



LM Audit & Tax GmbH
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft
Paul-Gerhardt-Allee 50
81245 Munich
Tel.: 089/896044-0
Fax: 089/896044-20
www.LMAT.de

LM Law Rechtsanwaltsgesellschaft
mbH
Paul-Gerhardt-Allee 50
81245 Munich
Tel.: 089/896044-0
Fax: 089/896044-20
www.LMLaw.de

Information Letter

Imminent Changes in the Money Laundering Act: The Transparency Register and Financial Information Act

Amending the reporting duties applicable since January 2020 in relation to the transparency register, the Transparency Register and Financial Information Act now serves to establish new, far-reaching reporting duties, which will affect all corporate entities and legal persons governed by private law. The Act is to come into force on 1 August 2021.

Principle

A duty to report information on natural persons acting as beneficial owners behind legal persons or partnerships, but also behind other associations such as trusts, trust relationships and unincorporated foundations (“associations”) based in Germany, to the transparency register has already been in force since 1 October 2017. A natural person is deemed to be a beneficial owner if such person, either directly or indirectly,

- holds more than 25% of the capital shares,
- controls more than 25% of the voting rights or
- exercises control in a comparable way (rights of veto/objection, blocking minorities, factual control or comparable rights).

NEW: Now the duties also will affect associations based abroad and undertaking to acquire real property situated in Germany, unless the necessary information has already been transmitted to the register of any other EU member state.

NEW: In future, a foreign association will also be subject to a reporting duty if shares in a company with domestic real property in terms of sect. 1(3) or (3)(a) of the German Real Estate Transfer Tax Act (“GrEStG”) are passed to it (“share deal”).

NEW: A beneficial owner is to be reported with information regarding all their nationalities.

Legal persons, in particular companies limited by shares

There have previously been exceptions from the duty of registration if the beneficial owners follow from other public registers under German law (including, in particular, the commercial register). This was subject to the compelling condition of the list of shareholders being retrievable electronically and having informative value of the beneficial ownership of natural persons. Another exception from the duty of reporting and registration applied on certain conditions to shareholders stock-listed in or outside Germany and to the fictitious beneficial owners.

NEW: This reporting fiction will no longer apply in future, with the result that all legal entities will be obliged to positively report their beneficial owners to the transparency register for registration, even if this information already follows from the list of shareholders deposited with



**LM Audit & Tax GmbH
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft**

Paul-Gerhardt-Allee 50
81245 Munich
Tel.: 089/896044-0
Fax: 089/896044-20
www.LMAT.de

**LM Law Rechtsanwaltsgesellschaft
mbH**

Paul-Gerhardt-Allee 50
81245 Munich
Tel.: 089/896044-0
Fax: 089/896044-20
www.LMLaw.de

the commercial register. In future, the beneficial owners of stock-listed companies, too, will have to be identified and reported under the general principles.

NEW: If the obliged party fails to identify the beneficial owners, for example because these are multi-level corporate structures abroad with executive management by different persons or there is no beneficial owner above the control threshold, the regulation of the fictitious beneficial owner applies: in this case, the legal representative identifiable from the commercial register (e.g. managing director) "is deemed to be" the beneficial owner. The fictitious beneficial owner (generally the managing director or director) having hitherto been identifiable only from the commercial register must be reported as well.

Partnerships, e.g. GmbH & Co. KG

In the view of the Federal Office of Administration (BVA) in charge, a limited partnership, in particular one with the legal form GmbH & Co. KG, is obliged to actively provide the transparency register with information on the percentage shareholding of its partners. Despite the commercial register being retrievable electronically, the BVA sees no exception from the duty of reporting and registration, since the commercial register (HRA) only contains the liable contributions, but no clear information on the limited partners' share ratios or the general partner's contribution.

Transition periods

Depending on the legal form, the following transition periods apply to any subsequent reporting for companies hitherto subject to the reporting fiction:

AG, SE, KGaA	31 March 2022
GmbH	30 June 2022
in all other cases	31 December 2022

With the reporting fiction being abolished, the transparency register will gradually go from being the rescue register to the full register!

Moreover, the national transparency registers of the EU member states are to be networked electronically via a central European platform before the end of 2021.

Short check

It is not always easy to see whether a company is subject to a reporting or subsequent reporting duty. The first question is whether there is any (at least one) natural person or stock-listed company as beneficial owner. If yes, this/these person(s) has/have to be reported to the transparency register. If no beneficial owner exists or can be identified despite request, reporting to the transparency register is no longer dispensable! In general, we highly recommend checking on an ongoing basis whether duties of reporting to the transparency register exist or any subsequent reporting is to be made. Of course, we can assist you in doing so and even perform any register reporting for you.



**LM Audit & Tax GmbH
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft**

Paul-Gerhardt-Allee 50
81245 Munich
Tel.: 089/896044-0
Fax: 089/896044-20
www.LMAT.de

**LM Law Rechtsanwaltsgesellschaft
mbH**

Paul-Gerhardt-Allee 50
81245 Munich
Tel.: 089/896044-0
Fax: 089/896044-20
www.LMLaw.de

If you have questions, we would be happy to help.

Point of contact at LM Law Rechtsanwaltsgesellschaft mbH:

- Ms Petra Kanz (Solicitor, Tax Adviser, Specialist Lawyer for Tax Law;
Partner)
 - Ms Miriam Rosenthal (Solicitor, Tax Adviser)
-

Remark: This circular letter only serves as a summarised presentation of selected legal innovations and is not intended to be exhaustive. It cannot replace legal advice in a given case. Any liability of LM from this information letter is excluded.