

The Transparency Register is Online now! Action is Required!

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The Transparency Register has been online since the end of 2017 (www.transparenzregister.de). With the introduction of this register, companies and other associations of individuals (e.g. foundations) are required to disclose the "beneficial owner" for the first time. In the past, companies have already been obliged to file a list of shareholders in the company's commercial register when the company is founded and later in the event of changes.

The shareholders' list has already been visible to third parties and it is possible to find out who the shareholders of a business are. In many cases, however, the list of shareholders only tells us that shareholders of, for example, a Private Limited Liability Company (or, "GmbH") are in turn one or more other companies. The innovation of the Transparency Register is that it requires the registration of individuals who have an equity interest of more than 25 percent in the company or who have a correspondingly large influence on the decision-making process (e.g. through voting right agreements). The new regulation was introduced as part of an amendment to the German Money Laundering Act and it aims at combatting money laundering and the financing of terrorism. The company or association itself is subject to the reporting requirement, acting through its managing director or other representative body.

The obligation to report the beneficial owners to the transparency register also applies if the direct shareholder is a foreign company (e.g. an English Ltd. or a US Corporation holding an equity interest in a German Private Limited Liability Company). In such a case, the individual holding an equity interest of more than 25 percent in the foreign parent company shall be published in the Transparency Register. However, if the ownership structure and the beneficial owners are already shown in another German register - for example, the Commercial Register - there is no such obligation to notify the Transparency Register (the latter is the case if shareholders are individuals). Furthermore, listed companies are excluded from separate notifications to the Transparency Register if the controlling position already results from corresponding notifications of voting rights.

The Transparency Register can in principle be inspected by anyone who has a legitimate interest to do so (e.g. a potential acquirer of the shares). The legitimate interest must be demonstrated. The right of inspection may, however, be restricted on the beneficial owner's request if his/her overriding interests are in conflict with the disclosure of certain private information (it is the intention to protect individuals against criminal offences such as kidnapping and extortion).

In case of non-compliance with the obligation to notify the beneficial owner to the Transparency Register, fines of up to EUR 100,000.00 can be imposed. In the case of severe or repeated violations, there is a risk of significantly higher consequences (fines of up to EUR 1 million or up to twice the economic benefit resulting from the violation). Unless already done, action is required now.

For any questions please contact:

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