

Reform of the Transparency Register - Elimination of the Notification Fiction

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The obligation to report certain information on the beneficial owner to the transparency register did previously not apply to a large number of the companies concerned due to an exemption from the reporting obligation on account of the notification fiction. This privilege is a thing of the past, as the German Parliament passed the Transparency Register and Financial Information Act ("TraFinG") in its session on June 10, 2021, and with it the elimination of the notification fiction.

The TraFinG provides for the transparency register to be converted from a catch-all register to a full register. This is to be achieved by abolishing the previous notification fiction of Section 20 (2) German Money Laundering Act (GwG), by abolishing the privileged treatment of listed companies, and by extending the reporting obligations of foreign companies in the case of share deals.



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Previously, the German transparency register was designed as a catch-all register. This meant that the beneficial owner did not need to be reported to the transparency register, if all the required information could be found in certain publicly accessible registers, such as the commercial, partnership, cooperative or association registers.

The core of the law now passed is that from now on almost every German company and foundation as well as certain foreign companies that directly or indirectly acquire real estate in Germany must report their beneficial owners to the transparency register.

The previously existing notification fiction will be abolished and the transparency register will be changed from a catch-all register to a full register. In the case of listed companies that are quoted on an organized market within the meaning of Section 2 (11) of the German Securities Trading Act (Wertpapierhandelsgesetz - WpHG), the obligation to notify has so far also been deemed to have been fulfilled in accordance with Section 20 (2) sentence 2 of the German Money Laundering Act (GwG). This privilege is consequently also abolished by the law.

This reform is also intended to promote European networking and improve digital usability. Ultimately, all data contained in the national transparency registers should be accessible via a European platform.

This amendment means that all legal entities registered in Germany must actively disclose their beneficial owners to the transparency register. This applies both to any actual beneficial owners and to so-called fictitious beneficial owners, if no actual beneficial owners exist or could be identified.

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IMPRESSUM

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For all those companies that have so far not been required to report to the transparency register due to the reporting fiction, the following extended deadlines for proper reporting - depending on their legal form - shall apply beyond the date of entry into force of the TraFinG on August 1, 2021:

- Stock corporation (AG), European company (SE), Limited partnership on shares (KGaA): **March 31, 2022**
- Limited liability companies (GmbHs), cooperatives, European cooperatives or partnerships: **June 30, 2022**
- In all other cases: **December 31, 2022**

Despite the aforementioned transition periods, all companies - not only those already obligated under the German Money Laundering Act (GwG) - are well advised to check as early as possible whether and to what extent they have to comply with potential reporting obligations to the transparency register in order to avoid possible fine proceedings.