



Transparency register  
Why all companies must now report.

As previously reported on our [website](#), the German Transparency Register and Financial Information Act (TraFinG) came into force on 1 August 2021.

The TraFinG is intended to convert the Transparency Register into a full register. In order to achieve this, the previously applicable notification fiction will be eliminated in three stages over the course of 2022. This means that companies that were previously exempt from the obligation to register with the Transparency Register because the beneficial owner was derived from the commercial register will also have to be registered with the Transparency Register. Similarly, listed companies and their subsidiaries will also be subject to the registration requirement.

## By when must my company be registered with the Transparency Register?

The expiry of the transition period depends on the legal form of the company:

Legal form	Expiry of the transition period
<b>German public limited companies</b> ( <i>Aktiengesellschaft, AG</i> ), <b>European stock companies</b> ( <i>Europäische Aktiengesellschaft, SE</i> ) and <b>partnerships limited by shares</b> ( <i>Kommanditgesellschaft auf Aktien, KGaA</i> )	31 March 2022
<b>German companies with limited liability</b> ( <i>Gesellschaft mit beschränkter Haftung, GmbH</i> ), <b>Cooperatives</b> ( <i>eingetragene Genossenschaften, eG</i> ), <b>European Cooperatives</b> ( <i>Europäische Genossenschaften, SCE</i> ) and <b>registered partnership companies</b> ( <i>Partnerschaften</i> )	30 June 2022
<b>Partnerships</b> ( <i>Offene Handelsgesellschaften, OHG</i> ), <b>Limited Partnerships</b> ( <i>Kommanditgesellschaften, KG and GmbH &amp; Co. KG</i> ), <b>Foundations</b> ( <i>Stiftungen</i> )	31 December 2022

Please note, however, that only companies that were not already required to be registered with the Transparency Register before 1 August 2021 will benefit from the transitional arrangement. Similarly, companies that were only founded after the TraFinG came into force on 1 August 2021 do not benefit from the transitional regulation and must therefore be registered with the Transparency Register immediately after registration with the Commercial Register.

## What must be entered? / Who is the beneficial owner?

In principle, the beneficial owner of a company must always be entered. If there is no such person, a fictitious beneficial owner must be entered.

According to Section 3 para. 1 of the German Money Laundering Act (GwG), the beneficial owner is any natural person who directly or indirectly holds more than 25% of the capital shares or voting rights in a company or exercises control in a comparable manner. Indirect control exists in particular if corresponding shares are held by one or more companies pursuant to Section 20 para. 1 GwG that are controlled by a natural person, cf. Section 3 para. 2 GwG. If such persons do not exist in the case of a corporation, the legal representatives, i.e. the board members or the managing directors, must be entered in the Transparency Register as fictitious beneficial owners.

## **What information of the beneficial owner must be entered?**

The following information must be entered in the Transparency Register with regard to each beneficial owner:

- First and last name
- Date of birth
- Place of residence
- Type and scope of beneficial interest (equity interest, voting rights ownership, comparable control including reason for beneficial ownership).

It is important that the data be kept up to date at all times; in particular, whenever there is a change in the board of directors or management, the Transparency Register entry must be updated accordingly. This also applies if data subject to registration (e.g. last name or place of residence) of a board member or managing director changes.

## **Who can inspect the transparency register?**

In principle, the Transparency Register can be viewed by the public at any time. However, a distinction is made between the authorities named in the GwG, the obligated parties and the general public. However, beneficial owners have the option of submitting an application to restrict access to the Transparency Register in order to protect their personal data. However, such a restriction requires that the inspection is opposed by legitimate specific interests of the beneficial owner that are worthy of protection. This is the case, for example, if inspection would expose the beneficial owner to the risk of becoming a victim of certain serious criminal offenses.

## **Is there a risk of fines if a company is not entered in the Transparency register or is not entered in time?**

Yes, violations of the notification obligations contained in the GwG (including merely late notification) constitute administrative offenses and are punishable by a fine. The amount of the fine can be up to EUR 100,000.00 (Section 56 GwG). In the case of serious, repeated or systematic violations, the fines can amount to up to EUR 1 million or twice the amount of the economic benefit derived from the violation.

## **Do foreign companies also have to be entered in the German transparency register?**

At least in the context of real estate share deals, foreign companies will also be required to be entered in the Transparency Register in the future. This will always be the case if the transaction in question falls under Section 1 para. 3 or para. 3a of the German Real Estate Transfer Tax Act (GrEStG), a company with its registered office abroad acquires at least 90% of the shares (Section 1 para. 3 GrEStG) or an economic interest of at least 90% (Section 1 para. 3a GrEStG) in a company that has real estate in

Germany. However, there is no obligation to register if the foreign company is already entered in the Transparency Register of another member state of the European Union (Section 20 para. 1 Sentence 2, 3 GwG).

### **Do civil law partnerships (GbR), individual companies (Einzelunternehmen) and associations (Vereine) also have to be entered in the Transparency Register?**

Civil law partnerships (GbR) are generally not required to be entered in the Transparency Register. However, if the civil law partnership holds shares in a German company with limited liability (GmbH), the shareholders of the civil law partnership must also be entered in the transparency register as beneficial owners, if applicable. However, a separate company register is to be created for civil law partnerships from 1 January 2024. A corresponding regulation is contained in the Act on the modernization of the law on partnerships (MoPeG). We will inform our clients about this in due course.

Individual companies (Einzelunternehmen) are also exempt from the obligation to be registered with the Transparency Register.

For associations, the law contains simplifications in Section 20a GwG; here, the office keeping the register (Vereinsregister) creates an entry in the Transparency Register on the basis of the data entered in the register of associations without the need for a notification in accordance with Section 20 para. 1 Sentence 1 GwG.

If you have any questions regarding the Transparency Register, please do not hesitate to contact us. We will be happy to assist you in identifying the beneficial owner, in the registration with the Transparency Register or in the event of a penalty notice being issued against your company.