

## New German Money Laundering Act Introduces Beneficial Ownership Register (Transparenzregister)

### IN SHORT

**The Background:** As part of the implementation of the European Anti-Money Laundering Directive (EU Directive 2015/849), a new German Money Laundering Act has come into effect.

**The Action:** While the "old" Money Laundering Act addressed certain parties that are typically targeted by money laundering actions and thus have to take preventative measures (such as banks), the new Money Laundering Act also imposes obligations on all German companies—to collect, store, and file information on their beneficial owners with a new central register, the Beneficial Ownership Register ("BOR").

**Looking Ahead:** The new Money Laundering Act came into effect on June 26, 2017, and the BOR will be available for inspection as of December 27, 2017.

On June 26, 2017, a new Money Laundering Act came into force in Germany. It provides for the Beneficial Ownership Register (*Transparenzregister*, "BOR"), where certain beneficial ownership information is to be registered. The BOR itself is an official, electronic register established and maintained by or on behalf of the Federal Republic of Germany. It is available via its homepage [www.transparenzregister.de](http://www.transparenzregister.de). Private legal persons (*juristische Personen des Privatrechts*), such as a GmbH or an AG as well as partnerships registered with the commercial register (*eingetragene Personengesellschaften*) and trustees of trusts ("Obligors") are obliged to file with the BOR specific information with regard to the beneficial ownership and any amendments relating to it. The Obligor was required to comply with this registration requirement by October 1, 2017, by collecting, storing, and updating the requested information. The BOR will be available for inspection as of December 27, 2017.



Going forward, the list of shareholders must include information about the proportional share participation of each shareholder.



The information regarding the beneficial owner that the Obligor is to collect, store, update, and file with the BOR by the Obligor consists of:

1. Full name
2. Date of birth
3. Place of residence
4. Nature and extent of the beneficial interest held (e.g., shareholding and number of shares/voting rights or function as a managing shareholder or legal representative).

"Beneficial owner" refers to any natural person who owns or controls the Obligor. In particular, if the Obligor is a non-listed company or partnership, the beneficial owner is any natural person who, directly or indirectly, holds more than 25 percent of the shares or exercises control over more than 25 percent of the voting rights, or through other means exercises controlling influence over the Obligor. Control through other means includes the criterion of control used for the purpose of preparing consolidated financial statements according to the German Commercial Code (*Handelsgesetzbuch*), such as control through a shareholders' agreement or the power to appoint the majority of the senior management.

The German Money Laundering Act does not stipulate how to identify a beneficial owner in the case of a company listed on a stock exchange (regulated market).

The Obligor must trace the ownership up to the top to a natural person who ultimately owns or controls the Obligor. If no such natural person is identifiable, managing shareholders (*geschäftsführende Gesellschafter*) and any other legal representatives, such as the CEO or board members, are deemed to be the beneficial owner.

The German Money Laundering Act also changed the obligation of a GmbH to submit a signed list of all shareholders to the Commercial Register. Going forward, the list of shareholders must include information about the proportional share participation of each shareholder. This obligation also applies to companies and partnerships under civil law ("GbR") that are GmbH shareholders. As a result, the

information must include a list of all GbR shareholders and potential changes with regard to the ownership.

With regard to "bona fide" acquisitions, the BOR has no constitutive effect. The Commercial Register allows a purchase in good faith if the seller has been named as the share owner in the list of shareholders entered into the Commercial Register. By contrast, the position in the BOR does not guarantee or reflect the current status of a registered company's substantive legal situation.

The Obligor may have to pay a fine of up to EUR 100,000 if it fails deliberately or recklessly to comply with its obligations to timely collect, store, update, and file the information correctly and completely with the BOR. In case of a serious, repetitive, or systematic violation, the fine might be increased up to EUR 1 million or the double amount of the commercial advantage gained by means of the violation. However, while the Obligor is obliged to collect the requested information, it is not required to further investigate its accuracy. Unless the information is obviously incorrect, the Obligor can trust the information gathered or received. Correspondingly, shareholders who are beneficial owners are legally obliged to provide the Obligor with the required information immediately, and if they do not comply, they too can be subject to fines as described above. Furthermore, administrative offenses may be published on the competent authorities' website (so-called "naming and shaming").

Generally, the Obligor's obligations are deemed to be fulfilled and no fines will be imposed if the required information on the beneficial owner is available via a public register such as the commercial register. However, the Obligor must update the information concerning the beneficial owner if any changes occur. This applies independently of whether any information has been provided to other public registers.

Certain authorities (such as supervisory and prosecution authorities) and anyone who can present a valid interest (such as NGOs, journalists, lawyers, banks) have the right to inspect the BOR.

### THREE KEY TAKEAWAYS

1. A new German Money Laundering Act has come into effect that introduces a central Beneficial Ownership Register, into which the beneficial owners of all German companies have to be entered.
2. Beneficial owners are obliged to immediately provide the company with the required information on their person and on the nature and extent of the beneficial interest held. The company is obliged to collect, store, and file this information with the Beneficial Ownership Register, and a compliance process for all German companies should be established.
3. The Beneficial Ownership Register has no constitutive effect and does not necessarily reflect the current status of the substantive legal situation of a company's owners.

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