

# The new central transparency register in Germany

## Is my organization subject to reporting obligations under the revised German Anti-Money Laundering Act?

1. Is the administrative seat of my organization or company located in or outside of Germany and is it organized as a German stock company, limited liability company, *societas europaea*, partnership limited by shares, general or limited partnership, cooperative, partnership company or is it a foundation or a legal arrangement similar to a trust?

↓ Yes\*

2. Is my company publicly listed or is it subject to equivalent international standards regarding transparency in respect of voting powers?

↓ No

3. Is there a natural person directly holding more than 25% of the shares or ownership interests in my company?

↓ No

4. Is there a natural person who controls more than **25% of the voting rights in my company**? Such control can be based on multiple voting rights, veto rights, escrow agreements, voting rights agreements, pooling or syndicate agreements.

↓ No

5. Is there another corporate entity (directly controlled by a natural person) holding directly or indirectly more than 25% of the shares or ownership interests in my company or controlling more than **25% of the voting rights**?

↓ No\*: In more complex group structures a case-by-case evaluation is recommended.

6. Can the relevant information about the beneficial owner be electronically retrieved from German public registers (exemption from the reporting obligation)?

↓ No: The information about the beneficial owner (and any changes thereto) have to be reported to the central transparency register.

→ No → No reporting obligation

\* Special provisions apply for trusts, foundations or special legal arrangements.

→ Yes → No reporting obligation

→ Yes → This natural person is deemed to be the beneficial owner; continue at no.6 below

→ Yes → This natural person is deemed to be the beneficial owner; continue at no.6 below

→ Yes → This natural person is deemed to be the beneficial owner; continue at no.6 below

\* If, after having exhausted all possible means, no natural person is identified as a beneficial owner, or if there is any doubt that the person(s) identified is/are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s) are deemed to qualify as beneficial owner(s) and have to be reported.

→ Yes: no reporting obligation

## Who is the beneficial owner?

Every **natural person** who ultimately owns or controls an organization whether through:

- (a) direct or indirect ownership of **more than 25% of the shares**, voting rights or ownership interest; or
- (b) **control by any other means** so that the person exercises dominant influence over the entity.

Control amounting to dominant influence can for example arise out of special rights provided for in the articles of association of a legal entity, multiple voting rights, veto rights, rights of appointment, shareholder agreements, voting rights agreements, pooling agreements or escrow agreements.

There has also been much debate as to whether sub-participations or usufruct rights in respect of shares or ownership interests can amount to control for these purposes. Many details in this respect are not yet clear. For example, in the case of a pooling agreement, should every pool member be considered a beneficial owner or does only the pool manager qualify? In such cases we recommend an in depth review of the underlying agreement.

The economic interest giving rise to, and the source of, the beneficial owner's control are also to be reported to the transparency register.

If, after having exhausted all possibilities, no natural person is identified as a beneficial owner undoubtedly, the natural person(s) who hold the position of senior managing official(s) are deemed to qualify as beneficial owner(s).

Special provisions apply to foundations, trusts and special legal arrangements.

## Who is subject to reporting obligations?

**All private legal entities**, including registered commercial partnerships. This includes all German legal forms except for civil-law partnerships, as well as foundations and legal arrangements similar to trusts to the extent that the administrator's or trustee's residence or registered office is in Germany.

This means that also German companies with their administrative headquarters abroad are subject to reporting obligations, **but not foreign companies with their administrative headquarters in Germany.**

It should be noted **that a beneficial owner can be a foreign national or a person not resident within German territory.** The **reporting obligation does not depend on whether foreign companies are part of a shareholding chain with foreign companies in it.**

## Are there any exemptions from the reporting obligation?

There is **no obligation to report details of the beneficial owner if the relevant information can already be gathered from the following sources:**

- a) Notices pursuant to Sec. 20 para 6 Stock Company Act,
- b) Voting rights notices according to Secs. 26 and 26a Securities Trading Act,
- c) Shareholder lists in accordance with Sec. 40 Law on Limited Liability Partnership and equivalent sample protocols or
- d) Entries in the German commercial, partnership companies, cooperations or as-sociations register,

**and if the relevant information is electronically retrievable from these registers or from the business register** (Unternehmensregister). The exemption does **not** apply to information that is retrievable from foreign registers.

The reporting obligation is deemed to be fulfilled in respect of **listed companies** and so in effect they are exempt from reporting. The same applies to German subsidiaries of foreign listed companies which are subject to transparency requirements under European Community law or equivalent international standards regarding transparency in respect of voting powers.

## How can I gather the required information?

The beneficial owner of an entity or a company which is directly controlled by a beneficial owner is subject to **back to back disclosure obligations** which correspond to the entity's own reporting obligations, irrespective of the nationality, the residence or legal form of the individual or entity that is subject to the disclosure obligation.

An entity that is subject to reporting obligations **isn't obliged to research and investigate information beyond what is disclosed to it.** According to the legislator, only information that is already known to the entity or which is disclosed by the shareholders need be collected. However, **there is a compliance obligation under which a company has to be internally organized so that relevant information is identified and forwarded to the nominated person.**

An entity that is subject to reporting obligations has to verify (at least once a year) whether any new information is to be reported, whether the existing information is correct or whether the information has changed. An entity must therefore keep appropriate records to comply with its verification duties.

## Which information and how has to be reported?

The following information about the beneficial owner has to be reported to the central transparency register: name, the month and year of birth, the nationality and the country of residence as well as the nature and extent of the beneficial interest held.

Entities have to transmit the relevant information to the central transparency register by means of an **online form** that can be found at [www.transparenzregister.de](http://www.transparenzregister.de) after registration and creating a new data record for the relevant entity. It is possible to issue powers of attorneys in favour of lawyers or tax consultants.