



By implementing the 4th EU Anti-Money Laundering Directive 2015/849 of 20 May 2015 (the "Directive"), a new Anti-Money Laundering Act (Geldwäschegesetz – "GwG") entered into force in Germany. Among other law changes, the new GwG introduces a so-called Transparency Register ("Transparenzregister") regarding ultimate beneficial owners of all non-listed legal entities incorporated in Germany. Mandatory filings have to be made by 1 October 2017.

A beneficial owner is any natural person who ultimately owns or controls a legal entity and who needs to be identified under money laundering rules. As regards corporations or partnerships, a beneficial owner is a natural person directly or indirectly holding more than 25 % of the voting rights and/or shares of capital in the corporate entity or partnership or exercising control in a similar manner. In case of foundations or funds this includes natural persons acting as trustees, board members or beneficiaries. An ownership interest of more than 25 % held by corporate entities which are under the control of a natural person shall be an indication of indirect ownership.

The Transparency Register applies to all German corporations, partnerships, foundations ("Stiftungen"), funds and even foreign trusts managed by German trustees, with the exception of listed companies. In group structures, each company will be subject to individual filing obligations. The Register will contain the following information about natural persons qualifying as beneficial owners: identity, date of birth, and place of residence, as well as type and amount of the economic interest (i.e., share capital, voting rights, voting agreements, position/function in the company). Please note that in case a beneficial owner has not been identified or is in doubt, the respective entity's statutory representative is deemed to be the beneficial owner.

To the extent this information is electronically available in other German registers, such as the commercial register, it is not to be repeated in the Transparency Register. However, private German companies will need to keep these details updated and check – as part of their general compliance – at least once a year and report any changes.



The Transparency Register will contain the same information as under the Know-your-Customer (KYC) procedures which apply to banks and other financial institutions with regard to their customers. However, third parties cannot exclusively rely upon the information in the Transparency Register for purposes of a KYC check, as it is updated only annually and thus may be outdated.

Identifying the economic owner can be challenging in cross-border, multi-layered holding structures with private equity sponsors. The GwG provides for certain exemptions, but at this stage, there is no guidance by German authorities regarding relevant prerequisites. A complex structure as such is not expected to qualify as an exemption. In order to complete the notification obligation in a timely manner, German private companies should analyze their holding structures and collect the various details relating to their economic owners now. Non-compliance with the reporting obligations is an offence and violations are subject to fines of up to MEUR 1 (and up to MEUR 5 Mio. for credit institutions, insurance companies, financial services institutions and alternative investment fund managers (AIFMs) and similar businesses).

The Transparency Register will not be publicly accessible and require prior registration. Starting from 27 December 2017, the register will be available to certain public authorities. Third parties can only consult the Transparency Register in case of so-called justified interest. With regard to the latter, disclosure will be limited to the identity, and month and year of birth, as well as the country of residence but without any address details. All EU member states are required to introduce such a central register of company beneficial owners. Companies with affiliates in other EU member states have to make sure that they are compliant in each of those.



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