

## GERMAN TRANSPARENCY REGISTER: NEW REPORTING OBLIGATIONS AS OF 1 OCTOBER 2017

The German Money Laundering Act, aimed at the prevention of money laundering and terrorist financing, entered into force on 26 June 2017. The central element of the amended law is the introduction of the Transparency Register for establishing the beneficial owner's identity of all corporations with a registered office in the Federal Republic of Germany. The new transparency obligations apply to all legal entities governed by private law (such as "GmbH", "AG", "SE"), registered partnerships ("OHG", "KG") as well as trusts, trust-like entities, foundations and associations.

The beneficial owner of an affected association is any natural person who directly or indirectly (i) holds more than 25 percent of the share capital, (ii) controls more than 25 percent of the voting rights or (iii) exercises comparable control. The exercise of comparable control in the latter sense is determined pursuant to section 290 (2) to (4) of the German Commercial Code (HGB) and covers inter alia control by means of voting agreements etc.

Information about the beneficial owner must include (i) given name and surname, (ii) date of birth, (iii) domicile and (iv) the type and extent of the economic interest. The information regarding the type and extent of the economic interest must clearly indicate the basis of the beneficial owner's control, for example the level of shares or voting rights. To fulfil reporting obligations, shareholders or other persons exercising a controlling influence, who are deemed to be beneficial owners of a company, must provide the company with the necessary information about their person and notify it immediately of



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any changes to this information. Furthermore, the legislation requires that associations subject to reporting duties must verify at least once a year whether the beneficial owners have changed.

Due to the fact that the notification obligation also applies to affiliated companies within a group of companies, a natural person's beneficial ownership can also be obtained by indirect control. In view of the current situation it remains uncertain up to which level of the group the beneficial owner must be indicated. This confronts the affected companies with a major challenge.

If no natural person can be determined as the beneficial owner, the legal representatives or managing partners are deemed to be beneficial owners.

It is not necessary to supply information to the Transparency Register if the information on the beneficial owner is already evident from public registers. Stock exchange-listed companies are not required to make any disclosures; however, it is unclear whether this also applies to their subsidiaries.

Violations of the new notification and disclosure duties is punishable with fines up to EUR 5,000,000 (Section 56 of the German Money Laundering Act). In addition, decisions on fines can be published on the supervisory authority's website ("naming and shaming") for up to five years.

Access to the Transparency Register is given to supervisory and law enforcement authorities and persons who can prove a legitimate interest.

