



avocado
rechtsanwälte

Transparency Register
January 2020

Check your registration in the Transparency Register now!

Since June 2017, the Money Laundering Act requires beneficial owners to report to Transparency Register in certain cases.

At the beginning of the year, we would like to take this opportunity to draw your attention to the impending consequences of the violation of this obligation.

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Who is the beneficial owner and who must report?

In sum, only the natural person who holds more than 25 % of a company's shares or partnership's participation - provided that this has not been published by the commercial register.

Example 1:

The X-GmbH is composed of three shareholders: The natural person A with 33 %, the B-Ltd. with 33 % and the C-GmbH with 34 %. The natural person A is on the list of shareholders of the X-GmbH, his shareholding is recorded in the commercial register and he does not have to report. The B-Ltd. itself is not a natural person. Therefore, B-Ltd. is not the beneficial owner, but the shareholders behind it: They must report (if one of them has interest of more than 25 %). Although the C-GmbH is also not the beneficial owner and could therefore be treated in the same way as B-Ltd. However, since the C-GmbH itself is registered in the commercial register and the shareholding of its shareholders is shown in the commercial register, there is no reporting obligation (unless one of its shareholders is a company).

Example 2:

The A GmbH & Co. KG is composed of the A-GmbH as general partner and the natural person A as limited partner with a liable contribution of EUR 1,000.00. According to the articles of association, the A-GmbH does not participate in the profits and liquidation proceeds, but only A to 100%. According to the Federal Administration Office (*Bundesverwaltungsamt*), limited partners and general partners holding more than 25 % of the partnership participation must always be reported to the Transparency Register: The respective extent of their participation is not evident from the commercial register; in particular, in case of limited partners, only the liability sum is entered for registration. Therefore, in this example, A must report to the Transparency Register.

What are the consequences of the breach of the obligation to report?

Essentially three: in financial terms a fine, in social terms a pillory (whoever violates the obligation is published online) and in economic terms a partial exclusion from legal transactions (of course with regard to public tenders, but also with regard to notarizations, since notaries in certain cases have to refuse notarization from 2020 onwards in the absence of registration in the Transparency Register).



Imprint

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