

Transparency register Germany to facilitate beneficial owner check for AML

SDue to the 4th AML directive all European Union memberstates had to create transparency registers. These registers list all beneficial owners of a company. A beneficial owner is a natural person that – directly or indirectly – owns more than 25% of a company. **Since October 1st 2017** all German companies have to register with the Transparency Register Germany under www.transparenzregister.de.

Exception for beneficial owners due to shareholders' list in commercial register

This is the only time you can be happy of having a civil law partnership (GbR): GbRs are exempted! The obligation encompasses all OHGs, KGs, GmbHs and KGs. Did I say all of them? Yes, but in fact only those companies need to register whose beneficial owners cannot be detected through any other publicly available register. However, the mentioned company types should be registered in the commercial register under www.handelsregister.de. Therefore there will be many exempted companies. Do the shareholders' lists in the commercial register when viewed together ultimately only list natural persons as shareholders? If so, you don't have to register under the Transparency Register. If you are not sure if you need to comply check out your latest shareholders' list.

Of course this only works if the natural persons listed are acting on behalf of their own and not for someone else, e.g. as a fiduciary.

Another exception to the exception are old GmbHs. Old are those who have been entered into the commercial register before 2009. If their shareholders' list has been updated since to the new GmbHG requirements, the old GmbH needs to register with the transparency register as well.

Founders' vehicles

What about [founders' vehicles](#) or mother companies? In that case one needs to combine several commercial register entries to see whether all beneficial owners are reflected. If so,

you are exempted. If not, you need to register with the Transparency Register. This will especially obligate any company with a foreign company as a shareholder, be it the mother company or a founder's vehicle. Those are usually not registered in the commercial register (unless they have registered a branch in Germany).

Also, very complex structures may make a combination of a number of entries impossible.

Transparency Register Germany process

So what do you have to do if you are obligated?

Go to <https://www.transparenzregister.de/treg/en/start?1> and register your company. You need to name any beneficial owner over 25% in shares or voting rights (or comparable rights, whatever that means). Remember: only humans can be beneficial owners. Once identified, state their first and last name, birth date, place of residence as well as their kind and amount of ownership. If there is no beneficial owner, you need to name the representative (usually the managing director) since every obligated company needs to have at least one beneficial owner and the transparency register feigns it's the representative if there is no one else.

Unfortunately, registering is not free, but as for now the amount of the fee is yet unknown. Too bad, since companies are already obligated to register and failing to comply can be **severely fined and punished** right away and cause enormous fees. Checks in the transparency register can only be made from December 27, 2017, on.

So what does registering mean? You need to state all beneficial owners and their kind of ownership. Usually that means ownership by shares, e.g. 30% indirectly. This could also be ownership by votes if there are voting alignment agreements.

And after all, the website of Transparency Register Germany is available in English, but unfortunately the submission form in the Q&A format is not.

Annual checkups: Of course there is more

If you hope that by registering you did your part, you are wrong. Just like senior citizen doctor's checkups, managing directors need to check on their transparency register Germany

entry every year and update it if anything changed.

Any Questions?

Then leave as a quick message under hi@streifflaw.de or call as under +49 30 8597 6915

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