protector of a foreign trust. The same applies to 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.

Concerning incorporated foundations, individual members of the foundation's board are always beneficial owners. There are no constraints with regard to possible control and influence of a single board member. Therefore, all board members must be reported. Settlers of foundations, however, should not automatically be treated as beneficial owners. In contrast to prior drafts, the final GwG amendments do not include settlors 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.

## INFORMATION SUBJECT TO NOTIFICATION

The following information needs to be reported for every beneficial owner:

- First name and surname
- Date of birth
- Place of residence
- Nature and extent of the economic interest (including the percentage of shares and voting rights)

German-resident trustees must also report the citizenship of the beneficial owners of the trusts they manage.

## EXEMPTION FROM REPORTING

The reporting 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, etc.).

Hence, corporations with individuals as sole shareholders are not required to register due to the compulsory filing of the shareholder list with the commercial register.

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<sup>5</sup> Sec. 19 para. 2 GwG read in conjunction with Sec. 3 Para. 2 GwG.



In contrast, in the case of foundations, the German state registers of foundations are not considered to be sufficient, as they do not contain the complete information required.

## INSPECTION OF ENTRIES

Relevant authorities are allowed to inspect the entries. The transparency register is open to public access only if a legitimate interest can be demonstrated. If the beneficial owner wishes to limit access to personal information, he or she must file a request showing that the interests worthy of protection prevail over the interests of access to the register. This requirement might be satisfied, for example, if the beneficial owners are minors.

## CONCLUSION

If they have not done so already, legal representatives and beneficial owners should carefully assess their reporting duties as soon as possible, taking into consideration the specific circumstances of each case. If the required information has already been reported, it should be monitored for any changes, which then must be reported. Non-compliance with the reporting duties is a misdemeanor and administrative fines of up to €1,000,000 may be imposed.