

NOTARE AM ALSTERTOR

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NOTARE

Client Information on the Tightening of the German Money Laundering Act (*GwG*) - IMPORTANT INFORMATION, please note immediately -

Dear Clients,

As you have probably already read in the political reports, the Federal Council of Germany (*Bundesrat*) adopted the bill to amend the German Money Laundering Act (*GwG*) at its meeting on 29 November 2019. The new legislation has taken effect as of 1 January 2020.

The amendments to the German Money Laundering Act (*GwG*) considerably tighten the investigation, documentation and reporting obligations of various professions, in particular notaries. This applies in particular to the entire area of real-estate law as well as to major parts of corporate law. According to the legislator's assessment this tightening shall counteract the use of illegally obtained funds.

Against this (politically sensitive) background, we would like to point out to you as our clients that we are required to obtain considerably more information about the beneficial owners prior to various notarizations in the future. According to the requirements of the legislator this also applies to clients that are well-known to us for many years. The beneficial owner within the meaning of the German Money Laundering Act (*GwG*) is, in particular, in the case of companies, any natural person that directly or indirectly holds more than 25% of the capital stock or voting rights or exercises control in a comparable manner. In the case of natural persons, this is in particular the person at whose instruction a transaction is carried out (e.g. a trustor).

We would like to draw your special attention to the increased requirements when the subject matter of the notarization is a property (or shares in a company whose assets include a property). **In that case, you are required to provide us with the following information prior to the notarization in due time, in particular**

- the identity of the beneficial owner(s) on the basis of documentation regarding the ownership and control structure to be prepared and submitted by you to us (section 11 para. 5a sentence 1 of the German Money Laundering Act (*GwG*)). We are required to examine such documentation as regards its consistency and make such documentation available to the relevant authorities upon their request.
- a photocopy of a valid official photo identification document of the beneficial owner(s) (passport or photo-ID card).
- whether the beneficial owner is a "politically exposed person" (PeP) within the meaning of the German Money Laundering Act (*GwG*) or a family member or any other person known to be related to a PeP.

For all transactions taking place as from 1 January 2020, we are required to deny any appointment for notarization pursuant to the new statutory provision stipulated in section 10 para. 9 sentence 4 of the German Money Laundering Act (*GwG*) if you have not complied with the obligations referred to above. The observance of this legislation is **mandatory**. It

does not only concern large-volume real estate transactions between professional market participants but also covers every standard property development contract.

Against this background, we request all companies involved in real estate transactions to provide us with the above information as quickly as possible, in particular a chart of their ownership and control structure. This is the only way to ensure that notarizations can take place properly as from 1 January 2020.

If a **company domiciled abroad** as purchaser is party to a real estate transaction, special requirements apply as from 1 January 2020. Pursuant to section 20 para. 1 sentence 2 of the German Money Laundering Act (*GwG*) such companies must be registered in the German transparency register unless they can prove that they have already provided the relevant information to a transparency register situated in another member state of the European Union. If a purchasing company domiciled abroad cannot furnish such a proof of registration, the notary is required to **deny** the notarization of the real estate transaction pursuant to section 10 para. 9 sentence 4 of the German Money Laundering Act (*GwG*).

In this context, we would like to point out that in the course of the tightening of the German Money Laundering Act (*GwG*), the transparency register will also gain significantly more importance. All members of the public shall have the right to inspect the transparency register in the future. The imposition of penalties shall be intensified. In the future, final decisions on penalties for breaches of the obligation to notify shall be disclosed on the internet. Notaries and other obligors are required to submit so-called "discrepancy reports" to the competent registration authority if the information contained in the transparency register does not correspond to the other available information.

Finally, we would like to point out that not all of the details of the future new regulation have yet been determined. For example, the Federal Ministry of Finance (*Bundesfinanzministerium*) shall regulate various issues in more detail by means of a legal ordinance. Pursuant to section 43 para. 6 of the German Money Laundering Act (*GwG*) it is also intended to establish a catalogue of fact patterns. If one or more of these fact pattern(s) is/are fulfilled the acting notaries are required to report the incident(s) to the Central Office for Financial Transaction Investigations (*Zentralstelle für Finanztransaktionsuntersuchungen*) irrespective of any individual suspicious circumstances.

For helpful information provided by the Federal Administration Office (*Bundesverwaltungsamt*) on determining the beneficial owner(s) please go to

https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/FAQ/FAQ-wirtschaftlich-Berechtigte/wirtschaftl_Berechtigte_node.html;jsessionid=CA60EBD112D61436C5BEB2F0A281BE79.intranet661

It is particularly unfortunate that the legislator is putting these essentially sensible regulations into effect so quickly and is thus necessarily creating some legal uncertainty.

We thank you very much for your attention and understanding.

Yours,

Notaries at Alstertor