

Track Changes

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January 2020

Amendments to the rules for registering Ultimate Beneficial Owners in Austria will go into effect on 10 January 2020

Based on the "EU-Finanz-Anpassungsgesetz 2019", the Austrian legislature has issued several amendments to the Act on the Register of Ultimate Beneficial Owners (*Wirtschaftliche Eigentümer Registergesetz – WiEReG*). To a large extent, the anticipated amendments will enter into legal effect on 10 January 2020. Some additional changes (as set out below) will come into force at a later stage, namely on 10 November 2020 and 10 March 2021. Below is a non-exhaustive summary of some of the most important amendments.

1. PROVISIONS EFFECTIVE AS OF 10 JANUARY 2020

- The Register of Ultimate Beneficial Owners (the "Register") will become publicly accessible. This means that instead of certain obliged entities (e.g., credit institutions, auditors, notaries, attorneys-at-law) and competent authorities, as of 10 January 2020, anyone may obtain information from the Register in order to verify any legal entity's ultimate beneficial owner.
- Within four weeks after completion of the annual review of the accuracy of the data in the Register, each legal entity must register any necessary changes or expressly confirm that the current registered data is still correct.
- Formerly, trusts or any arrangements similar to trusts were covered by the scope of the Austrian WiEReG, provided that their administration was handled in Austria, which in particular is considered to be the case if the trustee's legal seat or permanent address is in Austria. Now, even if the trust's administration is not in Austria or another EU Member State, registration is required if the trustee enters into any business relationships within Austria or acquires any Austrian real estate (in each case in the name of such trust or similar arrangement).
- In the case of trusteeships, the ownership interest which is being controlled needs to be indicated in the Register (provided such can be verified).

- If the members from the top management level are registered as substitutes (i.e., no ultimate beneficial owner is identified under Austrian law), the registration must include a statement as to whether there is no ultimate beneficial owner or whether, after having exhausted all possible means, no ultimate beneficial owner could be determined or verified.
- If any obliged entity becomes aware that a client's registered data is incorrect or incomplete, the obliged entity has to enter an electronic note in the Register, thereby stating the express reasons for entering such note. However, this obligation does not apply provided that the obliged entity notifies the client about the incorrect or incomplete registration and the client issues a correction within a reasonable period of time. Also, in the event of suspicion of money laundering or terrorist financing, there is an express obligation to notify the competent authority that no note will be filed due to a suspicious transaction report.

2. PROVISIONS EFFECTIVE AS OF 10 NOVEMBER 2020

2.1 Compliance-Package

The so called "Compliance-Package" will be effective as of 10 November 2020 and is one of the core elements of the planned amendments. It aims to expand the Register by creating a centralized platform for the purpose of storing documents and data necessary for the identification and verification of ultimate beneficial owners (ownership structure, internal control structure, etc.) Therefore, this would eliminate the necessity of having to provide such documentation in each individual matter (more time efficient, especially regarding the KYC process). Key elements of the Compliance Package are as follows:

- Once a professional representative has identified and verified the ultimate beneficial owner, all relevant data and information can be uploaded in the Register on a voluntary basis (including in particular a group chart indicating the ownership or controlling structure, the articles of association of the legal entity which is being registered, any other documents serving as the basis for identification of the ultimate beneficial owner);
- The Compliance-Package is valid for twelve months. Amendments to the Compliance Package may be made at any time. If an amendment is made, the Compliance-Package's validity is extended for an additional twelve-month period. Such an extension does not apply if only additional documents are provided which shall only serve as an additional means of confirmation of the ultimate beneficial owner already registered with the Register;
- The documents provided as part of the Compliance-Package need to be up to date (e.g. extracts from foreign registers must not be older than six weeks);
- Any documents which are neither in English nor in German must be accompanied with a certified English or German translation;
- Since the documents and information provided in connection with the Compliance-Package are only stored for the purpose of preventing money laundering and

terrorism financing, they are only stored for a maximum period of five years and then must be deleted;

- In the event of justified reasons against a transmission (and subsequent publication) of documents to the Register, the professional representative may alternatively file an exhaustive file note with the Register, thereby confirming having inspected the document and having drafted the respective file note (including, among other information, the date and place of the document's inspection; full name, date of birth and signature of the inspecting individual; exact indication of the inspected document; description of the document's content and a summary of all information relevant in relation to the ultimate beneficial ownership of the legal entity in question).

2.2 Notifications (regarding Ultimate Beneficial Owners) made by the professional representative

Notifications may be completed either by the legal entity or a professional representative (regarding the ultimate beneficial owner or the Compliance-Package). If the notification is completed by a professional representative, the following information must be added:

- whether the ultimate beneficial owner was identified by the professional representative in accordance with the provisions specified under the Austrian Act on the Register of Ultimate Beneficial Owners;
- whether a Compliance-Package was provided and if so, whether the content may be disclosed to all obliged entities or may only be viewed upon request ("Restricted Compliance-Package"); in the event of a Restricted Compliance-Package, whether certain obliged entities are allowed access and who is entitled to grant access thereto (the professional representative, legal entity or both);
- the e-mail address of the professional representative and, in the event of a Compliance-Package, of the legal entity. In the event of a Restricted Compliance-Package provided that access shall be granted by the legal entity, the e-mail address of the legal entity;
- whether any questions regarding the notification itself or the Compliance-Package may be addressed to the disclosed e-mail addresses.

3. PROVISIONS EFFECTIVE AS OF 10 MARCH 2021

3.1 Procedure for the change of authorized party representatives

Once a filing has been completed by an entity's authorized representative, any newly appointed representative (e.g., change of attorney-at-law) may only complete a filing on behalf of the legal entity by informing the authority of the change of the entity's representative. The represented party (i.e. the legal entity) will be informed of such notification by the authority and may object to such change within two weeks. Provided that no objection is raised, the change will be registered and henceforth only the representative having filed for the last change in the Register may complete filings. In order to meet any filing deadlines, upon the application of the legal entity, the change

of a legal representative may already be registered prior to the lapse of the two-week period.

4. OTHER AMENDMENTS

4.1 Reduced grace period

Instead of a three months grace period, any penalties may now be imposed after a reduced grace period of six weeks.

4.2 New Penalties

Any intentional breach of the obligation to keep copies of the documents and information in relation to the ultimate beneficial owner's identification for a period of at least five years may be fined with a penalty of up to EUR 75,000 and – in the event of gross negligence – of up to EUR 25,000.

The intentional breach of a trustee's obligation to disclose its status and its filing obligations may be fined with a penalty of up to EUR 200,000 and – in the case of gross negligence – of up to EUR 100,000.

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For more information about our services, please contact:



Christian Mikosch

Partner

christian.mikosch@wolftheiss.com

T: +43 1 51510 5310



Doris Buxbaum

Counsel

doris.buxbaum@wolftheiss.com

T: +43 1 51510 5046

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Wolf Theiss
Schubertring 6
AT – 1010 Vienna

www.wolftheiss.com