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Transparency Register: Notification Obligation for all Entities – The End of the Notification Fiction

On **1 August 2021**, the **German Transparency Register and Financial Information Act (TraFinG)**, passed by the German Federal Parliament (10 June 2021) and approved by the German Federal Council (25 June 2021) will enter into effect.

One of the key changes of the reform is that there is no longer a so-called notification fiction, so that in principle **all undertakings**, regardless of their legal form, are obliged **to notify their beneficial owners to the Transparency Register**. There is an obligation to keep the notified data up to date. Certain **transitional periods** apply for implementation, depending on the respective legal form.

The undertaking may incur **significant fines** in case of a breach. The executive bodies of all undertakings should therefore review in due time their adherence to the obligations and whether any measures are necessary regarding **compliance of the undertaking with the Transparency Register**.

Transparency Register until now only fallback register

Already since October 2017, legal persons governed by private law, registered partnerships and certain comparable legal structures are obliged to make notification to the Transparency Register of those **natural persons who are their beneficial owners** or of such **natural persons which are their fictitious beneficial owners** (§ 3 GwG).

Until now, the Transparency Register was a **fallback register**. Insofar as the details relating to the beneficial owners were discernible from other electronic registers such as the commercial register (§ 2 para. 2 GwG), the notification obligation was deemed to have been fulfilled. Through this so-called **notification fiction**, in practice numerous companies were exempt from an active notification to the Transparency Register.

Transparency Register becomes a comprehensive register: Active notification obligation

With the TraFinG, this notification fiction will no longer apply. The Transparency Register will become a **comprehensive register** instead of a fallback register. In future, there is an **active notification obligation** to the Transparency Register **regarding beneficial owners** of all affected companies and undertakings. An exception generally only applies to registered associations (*eingetragene Vereine*), who will be entered automatically. Also, the present simplifications for publicly listed companies in their determination of their beneficial owners shall continue to apply.

All other companies and comparable undertakings, which to date benefited from the notification fiction, will in due time have to deal with implementation of the notification obligation. For entities, which have until now not been obliged to make a notification, certain **transitional periods** apply, depending on the respective legal form of the entity:

- AG, SE, KGaA: **31 March 2022**
- GmbH, Genossenschaft, Europäische Genossenschaft or Partnerschaft: **30 June 2022**
- All other legal undertakings which, until now, are not subject to the notification obligation: **31 December 2022.**

For undertakings, which, until now, are not subject to the notification obligation, the **provisions on the payment of fines** shall in each case be suspended **for one year after expiry of the respective transitional period**. In the case of the legal forms of an AG, SE or KGaA, which are so far exempt pursuant to the notification fiction, any breach shall only from 31 March 2023 onwards, and in the case of the legal forms of a GmbH, Genossenschaft, Europäische Genossenschaft or Partnerschaft, which are so far exempt pursuant to the notification fiction, any breach shall only from 30 June 2023 onwards, and all other legal undertakings which are so far exempt pursuant to the notification fiction, any breach shall only from 31 December 2023 onwards be subject to administrative fines.

The **German partnership under civil law** (*Gesellschaft bürgerlichen Rechts – GbR*) is itself not subject to the transparency register. If, however, a GbR for example holds shares in a GmbH, the natural persons participating in the GbR may have to be registered as so-called beneficial owners with the Transparency Register.

Note:

Due to the legislative change, **intensified monitoring and reviews** are expected in particular after expiry of the transitional periods. In view of the **potentially significant administrative fines**, it is strongly advised to review whether the undertaking is in compliance and up to date regarding all necessary notifications to the Transparency Register. Depending on the size of the undertaking, it may be advisable to delegate obligations. In this regard, the **responsibilities should be defined** and **adequate structures should be established to ensure compliance with the Transparency Register provisions**.

Notification of all citizenships

For future notifications to the Transparency Register, the TraFinG prescribes that **all citizenships of the beneficial owners are declared** (until now the declaration of only one citizenship was sufficient). However, an obligation to update already notified details does not exist.

Expanded notification obligation in share deals of foreign companies

Through the TraFinG, the notification obligations of foreign undertakings in the case of the acquisition of **German domestic real estate** are intensified. So far, the acquisition of domestic real estate by a foreign undertaking was subject to a registration and notification obligation in the case of a **direct acquisition**. In future, foreign purchasers are generally also in the case of an **acquisition of an entity holding real estate** obliged to register, insofar as at least 90% of the shares are transferred (§ 1 para. 3 GrEStG) or if they have obtained, as a result of a legal transaction within the meaning of § 1 para. 3a GrEStG, an economic participation.

We gladly support you in all questions in relation to the Transparency Register, whether this is in the review of the beneficial owners, the registration of your undertaking with the Transparency Register, the notification of the beneficial owners or the establishment of Transparency Register compliance, or whether this relates to support in administrative fine procedures.

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