

Transparency Register Update | Recent developments at national and EU level

Deloitte Legal Webcast | 29 March 2023, 11.00 - 11.45 a.m.



Introduction & Agenda

Experts



Jens Hoffmann

Deloitte Legal | Corporate/M&A
Attorney-at-law
Counsel

Tel.: +49 30 25468 236

Email: jenhoffmann@deloitte.de



Anna-Lena Kringel

Deloitte Legal | Corporate/M&A
Attorney-at-law
Associate

Tel.: +49 30 25468 246

Email: akringel@deloitte.de

Agenda

A. Introduction

- I. General information on the German transparency register
- II. Legal consequences of non-compliance with obligations

B. ECJ judgement | Protection of beneficial owners' personal data

- I. Background
- II. ECJ judgement of 22 November 2022 (cases C-37/20 and C-601/20)
- III. Legal consequences
- IV. Recommendations

C. New regulations by the Sanctions Enforcement Act II

- I. Overview
- II. Extension of notification obligations for foreign entities
- III. Inclusion of real estate data in the German transparency register
- IV. Recommendations

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

- I. Overview
- II. EU regulation on combating money laundering and terrorist financing

E. Q&A



A. Introduction

A. Introduction

I. General information on the German transparency register



Basis

1

First-time introduction of the so-called “**transparency register**” (*Transparenzregister*) in Germany based on the 4th EU Anti-Money Laundering Directive with entry into force of the new German Anti-Money Laundering Act (AMLA) on **26 June 2017**



2

Notification obligations regarding beneficial owners for legal entities under private law and registered partnerships with registered seat in Germany are generally in place since **1 October 2017**.

A. Introduction

I. General information on the German transparency register

Legislative reforms

- First reformation of the new German AMLA based on the 5th EU Anti-Money Laundering Directive as of **1 January 2020**: inter alia **extension of access to German transparency register entries for all members of the public** (previously access was only granted for a limited group of persons)
- **Notification obligations** regarding beneficial owners for foreign entities having a connection to real estate located in Germany are generally in place since **1 January 2020** under certain conditions.
- New regulations by the Transparency Register and Financial Information Act as of **1 August 2021**: Abolition of so-called "fictions of notification" (*Mitteilungsfiktionen*) and successive conversion of the German transparency register from a so-called "back-up-register" (*Auffangregister*) to a "full register" (*Vollregister*) until 31 December 2022; first extension of notification obligations for foreign entities
-  Resulting from the ECJ judgement of **22 November 2022**: Restriction of access to the German transparency register for members of the public
-  New regulations by the Sanctions Enforcement Act II of **28 December 2022**: inter alia second extension of notification obligations for foreign entities; inclusion of real estate data in the German transparency register

A. Introduction

I. General information on the German transparency register

Companies subject to notification obligations

Entities

- **Legal entities under private law** (e.g. limited liability company (*GmbH*) including the limited liability entrepreneurial company (*UG*), stock corporation (*AG*), European stock corporation (*SE*), partnership limited by shares (*KGaA*)) and **registered partnerships** (e.g. general partnership (*OHG*), limited partnership (*KG*) incl. the limited partnership with a GmbH as general partner (*GmbH & Co. KG*)) with registered seat in Germany (sec. 20 para. 1 sent. 1 AMLA)
 - Applies **without exception** after so-called "fictions of notification" (*Mitteilungsfiktionen*) were abolished as of 1 August 2021 and the expiration of latest transitional notification periods until 31 December 2022
 - **Also applies for companies listed on the stock exchange** and their subsidiaries
 - **Exceptions** may only apply for **registered associations** (sec. 20a AMLA)

- Under certain conditions also **entities with (registered) seat abroad having a connection to real estate located in Germany** (sec. 20 para. 1 sent. 2, 3 AMLA)

A. Introduction

I. General information on the German transparency register

Companies subject to notification obligations

Other legal arrangements

- **Domestic administrators (trustees) of trusts** as well as **domestic trustees of foundations without legal capacity and other special legal arrangements** (sec. 21 para. 1 sent. 1, para. 2 AMLA)
- Under certain conditions also **trustees with place of residence or seat outside the EU** if they enter into a business relationship for the trust with a contractual partner located in Germany or under certain conditions in case of a connection to real estate located in Germany (sec. 21 para. 1 sent. 2 AMLA).

A. Introduction

I. General information on the German transparency register

Identification of entities' actual beneficial owner

Basic rule: The beneficial owner is the **natural person** who ultimately **owns** or **controls** a legal person, other entity or legal arrangement (sec. 3 para. 1 sent. 1 no. 1 AMLA).

Pursuant to sec. 3 para. 2 sent. 1 AMLA the actual beneficial owner is any natural person who **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 manner**.



If these requirements are fulfilled by an entity, the natural person who exercises a **dominant controlling influence** on the parent entity within the meaning of sec. 3 para. 2 sent. 2 - 4 AMLA is deemed to be the **indirect actual beneficial owner** because he/she

- holds more than **50% of the capital shares**,
- controls more than **50% of the voting rights** or
- exercises **control in a comparable manner**.



A. Introduction

I. General information on the German transparency register

Entities' fictitious beneficial owner

- In case even after extensive investigations **no actual beneficial owner can be identified** according to sec. 3 para. 2 sent. 1 - 4 AMLA the entity's legal representative or managing partner is deemed to be its so-called "**fictitious beneficial owner**" (*fiktiv wirtschaftlich Berechtigter*) (sec. 3 para. 2 sent. 5 AMLA).

A. Introduction

II. Legal consequences of non-compliance with obligations



Financial penalties

- Intentional or reckless violations of notification obligations constitute **administrative offences** (sec. 56 para. 1 sent. 1 no. 55 lit. d) AMLA), which may be punished by the following **fin**es:
 - In general: in the case of intentional commission: up to EUR 150,000, otherwise: up to EUR 100,000 (sec. 56 para. 1 sent. 2 AMLA);
 - in the case of serious, repeated or systematic violations: up to one million euros or up to twice the economic benefit derived from the violation (sec. 56 para. 3 sent. 1 AMLA);
 - higher fines can be imposed on certain “specially obliged” persons under the German AMLA (including credit and payment institutions as well as insurance companies): up to 5 million euros or 10% of the achieved total (annual) turnover (sec. 56 para. 3 sent. 3, 4 AMLA).



Subject to fines are not only violations of notification obligations but also the omission of the necessary “advance measures” (e.g. if contrary to sec. 20 para. 1 AMLA the **information on the beneficial owners is intentionally or recklessly (a) not obtained, (b) not, not correctly or not completely stored or (c) not kept up to date**; sec. 56 para. 1 sent. 1 no. 55 lit. a) - c) AMLA).

A. Introduction

II. Legal consequences of non-compliance with obligations



“Naming & Shaming“

- The German anti-money laundering supervisory authorities (e.g. German Federal Administrative Office (*Bundesverwaltungsamt*; *BVA*), German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*; *BaFin*) must inter alia **publish final administrative decisions imposing fines** for violations of obligations under the German AMLA on their website or a joint website (sec. 57 para. 1 sent. 1 AMLA).



www.bva.bund.de (decisions on fines)

- The type and nature of the violation as well as the natural or legal persons or entities responsible for the violation must be named (sec. 57 para. 1 sent. 3 AMLA).
- The publication must remain on the authority's website for **five years** (sec. 57 para. 4 sent. 1 AMLA).

A. Introduction

II. Legal consequences of non-compliance with obligations

Notification of inconsistency (*Unstimmigkeitsmeldung*) (sec. 23a AMLA)

- If “specially obliged” persons under the German AMLA (e.g. credit institutions, insurance companies) come to the conclusion that German transparency register entries deviate from information available to them, they must immediately notify the German transparency register authority (German Federal Gazette publishing house (*Bundesanzeiger Verlag*)) about the inconsistency (sec. 23a para. 1 sent. 1 AMLA); exceptions apply for “legal advice and legal representation”.
- An inconsistency exists if (i) **transparency register entries are missing**, (ii) **certain information regarding the beneficial owners differ** or (iii) **differing beneficial owners have been identified** (sec. 23a para. 1 sent. 4 AMLA).
- The German transparency register authority must **immediately examine** notifications of inconsistency (sec. 23a para. 3 sent. 1 AMLA). It may request the information and documents required for the clarification from the person filing the notification of inconsistency or the concerned entity (sec. 23a para. 3 sent. 2 AMLA).
- During the examination of the notification of inconsistency the German transparency register authority prepares **overviews showing the ownership and control structure** of the concerned entity (sec. 23 para. 3a sent. 1 AMLA).

According to new regulations by the Sanctions Enforcement Act II as of 28 December 2022 these overviews **must be stored until the expiration of two years after the dissolution of the concerned entity**. For notifications of inconsistency whose examination will be completed as of 30 June 2023 these overviews will be **provided** to the person who filed the notification of inconsistency as well as to authorities, courts and “specially obliged” persons under the German AMLA inspecting the German transparency register in the course of normal inspections (sec. 23 para. 1 sent. 3, sec. 23a para. 3a sent. 2, para. 5 sent. 2, sec. 59 para. 14 AMLA).



A. Introduction

II. Legal consequences of non-compliance with obligations

Consequences of the notification of inconsistency

- Until the examination of a notification of inconsistency is completed, the **transparency register excerpt** contains a clearly visible **reference to the ongoing proceeding (“Ongoing examination pursuant to sec. 23a AMLA”)** (sec. 23a para. 6 sent. 1 AMLA). After completion of the examination this is also visible from the transparency register excerpt (sec. 23a para. 6 sent. 2 AMLA).
- Ongoing notification of inconsistency proceedings may **preclude or significantly delay the establishment or continuation of business relationships** (e.g. with banks and public notaries) (fulfilment of own due diligence obligations according to German anti-money laundering law; sec. 2, 10 AMLA).

Sec. 10 para. 9 sent. 1, 2 AMLA: "If the 'specially obliged' person is unable to fulfil the general due diligence obligations according to para. 1 no. 1 - 4, the business relationship must not be established or continued and no transaction may be carried out. Where a business relationship already exists the 'specially obliged' entity is regardless of any other statutory provisions or contractual terms obliged to its termination."

- Notification of inconsistency proceedings are **time and cost extensive proceedings** (inter alia legal costs for necessary statements vis-à-vis the German transparency register authority).
- If the German transparency register authority comes to the conclusion that the information on the beneficial owner as contained in the German transparency register is not correct or if it cannot complete the examination of the notification of inconsistency due to an unclear situation, it hands over the notification of inconsistency with all necessary documents to the German Federal Administrative Office (*Bundesverwaltungsamt; BVA*) for prosecution as **administrative offence** (sec. 23a para. 4 AMLA).

B. ECJ judgement | Protection of beneficial owners' personal data

B. ECJ judgement | Protection of beneficial owners' personal data

I. Background

German transparency register | Inspection rights

- All German **public authorities** and **courts** as well as **certain public corporations and institutions** for the purpose of fulfillment of their statutory duties (sec. 23 para. 1 sent. 1 no. 1 AMLA)
- **“Specially obliged” persons under the German AMLA** for the purpose of fulfillment of their own due diligence obligations under the German AMLA (e.g. credit institutions, insurance companies, public notaries, lawyers, auditors and real estate agents; sec. 23 para. 1 sent. 1 no. 2 AMLA)
- As per legal provision: all members of the public (sec. 23 para. 1 sent. 1 no. 3 AMLA)

Accessible information on beneficial owners

- In every case: First and last name, month and year of birth, country of residence, type and extent of the beneficial interest, all nationalities (sec. 23 para. 1 sent. 4 AMLA)
- For public authorities, courts and “specially obliged” persons under the German AMLA additionally: Date of birth, place of main residence (sec. 23 para. 1 sent. 4 AMLA)

B. ECJ judgement | Protection of beneficial owners' personal data

II. ECJ judgement of 22 November 2022 (cases C-37/20 and C-601/20)



Main content

- The ECJ **declared the relevant Union legislation of unrestricted access for all members of the public to the transparency registers of the EU member states** as foreseen in the 5th EU Anti-Money Laundering Directive (article 1 no. 15 lit. c) EU directive 2018/843) **invalid**.



Reasoning

- The access by all members of the public to the information on beneficial owners constitutes a **severe and unjustifiable infringement of their fundamental rights to respect for private life and protection of personal data** (articles 7 and 8 of the Charter of Fundamental Rights of the European Union).

B. ECJ judgement | Protection of beneficial owners' personal data

III. Legal consequences

The ECJ judgement's legal consequences at EU level

- **Revival** of the previous provision of the 4th EU Anti-Money Laundering Directive requiring a “**legitimate interest**” for public access to the German transparency register (article 30 para. 5 subpara. 1 lit. c) EU directive 2015/849)
- For reasons of legal certainty and legal clarity the EU legislator is obliged to amend respectively correct the provision of the 5th EU Anti-Money Laundering Directive that has been declared invalid.
- The **renewed draft version of the 6th EU Anti-Money Laundering Directive** as of **5 December 2022** (re-) introduces the obligation to demonstrate a “**legitimate interest**” (draft article 12 para. 1).
- To substantiate this requirement subject to interpretation the updated draft version of the 6th EU Anti-Money Laundering Directive **for the first time determines certain (non-exhaustive) cases to apply uniformly across the EU** (draft article 12 para. 1 subpara. 2).
 - ➔ Accordingly, a legitimate interest can be particularly assumed in case of inspections by members of the public who have a **connection to the prevention and combating of money laundering and terrorist financing** (e.g particularly journalists and NGOs conducting research in this area).

B. ECJ judgement | Protection of beneficial owners' personal data

III. Legal consequences

The ECJ judgement's legal consequences at national level

- Sec. 23 para. 1 sent. 1 no. 3 AMLA **formally** still provides for an unrestricted inspection right to the German transparency register for all members of the public; however, this provision **does not comply with EU law**.
- A new regulation by the German legislator is not expected until the implementation of the 6th EU Anti-Money Laundering Directive as part of the so-called "EU Anti-Money Laundering Prevention Legislative Package".
- Until the entry into force of a new legal framework the **administrative practice** of the German transparency register authority **updated** with announcement of **12 December 2022** must be observed: Members of the public are authorized to inspect the German transparency register but only in case they can demonstrate a "legitimate interest".
- According to the **specification of the new administrative practice** by the German transparency register authority at the **end of January 2023** such "legitimate interest" shall be particularly assumed in the following three constellations:

*„if it is intended to review the own information of the registration (so-called **self-inspection**)“*

*„for **journalists and non-governmental organizations (NGOs)** conducting research related to money laundering or terrorist financing“*

*„in case **any other close connection to money laundering and terrorist financing** can be plausibly demonstrated.“*

B. ECJ judgement | Protection of beneficial owners' personal data

IV. Recommendations

Recommendations for beneficial owners and compliance respectively data protection officers

- Continuous monitoring of current developments regarding the protection of beneficial owners' personal data
- Possibility to (regularly) **exercise the right to obtain information** about inspections in the German transparency register carried out by members of the public (sec. 23 para. 8 AMLA)
- **Application for restriction of inspection** (sec. 23 para. 2 AMLA); in view of the required legal interest only admissible in particular cases



Further information:

[Anti-Money Laundering Compliance | Protection of beneficial owners' personal data](#)

C. New regulations by the Sanctions Enforcement Act II

C. New regulations by the Sanctions Enforcement Act II

I. Overview

Background

- Sanctions Enforcement Act I entered into force on 28 May 2022;
- **Sanctions Enforcement Act II** entered into force on **28 December 2022**;
- Purpose: structural improvements in the areas of **enforcement of sanctions** and **combating of money laundering**

C. New regulations by the Sanctions Enforcement Act II

I. Overview



New German AMLA provisions

- **Extension of notification obligations** to the German transparency register **for foreign entities**
- **Inclusion of real estate data** in the German transparency register
- **More transparency regarding notifications of fictitious beneficial owners** (since 1 January 2023)
- Information utilization of **overviews showing the ownership and control structure** of companies for public authorities and “specially obliged” persons under the German AMLA
- **Prohibition of cash payments** for real estate purchase (as of 1 April 2023)

C. New regulations by the Sanctions Enforcement Act II

II. Extension of notification obligations for foreign entities

Previous legal situation (sec. 20 para. 1 sent. 2 AMLA old version)

Extraordinary "real estate related" notification obligation only applied in cases of new acquisition of real estate:

- The foreign entity **undertook to acquire** respectively **acquired** (direct) **ownership** of real estate located in Germany as of 1 January 2020; or
- The conditions of sec. 1 para. 3, para. 3a German Real Estate Transfer Tax Act (*Grunderwerbsteuergesetz*) were fulfilled as of 1 August 2021, e.g. the foreign entity **directly or indirectly undertook to acquire** respectively **acquired at least 90% of shares** in a company whose assets include real estate located in Germany.

New legal situation (sec. 20 para. 1 sent. 2 AMLA new version)

Extension of the extraordinary "real estate related" notification obligation to cases of already existing real estate ownership:

- The foreign entity undertakes to acquire, acquires or currently **holds** (direct) **ownership** of real estate located in Germany; or
- The conditions of sec. 1 para. 3, para. 3a German Real Estate Transfer Tax Act (*Grunderwerbsteuergesetz*) are fulfilled, particularly in case the foreign entity **directly or indirectly** undertakes to acquire, acquires or **holds at least 90% of shares** in a company whose assets include real estate located in Germany.

C. New regulations by the Sanctions Enforcement Act II

II. Extension of notification obligations for foreign entities



Transitional notification period

- For the newly covered cases of already existing real estate ownership a **transitional notification period** applies until **30 June 2023** (sec. 59 para. 13 AMLA new version).

Exception from notification obligations

- The notification obligations for foreign entities to the German transparency register do generally not apply if the **foreign entity has already notified its beneficial owners to a transparency register of another member state of the European Union** (sec. 20 para. 1 sent. 3 AMLA)

Consequences of omitted notifications



- Violations of the extraordinary "real estate related" notification obligation bear the risk of **administrative offence proceedings** whose consequences may include **significant financial and so-called "Naming & Shaming" penalties** (sec. 56 para. 1 sent. 1 no. 55, sec. 57 para. 1 sent. 1 AMLA).
- Additionally, the violation of notification obligations leads to a **prohibition of notarization** in real estate related transactions (sec. 10 para. 9 sent. 4 AMLA) that will be **extended to the seller side** with the expiration of transitional notification periods on 30 June 2023 (sec. 20 para. 1 sent. 2, sec. 59 para. 13 AMLA new version).

C. New regulations by the Sanctions Enforcement Act II

III. Inclusion of real estate data in the German transparency register



Real estate data

- With regard to **entities that are registered as owners of real estate in section I of the German land register**, the following information on real estate will be included in the German transparency register (sec. 19a AMLA new version):
 - Competent local court,
 - Land register district,
 - Number of the land register sheet,
 - All real estate registered in the inventory of the land register sheet, in each case with district (*Gemarkung*), plot (*Flur*) and plot parcel (*Flurstück*),
 - Nature and extent of the ownership,
 - Beginning and end of the ownership.

Procedure

- The **inclusion** of the real estate data in the German transparency register will be carried out **by the German transparency register authority** (sec. 19b para. 3 sent. 1 AMLA new version) on the basis of information provided by the German land register authorities or other competent German public authorities (sec. 19b para. 1 sent. 1, para. 4 AMLA new version).
- The **initial provision** of all information is supposed to take place no later than 31 July 2023 **with a status of the real estate data as of 30 June 2023** (sec. 19b para. 1 sent. 3 AMLA new version). As of **1 July 2023** the provision will take place on an ad hoc basis in an automated procedure after any **changes to the real estate data** (sec. 19b para. 2 AMLA new version).

C. New regulations by the Sanctions Enforcement Act II

III. Inclusion of real estate data in the German transparency register

Restricted inspection rights

- The right to inspect the real estate data included in the German transparency register will **only** be granted for **public authorities, courts, certain public corporations and institutions, certain “specially obliged” persons under the German AMLA** (credit institutions, financial services institutions, payment and e-money institutions, insurance companies) and **public notaries** (sec. 23 para. 1 sent. 5 AMLA new version).
- **Other persons will have no right to inspect** the real estate data.

Real estate related notification of inconsistency (*Unstimmigkeitsmeldung*) (future sec. 23b AMLA)

- Enters into force on **1 January 2026**
- The persons authorized to inspect the real estate data in the German transparency register must **immediately notify** the German transparency register authority of any **inconsistencies** they discover between the **real estate data** registered in the **German transparency register** and real estate data **available to them** (sec. 23b para. 1 sent. 1 AMLA).
- The German transparency register authority must **immediately examine** real estate related notifications of inconsistency (sec. 23b para. 3 sent. 1 AMLA). It may request the information and documents required for the clarification from the person filing the notification of inconsistency or the concerned entity or inspect the German land register (sec. 23b para. 3 sent. 2 AMLA).
- A **reference to the ongoing proceeding in the transparency register excerpt** as foreseen for notifications of inconsistency according to sec. 23a AMLA (sec. 23a para. 6 AMLA) is **currently not foreseen**.

C. New regulations by the Sanctions Enforcement Act II

IV. Recommendations



Extension of notification obligations for foreign entities

- **Foreign entities** as well as **cross-border and multi-level group structures** should **timely examine** potentially existing “real estate related” notification obligations to the German transparency register due to existing real estate ownership in Germany.
- **Transitional notification periods** only apply **until 30 June 2023** for newly covered cases of already existing real estate ownership.

Inclusion of real estate data in the German transparency register

- **Generally**, entities with real estate ownership in Germany should **review real estate data included in the German transparency register** by the German transparency register authority as real estate related notifications of inconsistency will be applicable as of 1 January 2026.
- However, currently neither self-inspection rights nor a right of inspection for lawyers is foreseen. Therefore, further **(legal) developments** in this regard should be closely **monitored**.

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

I. Overview

Planned legislative measures



6th EU Anti-Money Laundering Directive



EU regulation on combating money laundering and terrorist financing



EU regulation establishing an EU authority for combating money laundering and terrorist financing



Revised EU regulation on transfer of funds

Legislative procedure

- First drafts submitted by the European Commission on **20 July 2021**
- Ongoing legislative procedure (European Commission, Council of the European Union, European Parliament)
- **Adoption not before mid-year 2023**

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

I. Overview

Content of legislative measures

6th EU Anti-Money Laundering Directive:

- **To be implemented** by EU member states
- Replaces the 4th and 5th EU Anti-Money Laundering Directives
- **Regulations regarding the maintenance/ establishment of transparency registers** by EU member states
- Regulation of **access** to the transparency registers



EU regulation on combating money laundering and terrorist financing:

- **Directly applicable** in all EU member states
- Internal risk management of “specially obliged” persons
- Due diligence obligations in customer relationships
- **Transparency of beneficial ownership (identification of beneficial owners and notification obligations)**

EU regulation establishing an EU authority for combating money laundering and terrorist financing:

- Establishment of a **central EU authority**
- Support and coordination of national authorities
- Development of guidelines, recommendations and statements
- Direct supervision of certain high-risk “specially obliged” persons in the financial sector
- Own powers to adopt measures and impose sanctions

Revised EU regulation on transfer of funds:

- Revised version of EU regulation 2015/847
- In particular extension of traceability requirements to **crypto assets**

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

II. EU regulation on combating money laundering and terrorist financing

Background

- Generally, extensive regulations at EU level in the 4th and 5th EU Anti-Money Laundering Directives
- **Required implementation of directives** by EU member states into national law
- Many **delays** with regard to implementation into national law
- **Leeway of implementation** leads to discrepancies of national regulations

Purpose

- Establishment of a uniform rule set (**harmonization**)
- ➔ **Direct applicability** of the EU regulation on combating money laundering and terrorist financing three years after entry into force (draft article 65)

Legislative status


- **Renewed draft** version of the Council of the European Union of **5 December 2022**

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

II. EU regulation on combating money laundering and terrorist financing

EU-wide uniform identification of corporate entities' beneficial owners

1) Direct or indirect ownership in the corporate entity:

- Direct or indirect holding of **+25% of the capital shares or voting rights** (draft article 42 para. 1, 2)
 - Indirect ownership to be determined by **multiplying** the capital shares or voting rights held by each intermediary entity in the chain (draft article 42 para. 2).
 - ➔ Until today **no such calculation by multiplication** in Germany (*see BVA FAQ of 25 May 2022, part 1., chapter C., cipher 5.*)
-  ➔ Consequence: Decrease of the currently as of the second shareholder level decisive threshold in Germany of **+50%** for indirect ownership
- For **corporate entities with higher money laundering and terrorist financing risk** the European Commission may determine **lower thresholds** by means of implementing acts (draft article 42 para. 8).

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

II. EU regulation on combating money laundering and terrorist financing

EU-wide uniform identification of corporate entities' beneficial owners

2) Direct or indirect control over the corporate entity:

- Control = possibility to exercise **significant influence** and impose **relevant decisions** (draft article 42 para. 1, 3)

Defined cases (draft article 42 para. 4):

- Control over the **majority of voting rights**
- Right to appoint the **majority of the members** of the administrative, management or supervisory body
- Relevant **veto or decision rights** as well as decisions regarding **distribution of profit** or **leading to a shift in assets**

Control via other means (draft article 42 para. 5):

- May result from :
 - Formal or informal **agreements**, provisions in the **articles of association/partnership agreements** or **equivalent documents**
 - Relationships between **family members**
 - Existence of formal or informal **nominee agreements**
- To be examined **independent** from and **parallel** to the categories of ownership and control

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

II. EU regulation on combating money laundering and terrorist financing

EU-wide uniform identification of corporate entities' beneficial owners

3) Members of the representative, management or executive board:

- Where **after having exhausted all possible means** of identification no natural person can be identified who (directly or indirectly) holds ownership or exercises control the **members of the representative, management or executive board** (e.g. managing directors in case of a German limited liability company (*GmbH*)) have to be notified (draft article 45 para. 2, para. 3; in Germany currently so-called "fictitious beneficial owners").
- Additionally, a **statement** must be submitted clarifying that there is no beneficial owner or that the beneficial owner could not be identified or verified. The statement must be accompanied by a respective **justification** (draft article 45 para. 3).

EU-wide uniform identification of beneficial owners in other cases

- Special rules foressen for the identification of beneficial owners of legal entities under private law other than corporate entities (e.g. foundations), express trusts and similar legal arrangements (draft articles 42 para. 6, 42a, 43)

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

II. EU regulation on combating money laundering and terrorist financing

Companies listed on the stock exchange

- **Generally, no notification obligation** for companies whose securities are admitted to trading on a regulated market that are subject to the disclosure requirements consistent with EU legislation or subject to equivalent international standards (draft article 45a)
- Exception only applies in case **control** is exercised **exclusively by natural persons with voting rights** and **no other legal persons or legal arrangements** are **part of the company's ownership or control structure** (draft article 45a).

Companies with registered seat outside the EU

- **Notification obligation** under the following conditions (draft article 48 para. 1):
 - Acquisition of **real estate** in the territory of an EU member state;
 - Receiving a **public procurement** for goods, services or concessions;
 - Entering into a **business relationship with "specially obliged" persons under anti-money laundering law** (exception: "specially obliged" persons operating in a sector associated with low money laundering or terrorist financing risks and the business relationship or related transactions do not exceed the amount of EUR 250,000)

D. Upcoming: EU Anti-Money Laundering Prevention Legislative Package

II. EU regulation on combating money laundering and terrorist financing

Information on beneficial owners

- Currently (sec. 19 para. 1 AMLA):

- First and last name(s)
- Date of birth
- Place of main residence (with country of residence)
- Type and extent of the beneficial interest
- All nationalities

- **Additionally** (draft article 44):

- Place of birth
- Residential address
- Personal identification number or number of the identity document



Storing and updating of information

- Obligation to **obtain, store** and **update** information on beneficial owners (draft article 45 para. 1, para. 1a)
- Obligation to (at least) **annual review** (draft article 45 para. 1a)



Notification deadlines

- After incorporation of the company: **immediately** (i.e. without undue delay) (draft article 45 para. 1a)
- In the event of changes to the information: **immediately** (i.e. without undue delay) **but no later than 28 calendar days** (draft article 45 para. 1a)

V. Q&A



Many thanks
for your
attention

Your Contact



Jens Hoffmann

Deloitte Legal | Corporate/M&A
Attorney-at-law
Counsel

Tel.: +49 30 25468 236

Email: jenhoffmann@deloitte.de



Anna-Lena Kringel

Deloitte Legal | Corporate/M&A
Attorney-at-law
Associate

Tel.: +49 30 25468 246

Email: akringel@deloitte.de

Deloitte Legal

Experience the future of law, today

An introduction to Deloitte Legal

Deloitte Legal is

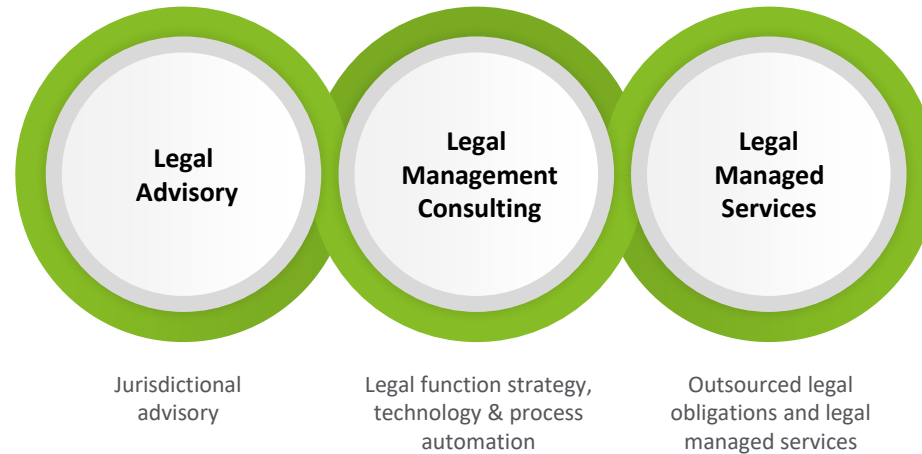
more than **2,500** legal professionals
operating in **75+** jurisdictions



collaborating seamlessly
across borders and with other Deloitte
business lines

Deloitte Legal practice areas

We are organized into three intersecting market offerings, enabling us to serve our clients when, how, and where we can help them achieve their visions.



We apply perspective to deliver value

Deloitte's cross-disciplinary approach enables us to provide globally integrated services that are:



Consistent
with your enterprise-wide vision



Tailored
to your business units and geographies



Technology-enabled
for improved collaboration and transparency

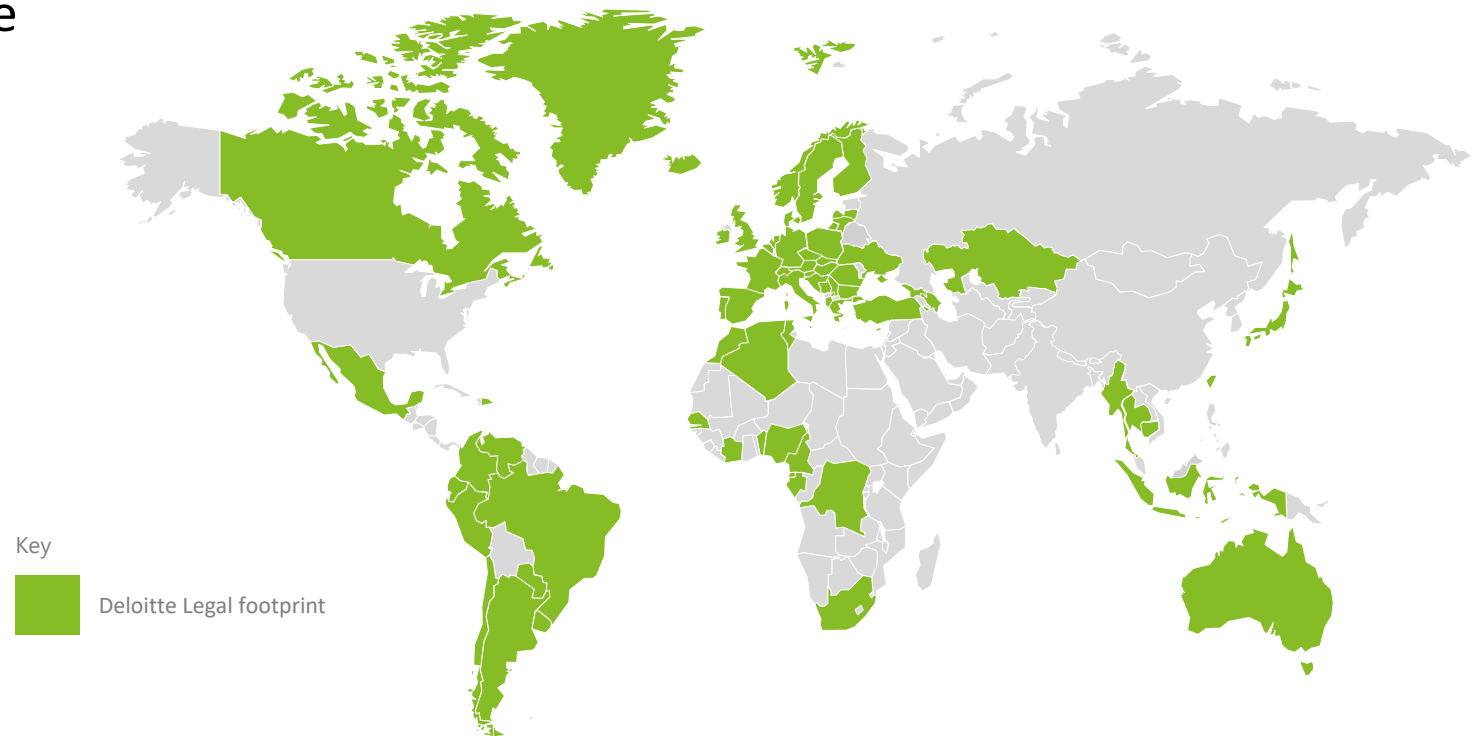


Sensitized
to your regulatory requirements

Cross-border coordination and a single point of contact

It can be enormously challenging to manage numerous legal services providers around the world and issues can slip into the cracks.

As one of the global leaders in legal services, Deloitte Legal works with you to understand your needs and your vision, and to coordinate delivery around the world to help you achieve your business goals.



Deloitte Legal practices

1. Albania
2. Algeria
3. Argentina
4. Australia
5. Austria
6. Azerbaijan
7. Belgium
8. Benin
9. Bosnia
10. Brazil
11. Bulgaria
12. Cambodia
13. Cameroon
14. Canada
15. Chile
16. Colombia
17. Costa Rica
18. Croatia
19. Cyprus
20. Czech Rep.
21. Dem Rep of Congo
22. Denmark
23. Dominican Republic
24. Ecuador
25. El Salvador
26. Equatorial Guinea
27. Finland
28. France
29. Gabon
30. Georgia
31. Germany
32. Greece
33. Guatemala
34. Honduras
35. Hong Kong SAR, China
36. Hungary
37. Iceland
38. Indonesia
39. Ireland
40. Italy
41. Ivory Coast
42. Japan
43. Kazakhstan
44. Kosovo
45. Latvia
46. Lithuania
47. Malta
48. Mexico
49. Montenegro
50. Morocco
51. Myanmar
52. Netherlands
53. Nicaragua
54. Nigeria
55. Norway
56. Paraguay
57. Peru
58. Poland
59. Portugal
60. Romania
61. Senegal
62. Serbia
63. Singapore
64. Slovakia
65. Slovenia
66. South Africa
67. Spain
68. Sweden
69. Switzerland
70. Taiwan
71. Thailand
72. Tunisia
73. Turkey
74. Ukraine
75. Uruguay
76. United Kingdom
77. Venezuela



Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms, their affiliates or partner firms that provide legal services.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/de/UeberUns to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Legal advisory services in Germany are provided by Deloitte Legal. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com/de.

This communication contains general information only, and none of Deloitte Legal Rechtsanwaltsgesellschaft mbH or Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.