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EXTRA

Corporate

The new Transparency Register – What to do?

Welcome to our newsletter corporate.

As of 1 October 2017 certain companies and legal entities have to report information on the beneficial owner directly or indirectly involved in them to the electronic Transparency Register under the German Money Laundering Act (Geldwäschegegesetz - GwG). The Transparency Register is centrally managed on national level and has been online since the beginning of 2018. Among other aims it is supposed to enable certain authorities to identify the beneficial owners behind private legal entities, registered partnerships, foundations, trusts or similar entities. Authorized authorities include law enforcement, financial, regulatory and security authorities.

The Transparency Register is intended to make it more difficult for criminals to use multilevel corporate structures to act in secret. Thus, it is supposed in particular to curb money laundering and terrorist financing.

The creation of the Transparency Register resulted in notification obligations that are basically addressed to the majority of German companies. The companies subject to registration include, in particular, stock corporations (AG), limited liability companies (GmbH), general partnerships (OHG), limited partnerships (KG), foundations with legal capacity (rechtsfähige Stiftung), associations (e.V.), cooperatives (eG) and partnership companies (PartG).

For partnerships under civil law (GbR) no new obligations have arisen, as the Transparency Register concerns only registered partnerships.

The following information must be provided: Personal data, i.e. first and last name, date of birth, place of residence and type and extent of economic interest, such as the amount of voting rights and / or the equity participation of all "beneficial owners" of the company.

Beneficial owners are all natural persons who own or control the company. For the purposes of the Transparency Register, this is the case where a natural person directly or indirectly holds more than 25% of the shares, controls more than 25% of the voting rights or controls the legal entity in a comparable manner. If such a person cannot be ascertained or if there are doubts as to whether a natural person is a beneficial owner, a legal fiction applies according to which the beneficial owner is the legal representative, and thus, the managing partner or partner of a company.

The information has to be transmitted to the Transparency Register via the portal www.transparenzregister.de and must be kept up to date. Violating the notification duties is subject to a substantial fine.

However, there are no notification duties if the information about the beneficial owners is available from already existing registers, such as the

- Commercial register (Handelsregister)
- Partnership register (Partnerschaftsregister)
- Cooperative register (Genossenschaftsregister)
- Association register (Vereinsregister)
- Business register (Unternehmensregister).

If not all the information required for the Transparency Register is available, the notification duties are not fulfilled.



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In order to ensure that legal entities that have notification duties to the Transparency Register are able to identify their beneficial owners and to gather all necessary information about them, the beneficial owners themselves have the duty to disclose this information to the entity.

If the company has no notification duty to the Transparency Register due to the so-called fiction of notification (see above), there also is no obligation for the beneficial owners to disclose the respective information to the company. In addition, the obligation to provide this information does not exist if the company has already been informed of the necessary data and information.

Practical Advice:

In the following cases, the beneficial owners cannot be determined from existing German registers, so that notification duties apply:

- With regard to all foundations with legal capacity, the beneficiaries who are entitled to the benefits from the foundation. If such do not exist or cannot be determined, the board members are to be reported as the beneficial owners.
- In the case of registered legal entities with trust contracts, the voting trust agreements or similar means of control which result in more than 25% of the shares or voting rights being attributed to a natural person, if this is not disclosed in public registers.
- Unlisted stock corporations in which the

threshold of 25% of the share capital or the voting rights is exceeded.

After all, all companies in which foreign companies are involved are generally subject to reporting. If there is a multi-level ownership structure, the German company is not obligated to investigate up to the ultimate beneficial owner, since, as mentioned, there is no obligation to investigate. In this case the legal fiction takes effect according to which the beneficial owner is the legal representative. Managing directors of companies with foreign shareholders should therefore ask the shareholder(s) to indicate who the beneficial owner is. If no feedback is received, the information already contained in the public registers meets the requirements of the Transparency Register.

If you have any questions, do not hesitate to contact us.

Best regards from Heidelberg,