

## **Changes to the reporting obligations to the Transparency Register - new legal situation as of August 2021**

In June 2021, the new version of the Money Laundering Act was passed by the Transparency Register and Financial Information Act (BT-Drs. 19/28164 and BT-Drs. 19/30443 and BR-Drs. 505/21), which came into force on 1 August 2021. The fines due for non-compliance with the amendments are of substantial.

It provides for extensive amendments to the Act on the Tracing of Profits from Serious Crimes (Money Laundering Act - GwG), which regulates, among other things, the transparency register. Part of these amendments is an extension of the obligation to notify the Transparency Register of the beneficial owners and the abolition of the previous publication fictions. As a result, the transparency register has become a "full register".

### **1. Effects of the amendment on the reporting obligations of companies / Abolition of the previous publication fictions**

As a result of the abolition of the previous publication fictions (Section 20 (2) AMLA, old version), according to which a duty to report to the Transparency Register was deemed to have been fulfilled if this information could be retrieved electronically from a public register such as the Commercial Register, the Register of Cooperatives or the Register of Associations, all companies domiciled in the Federal Republic of Germany are now in principle obliged to report their beneficial owners to the Transparency Register.

#### a) Who has to report?

The companies subject to the reporting obligation include:

- Stock corporations (AG),
- European public limited companies (SE),
- limited liability companies (GmbH),
- registered associations (e.V.),
- cooperatives (e.G.),
- foundations and
- general partnerships (oHG) and limited partnerships (e.g. KG and GmbH & Co. KG) entered in the commercial register.

#### b) How to report?

The reports are to be made exclusively online via the website of the transparency register (<https://www.transparenzregister.de/treg/de/start?2>). Registration with an email address is required.

#### c) What must be reported?

The following information on each beneficial owner must be reported as specified in Section 19 (1) AMLA, i.e.

- First and last name,
- date of birth,
- place of residence,
- the nature and extent of the beneficial interest and
- all nationalities (previously only one nationality).

From 1 August 2021, every legal entity under private law and every partnership entered in a register must therefore actively report its beneficial owners to the transparency register. The notifications to the commercial register or other registers alone will no longer be sufficient.

## 2. Transitional periods for companies that have benefited from publication fictions up to now

The notification obligations are subject to sanctions (see also section 3 below). Notifications that are not made or not made correctly can be punished as an administrative offence, as can incomplete or untimely notifications.

For legal entities and partnerships that previously benefited from the publication fiction, the new Section 59 (8) AMLA provides for transitional periods:

- Stock corporations, SEs and partnerships limited by shares must have notified the details of their beneficial owners by 31 March 2022;
- **Limited liability companies, cooperatives, European cooperatives and partnerships have until 30 June 2022 to do so;**
- for all other reporting entities, the deadline is 31 December 2022.

The transitional periods also mean that until their expiry, violations of the notification obligations applicable as of 1 August 2021 cannot be prosecuted as administrative offences.

## 3. Sanctions may be imposed if reporting obligations are not fulfilled (possibly until the transitional periods expire).

Failure to make a notification to the transparency register, although such notification is required, constitutes a misdemeanour (cf. the various case constellations in section 56 (1) sentence 1, numbers 54 to 66 AMLA). The administrative offence can be punished with a fine of up to one hundred and fifty thousand euros if committed intentionally, and with a fine of up to one hundred thousand euros in all other cases (Section 56 para. 1 sentence 2 AMLA), in the case of serious, repeated or systematic violations with a fine of up to a maximum of EUR 5 million or 10% of the total turnover of the previous business year (Section 56 (3) AMLA), the higher value being the upper limit.

"Normal" companies can expect fines in the four-digit and low five-digit range.

## 4. Need for action

Obligated persons who have so far benefited from the publication fiction must now actively fulfil the reporting obligations. Even if there is no threat of sanctions until the expiry of the

transitional periods (cf. 2. and 3. above), active reporting should not be put on the back burner.

It should also be noted that the notifications to the transparency register must always be up-to-date. If information on the beneficial owners changes, the information must be updated. This also applies if a previous beneficial owner ceases to exist as such and/or a new one is added.

A special regulation applies to registered associations. However, registered associations must also check whether the entries made ex officio in the register of associations are complete and correct. In particular, it should also be checked whether the executive board has been reported completely and correctly to the register of associations. This concerns, for example, the nationalities of the board members. If there is no information on this in the register of associations, it is automatically assumed that only the German nationality exists and this is entered. If no correction is made, this constitutes a sanctionable offence by the members of the association's board.

If you have any questions, please do not hesitate to contact us. If required, we will be pleased to assist you with the necessary reporting obligations of your company to the Transparency Register.