

## **Federal Act on the establishment of a register of beneficial owners of companies, other legal entities and trusts (Beneficial Owners Register Act – WiEReG; Wirtschaftliche Eigentümer Registergesetz)**

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### **Scope of application**

**Article 1.** (1) This Federal Act shall apply to the legal entities listed in para. 2.

(2) The following companies and other types of legal entity with registered offices in Austria, trusts and arrangements of a similar nature to a trust as defined in nos. 17 and 18 respectively as well as foreign legal entities subject to reporting obligations as defined in no. 19 shall be considered as legal entities for the purposes of this Federal Act:

1. ordinary partnerships (*offene Gesellschaften*);
2. limited partnerships (*Kommanditgesellschaften*);
3. stock companies (*Aktiengesellschaften*);
4. limited liability companies (*Gesellschaften mit beschränkter Haftung*);
5. commercial and industrial cooperative societies (*Erwerbs- und Wirtschaftsgenossenschaften*);
6. mutual insurance associations (*Versicherungsvereine auf Gegenseitigkeit*);
7. small mutual insurance associations (*kleine Versicherungsvereine*);
8. savings banks (*Sparkassen*);
9. European Economic Interest Groupings (*EEIGs*);
10. European companies (legal form: SE; *societas Europaea*);
11. European cooperative societies (legal form: SCE; *societas cooperativa Europaea*);
12. private foundations pursuant to Article 1 PSG;
13. other legal entities, required to be entered into the Commercial Register pursuant to Article 2 no. 13 of the Austrian Commercial Register Act (FBG; *Firmenbuchgesetz*);
14. associations pursuant to Article 1 of the Associations Act (VerG; *Vereinsgesetz*);

15. foundations and funds pursuant to Article 1 of the Federal Act on Foundations and Funds (BStFG 2015; Bundes-Stiftungs- und Fondsgesetz 2015);
16. foundations and funds established on the basis of a provincial act, provided that the application of this Federal Act is allowed under provincial law;
17. trusts pursuant to para. 3, if they are managed from within Austria, or in the case that their management is not in Austria or in another Member State, where the trustee establishes a business relationship on behalf of the trust or which commit themselves to acquire the ownership of a plot of land located in Austria. Management from within Austria shall in particular exist, where the trustee's place of residence or place of incorporation is in Austria;
18. arrangements of a similar nature to trusts; i.e. other legal arrangements, for example *fiducie*, certain types of *Treuhand* or *fideicomisio* provided that such arrangements are comparable both in function and structure with a trust and are managed from within Austria, or in the case that the management is not located in Austria or in another Member State, where the person comparable to a trustee establishes a business relationship or which commit themselves to acquire the ownership of a plot of land located in Austria on behalf of the arrangement of a similar nature to a trust. Management from within Austria shall in particular exist, if the holder of a position of authority of a comparable standing to a trustee has his/her place of residence or place of incorporation in Austria;
19. foreign legal entities subject to reporting obligations: companies, foundations and comparable legal entities, whose registered office is not situated in Austria or in another Member State, provided that they commit themselves to acquire the ownership of a plot of land located in Austria.

A Member State within the meaning of this Federal Act is a Member State of the European Union or another State that is a signatory country to the Agreement on the European Economic Area, published in Federal Law Gazette no. 909/1993 in the version of the protocol adjustment in Federal Law Gazette no. 910/1993 (EEA). An acquisition of ownership of a plot of land located in Austria within the meaning of this Federal Act is an acquisition process pursuant to Article 1 paras. 1 and 2 GrEStG 1987. Following the acquisition of the ownership of a plot of land located in Austria, foreign legal entities subject to reporting obligations as well as trusts and arrangements of a similar nature to a trust, in the case that their management is not in Austria or in another Member State, shall be subject to this Federal Act, for as long as this plot of land is in their assets, or where they are able to dispose of this plot of land on their own account.

(3) A Trust for the purpose of this Federal Act is a legal form created by a person (the Settlor/Trustor) by means of a legal transaction among living persons or by means of testamentary disposition, in assets for the benefit of a beneficiary or are entrusted to trustees for a specific purpose, whereby the trust itself may also be legally responsible. A trust has the following characteristics:

1. the assets of the trust constitute a separately held special assets and do not form part of the personal assets of the trustee.
2. the rights in relation to the assets of the trust are registered in the name of the trustee or to another person as a representative of the trustee;
3. the trustee shall have the power and obligation, about which he shall be required to give account, to manage, use or dispose of the assets of the trust in accordance with provisions governing the trust as well as the particular obligations conferred upon him under law.

The fact that specific rights and powers are reserved for the settlor/trustor or that the trustee himself/herself has rights as a beneficiary, shall not necessarily preclude the existence of a trust.

(4) The Federal Minister of Finance shall define by way of a Regulation the features of arrangements of a similar nature to a trust that may be established in accordance with Austrian law, so that it may be determined which legal arrangements are comparable with trusts in terms of their structure or function. The Federal Minister of Finance shall submit the categories, a description of the features, the names and in any case the legal basis of the trusts and arrangements of a similar nature to a trust listed in Article 1 para. 2 nos. 17 and 18, provided that they are able to be established in accordance with Austrian law, on an annual basis to the European Commission.

#### **Definition of the beneficial owner**

**Article 2.** Beneficial owners means any natural person(s) who ultimately owns or controls a legal entity, including at least the following:

1. in the case of companies, in particular in the case of legal entities pursuant to Article 1 para. 2 nos. 1 to 11, 13 and 14:
  - a) all natural persons, that either directly or indirectly hold a sufficient percentage of the shares or voting rights (including those held in the form of bearer shareholdings), who hold a sufficient ownership interest in the company (including in the form of cooperative shares or a capital share), or who exercise control over the company:
    - aa) direct beneficial owner: where a natural person holds a shareholding or voting rights of more than 25 % or an ownership interest of more than 25 % in the company, or a natural person or several

natural persons jointly exercise direct control over the company, then this/these natural person(s) shall be considered as direct beneficial owner(s).

- bb) indirect beneficial owner: where a legal entity holds a shareholding or voting rights of more than 25 % or an ownership interest of more than 25 % in the company and a natural person or several natural persons together jointly exercise direct or indirect control over this legal entity, then this/these natural person(s) shall be considered as indirect beneficial owner(s) of the company. If several legal entities that are directly or indirectly controlled by the same natural person(s) hold a total directly held holding of shares or voting rights or an ownership interest of more than 25 % of the company, then this/these natural person(s) shall be considered as a beneficial owners.

A directly held holding or shares or voting rights held by one or more of the aforementioned natural persons or a directly ownership interest shall be added respectively.

Ultimate legal entities are those legal entities in a chain of participations that are controlled directly by indirect beneficial owners as well as those legal entities in which indirect beneficial owners directly hold shares or an ownership interest, if these considered with the legal entity/entities constitute the beneficial ownership. If the beneficial owner performs a function pursuant to no. 2 or no. 3, then the respective legal entity shall always be considered the ultimate legal entity.

The term legal entity as used in these points also covers comparable legal entities as defined in Article 1 located in another Member State or third country.

Control has be considered to exist in the case of a shareholding of 50% plus one share or an ownership interest of more than 50%, held either directly or indirectly. Furthermore, control shall also be deemed to exist when the criteria pursuant to Article 244 para. 2 UGB are met, or where a function is exercised pursuant to no. 2 or 3 at an ultimate legal entity, or where the company is ultimately controlled by other means. Otherwise a trustor or a comparable person exercises control by means of a trustee relationship or a comparable legal relationship.

- b) the natural persons that belong to the top management level of the company, once all possible means have been exhausted and where no grounds for suspicion exist, that no person listed in lit. a can be identified. For the companies listed below, the following applies:
- aa) in the case of ordinary partnerships and limited partnerships with their shareholders consisting exclusively of natural persons, the managing partners shall be considered as beneficial owners, provided that no grounds exist that show that the company is either directly or indirectly under the control of one or several other natural persons.
- bb) in the case of commercial and industrial cooperatives the members of the top level of management (management board) shall be considered to be beneficial owners, or in the case that the directors are also entered in the register, then only the directors shall be considered to be beneficial owners.
- cc) in the case of companies without owners, the natural persons who belong to the management board shall be considered as beneficial owners, provided that no grounds exist that show that the company is either directly or indirectly under the control of one or several other natural persons.
2. in the case of trusts, in particular legal entities pursuant to Article 1 para. 2 no. 17:
- a) the settlor/trustor(s);
- b) the trustee(s);
- c) the protector(s), if any;
- d) the beneficiaries, or where the individuals that are the beneficiaries of the trust have yet to be determined, the group of persons in whose interest the trust was established or operated (circle of beneficiaries); if persons belonging to this group receive benefits from the trust that exceed the value of EUR 2,000 in a calendar year, then they shall be considered as beneficiaries in the calendar year in question;
- e) any other natural person exercising ultimate control over the trust by other means.
3. in the case of foundations, comparable legal entities and legal arrangements similar to trusts pursuant to Article 1 para. 2 no. 18, the natural persons who occupy comparable or similar positions to those listed in no. 2;
- a) private foundations (Article 1 para. 2 no. 12):
- aa) the founders;
- bb) the beneficiaries, the group of persons (circle of beneficiaries) from whom the beneficiaries are selected on the basis of a separate determination (Article 5 PSG), if persons from this group receive benefits from the private foundation, the value of which exceeds EUR 2 000 within a calendar year, shall be considered as beneficiaries in the relevant calendar year or in the case of insurance associations transformed into private foundations pursuant to Article 66 VAG 2016, savings banks transformed into the legal form of private foundations pursuant to Article 27a of the Savings Banks Act (SpG; Sparkassengesetz), foundations established for the purpose of supporting the purpose of the entity pursuant to Article 4d para. 1 EStG 1988, foundations established for the purpose of

supporting employees pursuant to Article 4d para. 2 EStG 1988, foundations for the purposes of profit-sharing by workers and employees pursuant to Article 4d paras. 3 and 4 EStG 1988 shall always be considered as the circle of beneficiaries;

- cc) the members of the management board of the foundation;
  - dd) any other natural person exercising ultimate control over the private foundation by other means.
- b) in the case of foundations and funds (Article 1 para. 2 nos. 15 and 16):
- aa) the founders;
  - bb) the members of the management board of the foundation or the fund;
  - cc) the circle of beneficiaries;
  - dd) any other natural person exercising ultimate control over the foundation or fund by other means.

### **Due diligence obligations of legal entities in relation to their beneficial owners**

**Article 3.** (1) The legal entities shall identify their beneficial owner and take reasonable measures to verify that Person's identity so that they are satisfied that they know who their beneficial owner is; this includes taking reasonable measures in order to understand the ownership and control structure. Furthermore they shall also provide the obliged entities (Article 9 para. 1), with information about their beneficial owners in addition to the information about their legal owners, in the case that customers are subjected to due diligence measures by the obliged entities.

(2) The legal entities shall be required to retain copies of the documents and information that are required for compliance with due diligence requirements pursuant to para. 1 for at least five years after the beneficial ownership by the natural person has ended. This obligation shall be deemed to have been fulfilled by a complete compliance package having been submitted for a legal entity.

(3) Legal entities shall be required to conduct the due diligence obligations pursuant to para. 1 at least once a year, and in so doing to collect appropriate, precise and up-to-date information about the beneficial owners, including precise details about their beneficial interest, and to check whether the beneficial owners reported to the Register are still up-to-date.

(4) In the case of trusts and arrangements of a similar nature to a trust, the rights and obligations pursuant to this Federal Act shall apply to the trustee (Article 2 no. 2 lit. b) or a person comparable to the trustee. The former or the latter of these persons shall disclose their status towards obliged entities, when obliged entities apply due diligence towards their customers, and to submit information about the beneficial owner or arrangement of a similar nature to a trust promptly when establishing a business relationship or when conducting an occasional transaction that is about the thresholds. Furthermore, they shall also ensure that the trust or arrangement of a similar nature to a trust is entered in the Supplementary Register for Others, and where necessary shall submit an application for entry into the Supplementary Register for Others. The following shall apply for this application:

1. The contractually determined designation agreed by the parties shall apply as the legally valid designation of the trust or the arrangement of a similar nature to a trust. In the absence of such a designation, the forename and surname of the settlor suffixed with the designation "Trust" shall be used. In the case of an arrangement of a similar nature to a trust, the forename and surname of the person performing a comparable position to that of the settlor (trustor) suffixed with the designation "trustähnliche Vereinbarung" ("*arrangement of a similar nature to a trust*").
2. The entry about the legal or organisation form shall read either "Trust" or "trustähnliche Vereinbarung".
3. The place from which the trust or arrangement of a similar nature to a trust is managed shall be entered as the address and registered address.
4. The point of time from when the trust or the arrangement of a similar nature to a trust became legally effective shall be given for the entry about the period of existence.

(5) The obligation to be entered into the Supplementary Register and to report the beneficial owners pursuant to Article 5 shall cease to apply where a trust or an arrangement of a similar nature to a trust, which is also managed from another Member State, is entered in a Register pursuant to Article 31 of Directive (EU) 2015/849 in another Member State. This shall also apply to trusts or arrangements of a similar nature to a trust, where their management is not situated in Austria or in another Member State, where the former or the latter are entered in a Register pursuant to Article 31 of Directive (EU) 2015/849 in another Member State, and no properties have been purchased for the former or the latter in Austria. Following proof of the registration the entry of the trust or arrangements of a similar nature to a trust in the Supplementary Register may be ended.

(6) Foreign legal entities subject to reporting obligations shall disclose their status towards obliged entities, when obliged entities apply due diligence towards their customers, and submit information about the beneficial owners promptly when establishing a business relationship or when conducting an occasional transaction that exceeds the thresholds. The foreign legal entities subject to reporting obligations shall submit an application to have the foreign

legal entity subject to reporting obligations entered into the Supplementary Register for Others. The following shall apply for this application:

1. the entry about the legal or organisational form shall read “foreign legal entity subject to reporting obligations”;
2. the registered office of the foreign legal entity subject to reporting obligations shall be entered as the registered office and the delivery address in Austria of the representative of the party acting in a professional capacity that has been engaged for the conducting of due diligence entered as the delivery address;
3. The point in time of the submission of the application being submitted is to be stated as the period of existence.

(7) Foreign legal entities subject to reporting obligations as well as trusts and arrangements of a similar nature to a trust, whose management is not situated in Austria or in another Member State, shall engage a representative of the party acting in a professional capacity with a registered office in Austria, which shall also be the authorised recipient, with the conducting of due diligence pursuant to this Federal Act.

(8) Prior to the notarisation or recording of a notarial deed for the purpose of purchasing a plot of land located in Austria, foreign legal entities subject to reporting obligations as well as trusts and arrangements of a similar nature to trusts, the management of which is not situated in Austria or in another Member State, shall submit documents containing conclusive proof about their beneficial owners and shall prove that they have reported their beneficial owners pursuant to Article 5. Proof of the report having been made may also occur by means of the notary performing the notarisation obtaining an excerpt pursuant to Article 9 themselves.

#### **Obligations of legal and beneficial owners**

**Article 4.** Legal and beneficial owners of legal entities (including beneficial owners on the basis of number of shares and bearer shares, voting rights, participations or other forms of control held) shall make all necessary documents and information available to ensure compliance with the due diligence requirements (Article 3).

#### **Reporting of information by the legal entities**

**Article 5.** (1) Legal entities shall report the following information about their beneficial owners to Statistics Austria (Bundesanstalt Statistik Österreich) as the processor of the registry authority:

1. in the case of direct beneficial owners:
  - a) Forename and surname;
  - b) In the case that they do not have a place of residence in Austria, the number and type of the official photo identification document;
  - c) Date and place of birth;
  - d) Nationality;
  - e) Place of residence;

Where a beneficial owner is deceased, this must be stated; in this case the details pursuant to lits. b to e shall be omitted.
2. in the case of indirect beneficial owners:
  - a) the information pursuant to no. 1 about the indirect beneficial owner;
  - b) where the ultimate legal entity is a legal entity pursuant to Article 1, its identification number, as well as its holding in terms of number of shares, voting rights or the holding of the beneficial owner in the ultimate legal entity;
  - c) where the ultimate legal entity is a legal entity comparable to one defined in Article 1 with its registered office in another Member State or a third country, the name and address of the registered office of the legal entity, the legal form, the identification number that correspond to the identification number and the identification registry as well as the holding of shares, voting rights or the holding of the beneficial owner in the ultimate legal entity.

Indirect beneficial owners shall not be required to be reported in the event that their beneficial owner is explained by an ultimate legal entity pursuant to Article 2 nos. 2 and 3 that itself is also entered in the Register as a legal entity.

3. the nature and scope of the beneficial interest for every beneficial owner by stating:
  - a) in the case of Article 2 no. 1 lit. a whether the legal entity is owned by the beneficial owner (including information about the shares held or the holding) or the beneficial owner holds voting rights (including information about the amount held), or if the legal entity is under the control of the beneficial owner in some other way (stating the stake upon which control is exercised, provided that this can be calculated, and stating whether a relevant trustee relationship (*Treuhandtschaft*) exists and whether the beneficial owner is a trustee or trustor);

- b) in the case of Article 2 no. 1 lit. b whether the beneficial owner is a member of the senior management of the legal entity and whether there is no beneficial owner or whether the beneficial owners were unable to be verified and checked once all possibilities had been exhausted;
  - c) in the case of Article 2 no. 2 which of the functions specified in Article 2 no. 2 lits. a to d the beneficial owner exercises, or whether the beneficial owner exercises another form or control pursuant to Article 2 no. 2 lit. e.
  - d) in the case of Article 2 no. 3 which of the functions specified in Article 2 no. 3 lit. a sublits. aa to cc or lit. b sublits. aa to cc the beneficial owner exercises in private foundations or foundations and funds pursuant to Article 1 para. 2 nos. 15 and 16 or whether the beneficial owner exercises another form of control pursuant to Article 2 no. 3 lit. a sublit. dd or lit. b sublit. dd.
  - e) in all other cases, that beneficial ownership is established in other ways.
4. In the case of reports by a representative of the party acting in a professional capacity (Article 9 para. 1 nos. 6 to 10) the information,
- a) whether the beneficial owners were determined and reviewed by the representative of the party acting in a professional capacity pursuant to the requirements set forth in this Federal Act,
  - b) whether a compliance package (Article 5a) is being submitted and in the event that one is, whether its content may be inspected by all obliged entities or only upon request (restricted compliance package). In the case of a restricted compliance package, as applicable whether specific obliged entities should be granted the right of inspection. In the case of restricted compliance packages it must be stated whether the authorised representative or the legal entity or both is/are able to grant approvals;
  - c) an e-mail address for the representative of the party acting in a professional capacity as well as in any case for the legal entity, where a compliance package is submitted; in the case of a restricted compliance package being submitted an e-mail address must be supplied for the legal entity where the legal entity itself should grant approvals; and
  - d) information about whether enquiries in conjunction with a report or a compliance package shall be allowed to be submitted electronically to the e-mail address supplied for the representative of the party acting in a professional capacity or the legal entity.

The legal entity shall submit the data within four weeks of first being entered into the respective identification register or in the case of trusts or arrangements of a similar nature to a trust following the establishment of its management in Austria. Amendments to the information supplied shall be submitted within four weeks of obtaining knowledge of the change. In the case of information about the legal entity itself that are entered in the respective identification register, in any case they shall be assumed to have been acknowledged from the time of being entered in the respective identification register. Where circumstances already arise prior to entry in the identification register that have an impact of the beneficial owners of a legal entity, then the start of the reporting period is to be considered as the start of it being effective. Where an exemption from the obligation to report pursuant to Article 6 exists, the obligation to report changes will also cease to apply if the application for entry in the respective identification register is lodged within four weeks. Legal entities, for whom there is no exemption from the obligation to report pursuant to Article 6, must confirm the amendments determined during the review or the reported information within four week following the expiry of the period for the annual review pursuant to Article 3 para. 3.

(2) The report of the data listed in para. 1 shall be made by the legal entities electronically via the Unternehmensserviceportal (Article 1 USPG) to the Bundesanstalt Statistik Österreich as the processor of the registry authority. Submission of information by representatives of the party acting in a professional capacity pursuant to Article 5 para. 1 no. 2 USPG shall be permitted. Devices may only be used that communicate using a recognised protocol in accordance with the current technical state-of-the-art. In the case of natural persons not having a place of residence in Austria, the legal entity shall submit a copy of the official photo identification document listed in para. 1 no. 1 lit. b electronically to the registry authority via the Unternehmensserviceportal.

(3) For the purposes of the clear identification of beneficial owners, the Bundesanstalt Statistik Österreich shall determine the sector-specific personal indicator for the sector "Taxes and Fees" ("*Steuern und Abgaben - SA*") by automated means from the sourcePIN Register. The Bundesanstalt Statistik Österreich shall query the data processed in the Central Residence Register (ZMR; Zentrales Melderegister), in order to import, append and update data about the beneficial owners and may also query the Supplementary Register for Others for natural persons. The Federal Minister for Justice shall be authorised to open up the querying of the Central Residence Register to the Bundesanstalt Statistik Österreich at the latter's request for the purpose of adding and reviewing data about the beneficial owners pursuant to Article 16a para. 4 of Residence Registration Act (MeldeG; Meldegesetz). Thereafter the update service pursuant to Article 16c MeldeG is to be used. For the purpose of the clear identification of ultimate legal entities with their registered offices in Austria, the Bundesanstalt Statistik Österreich shall compare their data with those in the sourcePIN Register by automated means. Where it is not possible to perform a comparison by automated means with regard to the aforementioned legal entities, then such data shall not be allowed to be reported. Provided that individual items of the data listed in para. 1 can be appended

by automated means by Bundesanstalt Statistik Österreich, the legal entity shall not be required to submit the respective data.

(4) Every legal entity shall be authorised to inspect the data held about it in the register via the Unternehmensserviceportal. Inspection shall be allowed in the form of information about the status of the Register, which contains all elements in the excerpt pursuant to Article 9 para. 4.

(5) Where in the case of legal entities pursuant to Article 1 para. 2 nos. 1, 2, 3, 4, 9, 10, 11 and 13 the beneficial owners pursuant to Article 2 no. 1 lit. b have been determined, it shall only be necessary to report that the natural persons that belong to the top management level of the legal entity have been determined as the beneficial owners. Bundesanstalt Statistik Österreich shall import these information from the Commercial Register, and shall keep this information constantly updated. Where the natural persons that belong to the top management level are no longer entered in the Commercial Register, then Bundesanstalt Statistik Österreich must end the report pursuant to Article 5 para. 5 WiEReG.

(6) Where a report has not previously been submitted for a legal entity by a representative of the party acting in a professional capacity, then any representative of the party acting in a professional capacity may submit a report in pursuant to this Article making due reference to the power of attorney conferred upon it. Once a report has been submitted by a representative of the party acting in a professional capacity for a legal entity, another representative of the party acting in a professional capacity may only submit a report for this legal entity, where it notifies the registry authority electronically making due reference to the power of attorney conferred upon it about the change of authorisation for submitting a report. The registry authority shall inform the legal entity about the change of authorisation and advise that the change will be entered in the Register within two weeks of the application being made, provided that no objection by the legal entity is received by the registry authority within this period. Once this period expires, the possibility for the originally authorised representative of the party acting in a professional capacity for a legal entity to make a report expires and reports may only be made by the representative of the party acting in a professional capacity, which most recently notified the change in authorisation. The registry authority may at the request of the legal entity already enter the change in authorisation prior to the expiry of the two week period, when doing so is necessary to ensure that the reporting deadline is observed.

(7) Third parties may only exercise claims for compensation against authorised representatives of the party acting in a professional capacity or their employees that determine, review and report beneficial owners pursuant to Article 9 para. 4 no. 7a or have submitted a compliance package pursuant to Article 9 para. 5a in the case that the authorised representatives of the party acting in a professional capacity or their employees have deliberately breached or have breached their due diligence obligations in accordance with this Federal Act as a result of pure gross negligence.

**Submission of documentation about the application of due diligence obligations for the identification and verification of the identity of beneficial owners (compliance package)**

**Article 5a** (1) A representative of the party acting in a professional capacity, if he/she has identified and verified the identity of the beneficial owners of a legal entity in accordance with the requirements set forth in this Federal Act, may submit all necessary information, data and documents for the identification and verification of the identity of the beneficial owners to the registry authority electronically via the Unternehmensserviceportal (compliance package). In any case the following information, data and documents are to be submitted to the registry authority via the Unternehmensserviceportal:

1. an organisation chart, from which the relevant ownership and control structure is apparent in the case of legal entities pursuant to Article 1 para. 2 nos. 1 to 4, 9 and 10;
2. for the reporting legal entity itself,
  - a) in the case of ordinary partnerships (OGs), limited partnerships (KGs) and European Economic Interest Groupings (EEIGs) the memorandum of association or the deed of establishment or another form of proof about the ownership structures;
  - b) in the case of stock companies (AGs) and European companies (SEs) proof of the stock rights and shares that are relevant in relation to beneficial ownership as well as the articles of association, where deviating voting rights or control relationships arise from them;
  - c) in the case of limited liability companies (GmbHs) the memorandum of association, where deviating voting rights or control relationships arise from them in comparison the ownership structures;
  - d) in the case of private foundations pursuant to Article 1 PSG the deed of foundation as well as the supplementary foundation deed and all further proof that are necessary for the verification and reviewing of all beneficiaries of the private foundation;
  - e) in the case of foundations and funds pursuant to Article 1 of the Federal Act on Foundations and Funds (BStFG 2015; Bundes-Stiftungs- und Fondsgesetz 2015) and in the case of foundations and funds established on the basis of a regional law the deed of foundation, memorandum of association or comparable proof;

- f) in the case of trusts and arrangements of a similar nature to a trust the trust deed, other documents from which the beneficiaries of the trusts can be determined, and all further proof that is necessary pursuant to this Federal Act for the identification and verification of the identity of all beneficiaries of the trust or the arrangement of a similar nature to a trust;
  - g) proof and declaration upon the basis of which other relevant trusteeships arise that are relevant for consideration as a beneficial owner pursuant to this Federal Act;
  - h) other proof and documents that are necessary for the identification and verification of the identity of the legal entity's beneficial owners; such items are especially necessary where relevant voting rights exist, that deviate from the respective participation or the number of shares held or where other control relationships exist that are relevant for the identification and verification of the identity of the beneficial owners and are not already captured by lits. a to g.
3. for relevant Austrian superordinate legal entities the documents listed in no. 2 lits. a to h must be submitted. Where documents are to be submitted, the identification number of the superordinate Austrian legal entity. Where at the time of the report a valid compliance package has been stored in the Register for the superordinate legal entity with its registered office in Austria, then the requirement to submit documents for this superordinate legal entity pursuant to this point shall be waived where the identification number of this superordinate legal entity and the circumstance is reported that refers to this compliance package. In this case only the circumstance, which refers to this compliance package, is part of the report.
4. for foreign ultimate legal entities that are relevant for the beneficial ownership of the legal entity, the identification number, the legal form, and the country of incorporation as well as the items available at the registered office of the superordinate legal entity pursuant to the typical national legal standard, consisting of:
- a) proof that is intended for checking the existence of a legal person in the country of incorporation;
  - b) proof that is intended for the purposes of checking the ownership relationships in the country of incorporation;
  - c) memoranda of association, statutes and similar items, where there are voting rights or control relationships that deviate from lit. b;
  - d) proof and declarations, on the basis of which other relevant trusteeships for consideration as a beneficial owner in accordance with this Federal Act and which are required for the identification and verification of the identity of such beneficial owners; this is irrespective of the available proof on the basis of the typical national legal standards;
  - e) other proof and documents that are necessary for the identification and verification of the identity of the legal entity's beneficial owners; such proof is particularly necessary where relevant voting rights exist that deviate from the respective participation or number of shares held or where other control relationships exist that are relevant for the identification and verification of the identity of the beneficial owners and which have not already been submitted pursuant to lits. a to d.

Where a valid compliance package has been saved for a legal entity with its place of incorporation in Austria, which is the final domestic level of a ownership or control chain, then the obligation to submit documents in accordance with this point is waived for those relevant legal entities with their place of incorporation in a foreign country, whose documents are contained in this compliance package, where the identification number of this legal entity and the circumstance is reported that refers to this compliance package. In this case only the circumstance, which refers to this compliance package, is part of the report.

(2) Where the documents are certificates, then they must be certificates that contain the necessary proof, that are available in accordance with the typical national legal standard that applies at the place of incorporation of the legal person. If the registered office of a relevant superordinate foreign legal entity at the time of the submission of the compliance package is in a third country identified as high risk country (Article 2 no. 16 FM-GwG) or where doubts exist about the authenticity of a certificate, then the certificates in question must be submitted to the representative of the party acting in a professional capacity as originals or in the form of a certified copy. Once the check has been conducted, copies of the original documents seen are to be made, bearing the remark "original seen on:" and the date stated as well as a note about the remark having been made by a plausibly identifiable author of the remark, and submitted to the Register. Original documents may be returned to the legal entity. Where documents are not in either German or English, then in addition to the original document certified translations of the document or in any case the relevant parts are to be submitted in German or in English.

(3) Where justifiable reasons exist for the non-submission of a certificate to the Register, then instead of the submission of the certificate a complete file note may be submitted to the Register, where the representative of the party acting in a professional capacity that has identified and verified the identity of the beneficial owners of the legal entity or a third party pursuant to point 3 lits. a and b of Article 2 (1) of Directive (EU) 2015/849 with its place of incorporation in Austria or another Member State or with its place of incorporation in a third country in accordance with Article 13 para. 4 FM-GwG has inspected the certificate and has made this file note. A full file note must contain the following items:



1. the date and place where the inspection occurred,
2. the forename, surname, date of birth and signature undertaking the inspection,
3. a precise designation of the inspected document and by whom the document was drawn up or issued and signed in what function,
4. a description of the content of the document and a summary of all relevant parts of the document relating to the beneficial ownership of the legal entity.

It is not permissible to submit file notes instead of documents, where the place of incorporation of the document, the place of incorporation of one of the contractual parties that established the document, or the place of incorporation of the legal entity, about which the document refers is in a third countries identified as high risk (Article 2 no. 16 FM-GwG).

(4) The documents must be up-to-date at the time of their submission to the Register. Excerpts from foreign commercial registers, company registers or trust registers and the confirmation by the management of the legal entity pursuant to para. 1 no. 2 lit. i shall not be allowed to be older than 6 weeks for reports and amendment reports. Older documents shall only be allowed to be submitted in justified exceptional circumstances together with the reasons for doing so.

(5) Prior to the submission, amendment or supplementing of a compliance package the representative of the party acting in a professional capacity must obtain a confirmation from the management of the legal entity bearing the company's official designation, in which it is confirmed that all required documents for the identification and verification of the identity of the beneficial owners have been submitted to the representative of the party acting in a professional capacity, are up-to-date and are contained the compliance package to be submitted, and that no voting rights, control or trust relationships exist that deviate from those contained in the report. The representative of the party acting in a professional capacity must confirm in the report that it has received this confirmation. A confirmation from the management of the legal entity shall not be necessary, where when supplementing a compliance package there is no change to the relevant Austrian or foreign superordinate legal entities and where no changes are made to the documents to be submitted.

(6) The submitted information, data and documents shall be stored for the purpose of the prevention of money laundering and terrorist financing, and shall be deleted five years after the point of time, when they were submitted with a compliance package. The compliance package is valid for a period of twelve months following the last report for which a compliance package was submitted pursuant to para. 1 or para. 7.

(7) The representative of the party acting in a professional capacity authorised pursuant to Article 5 para. 6 may submit a report about an amendment to an existing compliance package, through which the validity of the compliance package is extended by a further twelve months. In the case of this report the representative of the party acting in a professional capacity must check the completeness of the compliance package pursuant to para. 1 and to check and confirm the up-to-dateness of all documents pursuant to para. 4.

(8) The representative of the party acting in a professional capacity authorised pursuant to Article 5 para. 6 may submit a supplement to an existing compliance package, for which relevant Austrian and foreign superordinate legal entities may be added, removed, or their data changed, submitted documents deleted, new documents added or the data saved about documents may be amended, the compliance package may be restricted or the restriction may be lifted, or the e-mail address of the representative of the party acting in a professional capacity and the legal entity may be changed, or it may be determined whether the representative of the party acting in a professional capacity and/or the legal entity may grant approvals or may answer enquiries and may be determined which obliged entities should be granted an inspection right in a restricted compliance package, without however that changes are able to be undertaken by the reported beneficial owners. The representative of the party acting in a professional capacity shall check and confirm the up-to-dateness of the additionally submitted documents every time they are supplemented. The duration of the validity of the compliance package pursuant to para. 6 shall not change as a result of the submission of a supplement.

(9) The representative of the party acting in a professional capacity shall declare when submitting documents as part of a compliance package to the Register that the legal entity has confirmed that the necessary declarations of consent that correspond to the requirements set out in Article 7 of Regulation (EU) 2016/679 and the approval for the submission of the compliance package exist.

#### **Exemption from the obligation to report**

**Article 6.** (1) Ordinary partnerships pursuant to Article 1 para. 2 no. 1 and limited partnerships pursuant to Article 1 para. 2 no. 2 shall be exempted from reports pursuant to Article 5, in the case that all partners are natural persons. Where less than four partners are entered in the Commercial Register, then they shall be imported by Bundesanstalt Statistik Österreich as the beneficial owners. Where four or more partners are entered in the Commercial Register, then the managing partners entered in the Commercial Register shall be imported by Bundesanstalt Statistik Österreich as the beneficial owners. If another natural person is the beneficial owner pursuant to Article 2 of the ordinary partnership or the limited partnership, then the ordinary partnership or the limited partnership shall be required to make a report pursuant to Article 5 para. 1.

(2) Limited liability companies pursuant to Article 1 para. 2 no. 4 shall be exempted from the obligation to report pursuant to Article 5, in the event that all partners are natural persons. In this case, the partners listed in the Commercial Register shall be imported into the Register by Bundesanstalt Statistik Österreich as the beneficial owners, in the event that they hold more than 25 %. If none of the partners holds a participation of more than 25 %, then the top managers entered in the Commercial Register shall be imported into the Register by Bundesanstalt Statistik Österreich as the beneficial owners. If another natural person is the beneficial owner pursuant to Article 2 of the limited liability company, then the limited liability company shall be required to make a report pursuant to Article 5 para. 1.

(3) Commercial and industrial cooperatives pursuant to Article 1 para. 2 no. 5 shall be exempted from the obligation to report pursuant to Article 5. In this case the members of the management board listed in the Commercial Register, provided that the directors are entered in that list, only the directors shall be imported by Statistics Austria as beneficial owners. If another natural person is the beneficial owner pursuant to Article 2 of the commercial and industrial cooperative society, then the commercial and industrial cooperative society shall be required to make a report pursuant to Article 5 para. 1.

(4) Mutual insurance associations pursuant to Article 1 para. 2 no. 6, small mutual insurance associations pursuant to Article 1 para. 2 no. 7 and savings banks pursuant to Article 1 para. 2 no. 8 shall be exempted from the reporting obligation pursuant to Article 5. In this case the members of the management board entered in the Commercial Register or in the Supplementary Register for Others shall be imported by Bundesanstalt Statistik Österreich as beneficial owners. If another natural person directly or indirectly exercises control over the aforementioned companies, then this company shall be required to make a notification pursuant to Article 5 para. 1.

(5) Associations pursuant to Article 1 para. 2 no. 14 shall be exempted from the obligation to report pursuant to Article 5. In this case the names of the official representatives of the association entered in the register of associations shall be imported by Bundesanstalt Statistik Österreich as beneficial owners. If another natural person directly or indirectly exercises control over the association, then the association shall be required to make a report pursuant to Article 5 para. 1.

(6) If a legal entity makes a report in accordance with the aforementioned paragraphs or decides to obtain from the exemption from reporting, then Bundesanstalt Statistik Österreich shall not import any of this data for this legal entity. If the requirements for an exemption once again apply at a later date, the legal entity may report Bundesanstalt Statistik Österreich as the processor of the registry authority of this being the case electronically via the Unternehmensserviceportal.

(7) Bundesanstalt Statistik Österreich shall be required to keep the data imported pursuant to this Article constantly updated.

### **Operating of the Register of Beneficial Owners**

**Article 7.** (1) The registry authority shall operate a register of beneficial owners ("the Register") for the purpose of the prevention of the misuse of the financial system for the purposes of money laundering and terrorist financing, as a regularly updated and chronologically layered data collection, and to be operated for this purpose by the legal processors and any other sub-processors listed in para. 5. This Register shall contain the data listed in Article 5 and in this provision using the sector-specific personal indicator for the sector "Taxes and Fees" ("*Steuern und Abgaben - SA*") as well as the data relating to the legal entity pursuant to Article 25 para. 1 nos. 1 to 5 and 7 BStatG 2000.

(2) The data pursuant to Article 25 para. 1 nos. 1 to 5 BStatG 2000 shall be submitted to the Bundesanstalt Statistik Österreich as the processor of the registry authority as well as data about capital holdings in legal entities and modifications thereto (corrections, deletions) regarding

1. the legal entities entered in the Commercial Register pursuant to Article 1 para. 2 nos. 1 to 13,
2. the legal entities entered in the Register of Associations pursuant to Article 1 para. 2 nos. 1 to 14,
3. the legal entities entered in the Registers of Foundations and Funds pursuant to Article 1 para. 2 nos. 1 to 15, and
4. the legal entities entered in registers established on the basis of a regional law pursuant to Article 1 para. 2 nos. 1 to 16

by the respective competent authorities in the cases pursuant to nos. 1 to 3 to be submitted free of charge without delay once they become aware of circumstances requiring notification to be notified by electronic means using an interface defined by the Bundesanstalt Statistik Österreich. In the case listed in no. 4, this shall be subject to the condition that an electronic submission free of charge is stipulated under regional law using an interface defined by the Bundesanstalt Statistik Österreich. The authorised representatives of the associations (Article 16 para. 1 nos. 7 and 8 VerG) shall be submitted using the encrypted sector-specific personal indicator for the sector "Taxes and Fees" ("*Steuern und Abgaben - SA*"). The competent authorities for operating the respective registers shall request the servicePIN registry authority to electronically enter the legal entities to be entered into the Register pursuant to nos. 3 and 4 in to the Supplementary Register for Others, where such entities have hitherto not been entered. Bundesanstalt Statistik Österreich shall import the data pursuant to Article 25 para. 1 nos. 1, 2, 4 and 5 of

the Federal Statistics Act 2000 (BStatG; Bundesstatistikgesetz 2000) that is saved in the Company Register for every legal entity. This also includes legal entities with the legal form “trust” and “arrangement of a similar nature to a trust”, and “foreign legal entity subject to reporting obligations” stored in the Supplementary Register for Others. Where it is possible for the data to be migrated, the obligation to submit the data separately by the respective competent authorities. Article 25 paras. 3 to 5 BStatG 2000 shall be applied accordingly.

(3) Bundesanstalt Statistik Österreich shall take appropriate measures to ensure that the data about a beneficial owner of a company shall cease to be accessible once ten years have elapsed following the termination of its beneficial ownership of the company and the data of a legal entity upon expiry of ten years following the removal of the legal entity in the Register of beneficial owners.

(4) The data about the beneficial owners shall be submitted to Bundesanstalt Statistik Österreich, who shall in turn be allowed to process this data for statistical purposes.

(5) The registry authority shall be considered to be the Register's controller under data protection law. Bundesanstalt Statistik Österreich and the Bundesrechenzentrum Gesellschaft mit beschränkter Haftung (BRZ GmbH) shall be the legal processors for the Register, unless explicitly stated otherwise.

#### **Engagement of the Bundesrechenzentrum GmbH and Bundesanstalt Statistik Österreich**

**Article 8.** The Federal Minister of Finance shall entrust Bundesanstalt Statistik Österreich and Bundesrechenzentrum GmbH with the setting up, including establishing the necessary data connections, the operation and further development of the Register. The cooperation between Bundesanstalt Statistik Österreich and Bundesrechenzentrum GmbH shall take place in consultation with the Federal Minister of Finance. The services provided by Bundesanstalt Statistik Österreich shall be provided pursuant to Article 32 BStatG 2000, while the services provided by the Bundesrechenzentrum GmbH shall be provided pursuant to Article 5 BRZ GmbH.

#### **Inspection of the Register by obliged entities**

**Article 9.** (1) The entities listed hereafter shall be considered as obliged entities within the meaning of this Federal Act and shall be authorised to inspect the Register in accordance with para. 2:

1. credit institutions pursuant to Article 2 no. 1 FM-GwG, wind-down entities pursuant to Article 162 BaSAG, wind-down units that were established pursuant to Article 2 GSA, wind-down units pursuant to Article 83 BaSAG and insurance undertakings pursuant to Article 2 no. 2 lit. b FM-GwG;
2. credit institutions and financial institutions pursuant to Article 2 nos. 1 and 2 FM-GwG that are supervised by the FMA pursuant to Article 25 para. 1 FM-GwG, where such entities are not captured under no. 1;
3. financial institutions pursuant to Article 2 no. 2 FM-GwG that are not supervised by the FMA pursuant to Article 25 para. 1 FM-GwG;
4. holders of government-approved licences pursuant to Article 14 and Article 21 GSpG;
5. authorised operators for gaming machines and betting companies, that have been established on the basis of an authorised under regional law, in accordance with the regulations set out under regional law.
6. attorneys;
7. notaries;
8. external auditors pursuant to Article 1 para. 1 no. 1 WTBG 2017;
9. tax advisors pursuant to Article 1 para. 1 no. 2 WTBG 2017;
10. balance sheet accountants, accounts and payroll accountants pursuant to Article 1 Balance Sheet Accounting Act 2014 (BiBuG 2014; Bilanzbuchhaltungsgesetz 2014);
11. commercial traders pursuant to Article 365m1 para. 2 no. 1 lits. a and b GewO 1994 and traders pursuant to Article 365m1 para. 2 no. 1 lit. c GewO 1994;
12. real estate agents pursuant to Article 365m1 para. 2 no. 2 GewO 1994;
13. business consultants pursuant to Article 365m1 para. 3 no. 3 GewO 1994;
14. insurance brokers pursuant to Article 365m1 para. 2 no. 4 GewO 1994;
15. the Austrian Treasury (Österreichische Bundesfinanzierungsagentur);
16. service providers in relation to virtual currencies pursuant to Article 2 no. 22 FM-GwG.

(2) Obligated entities shall only be allowed to inspect the Register in application of due diligence obligations for the prevention of money laundering and terrorism towards their customers. Furthermore obliged entities shall be allowed pursuant to para. 1 nos. 6 to 10 to inspect the Register for the purposes of advising their clients and cooperative auditing associations for the purpose of the advising its members respectively with regard to the verification, checking and reporting of the beneficial owners of their clients and for the purposes of advising beneficial owners with regard to the applications submitted pursuant to Article 10a and Article 14 para. 7 WiEReG.

(3) Inspection of the Register shall be conducted using the Unternehmensserviceportal by means of an excerpt bearing an official signature of the registry authority pursuant to para. 4 or an extended excerpt pursuant to para. 5.

Search queries may only be for specific legal entities or specific natural persons. The option to search for a natural person shall only be permissible for obliged entities pursuant to Article 9 para. 1 nos. 1 and 4 and nos. 6 to 10. Furthermore it is necessary that the natural persons in addition to their name may also be uniquely determined by entering one or several additional identifiers. All login details shall be kept secret. It shall be ensured by the obliged entities that unauthorised third parties shall not have any access to the login details and well as any required tools. The possibility to inspect documents submitted pursuant to Article 5 para. 2 and the valid compliance package stored for a legal entity shall be ensured using the Unternehmensserviceportal. Where such a request is made, historical data pursuant to para. 4 nos. 1 to 4, no. 5 lits. a to d, f and g, para. 6 lits. a to d and lits. f to h, nos. 7 and 8 as well as para. 5 no. 2 shall be imported into a simplified or extended excerpt. A web service of the Unternehmensserviceportal may also be used for the purposes of this paragraph.

(4) The obliged entities may request an excerpt from the Register via the Unternehmensserviceportal that contains an official signature of the registry authority, which is made available to them by means of automated data transmission using the Unternehmensserviceportal. This excerpt that contain the following information:

1. The name of the legal entity and address details;
2. Identification number and identification register of the legal entity;
3. Legal form and information about the period of time for which the legal entity has been in existence;
4. ÖNACE code for the legal entity's main activities, where they have been determined pursuant to Article 21 BStatG 2000;
5. the following information about all direct beneficial owners:
  - a) Forename and surname;
  - b) Date of birth;
  - c) Nationality;
  - d) Place of birth;
  - e) Place of residence;
  - f) the nature and scope of the beneficial interest;
  - g) where available information that a beneficial owner is deceased;
6. The following information about all indirect beneficial owners:
  - a) Forename and surname;
  - b) Date of birth;
  - c) Nationality;
  - d) Place of birth;
  - e) Place of residence;
  - f) the information pursuant to nos. 1 to 4 about the respective ultimate legal entities where available;
  - g) the nature and scope of the beneficial interest;
  - h) where available information that a beneficial owner is deceased;
7. the point in time of the last report and information about whether an exemption from the reporting obligation pursuant to Article 6 applies;
- 7a. the information about whether the beneficial owners were identified and verified by a representative of the party acting in a professional capacity;
- 7b. the information about whether a valid compliance package may be inspected for the legal entity;
- 7c. where the beneficial owners pursuant to Article 2 no. 1 lit. b were identified, whether following all possibilities having been exhausted the beneficial owners were unable to be identified and verified;
8. the circumstance of whether a valid remark pursuant to Article 11 para. 4 and Article 13 para. 3;
9. information about whether and from which source Bundesanstalt Statistik Österreich imported the data and in the case of reported information a notice that the information was reported by the legal entity;
10. a notice that it is not possible to guarantee the correctness and completeness of the information.

In the case of a ban on disclosing information pursuant to the VerG being in place, then the excerpt shall only contain the name of the association, its identification number and information that the registered office of the association is located in Austria instead of the information pursuant to nos. 1, 2, 5 and 6, as well as a remark that information is not allowed to be disclosed. This shall not apply for obliged entities pursuant to para. 1 nos. 1, 2, and 7. For such obliged entities, instead of information about the places of residence of the direct and indirect beneficial owners pursuant to no. 5 lit. e and no. 6 lit. e, the excerpt shall only contain the country of residence as well as a remark that information is not allowed to be disclosed. Where a search is being conducting for natural persons that are the beneficial owners of an association, for which the disclosure of information is banned, then this association shall not be allowed to be displayed in the list of hits returned. In the case of a ban on disclosing information pursuant to the MeldeG being in place, then the excerpt shall only contain the information that the place of residence is in Austria instead of the information pursuant to no. 5 lit. e and no. 6 lit. e, as well as a remark

that information is not allowed to be disclosed. In the case of beneficiaries of legal entities pursuant to Article 1 para. 2 nos. 12, 17 and 18 and comparable legal entities with their registered office in another Member State or in a third country that are the ultimate legal entities, the excerpt shall, with the exception for obliged entities pursuant to para. 1 nos. 1, 2 and 7, instead of containing the places of residence of the direct and indirect beneficial owners pursuant to no. 5 lit. e and no. 6 lit. e shall only contain the country of residence.

(5) The obliged entities may request an extended excerpt from the Register via the Unternehmensserviceportal that contains an official signature of the registry authority, which is made available to them by means of automated data transmission using the Unternehmensserviceportal. This excerpt shall, in addition to the information listed in para. 4, also contain the following information:

1. an automatically generated graphical illustration of all known levels of participation on the basis of the entries in the Register, provided that they are relevant for the identification of the beneficial owner and are available through the data in the Register about the respective legal entities; where there is a lack of sufficient data about the individual levels, it should be stated that no information is available; the depiction shall be restricted to 20 levels;
2. the provision of the information pursuant to para. 4; no. 5 lits. a to d and g about the persons authorised to represent the legal entity, provided that this information is stored in the Register and about the reckoned beneficial owners and the provision of the information pursuant to para. 4 no. 6 lit. f about the reckoned ultimate legal entities;
3. information about whether and from which source the Bundesanstalt Statistik Österreich imported the data and a remark that the statement has been automatically generated;
4. information about whether it is a complete extended excerpt; this shall be deemed to be the case where all the information is available in a fully complete form, where the notified data matches the information generated by automated means and that no valid remark exists;
5. a notice that it is not possible to guarantee the correctness of the information.

(5a) Where an extended excerpt is requested from the Register, the obliged entity may inspect a compliance package that has been uploaded, and download the documents stored in it. Where the compliance package refers to another compliance package, then that compliance package may also be referred to for the legal entity, an extended excerpt requested, and its compliance package inspected. If the compliance package or a compliance package that is referred to was only made available upon request, and this was not released to the obliged entity when making the report, the obliged entity may request that the relevant compliance package is released via the Unternehmensserviceportal and stating reasons and an e-mail address. In this case the legal entity and/or the authorised representative of the party acting in a professional capacity shall be informed electronically about the request, with the name and identification number of the obliged entity making the request as well as the reasons for the request being stated. The legal entity itself and/or the representative of the party acting in a professional capacity is then able to release the compliance package within two weeks for the obliged entity making the request for the duration of four weeks. Where no approval is granted within two weeks, then the request is automatically rejected. The obliged entity making the request is to be informed electronically about an approval or a rejection of its request. The obliged entity shall be allowed to use the documents contained in the compliance package in applying the due diligence obligations for the prevention of money laundering and terrorist financing. The legal entity itself and/or the representative of the party acting in a professional capacity may revoke the granted approval for a compliance package during the four week period. In such a case, the requesting obliged entity must be informed about this electronically.

(5b) If the report by a representative of the party acting in a professional capacity pursuant to Article 5 para. 1 no. 4 states that enquiries in conjunction with a report or a compliance package are allowed to be submitted to the representative of the party acting in a professional capacity and/or the legal entity, then when the obliged entity inspects the Register via the Unternehmensserviceportal, they shall be given the possibility to establish contact electronically.

(6) Where data for the precise determination of the classification of the obliged entities pursuant to para. 1 nos. 1 to 10 and 12 to 14 are not able to be transmitted from the Company Register or are already available in the Unternehmensserviceportal, the supervisory authorities that are competent for the obliged entities listed in para. 1 nos. 1 to 4 and 6 to 14 shall submit the names and the identification number of the obliged entities that are subject to supervision by them electronically, and where possible via an interface or an online application free of charge to the registry authority. Amendments for information that is required for participation shall be submitted where possible within one week for the amendment. An obliged entity pursuant to para. 1 nos. 1 to 10 and nos. 12 to 14 may apply for authorisation to inspect the Register from its competent supervisory authority, provided that such an authorisation has not already been granted by automated means. In the case of granting authorisation to inspect, the supervisory authority shall submit the name and identification number of the relevant obliged entity to the registry authority electronically, where possible via an interface or an online application. This paragraph shall also apply in accordance with regulations under regional law to the supervisory authorities that are competent for the obliged entities listed in para. 1 no. 5.

(7) Commercial traders may make a declaration to the competent trade authority, that they are subject to the regulations of the GewO for the prevention of money laundering and terrorist financing, and that they wish to apply for authorisation to inspect the Register. Financial institutions pursuant to Article 2 no. 2 lit. a FM-GwG, which are not subject to supervision by the FMA pursuant to Article 25 para. 1 FM-GwG, may apply to the competent trade authority for authorisation to inspect the Register. In the case of granting authorisation to inspect, the trade authority shall submit the name and identification number of the relevant obliged entity to the registry authority electronically, where possible via an interface or an online application.

(8) Bundesanstalt Statistik Österreich shall provide information in a suitable form about queries, remarks and amendments should be recorded to ensure that the compliance of the provisions of this Federal Act as well as the regulations under data protection law can be checked.

(9) Bundesanstalt Statistik Österreich shall make the identification numbers of those legal entities available for retrieval via an interface, for which the following applies (update service):

1. where a report pursuant to Article 5 para. 1 or para. 5 or Article 6 has been entered,
2. where a report pursuant to Article 5 para. 1, para. 5 or Article 6 has been entered, which leads to an update of the data stored listed in para. 4 no. 5 lits. a, f or g as well as in no. 6 lits. a, f, g or h,
3. where a report pursuant to Article 5 para. 1 or para. 5 or a supplement to a compliance package pursuant to Article 5a para. 8 has been entered, which leads to an update of the data pursuant to Article 5a para. 1 nos. 1 to 4,
4. in the case of a legal entity that has submitted a report pursuant to Article 5 where this report will have been valid for longer than one year in four weeks' time (annual reporting obligation becomes effective) or a report was terminated pursuant to Article 5 para. 5 final sentence, or a legal entity, which is exempted from the reporting obligation pursuant to Article 6, no longer falls under the scope of application of Article 6.

#### **Public inspection**

**Article 10.** The public excerpt from the Register bearing the official signature of the registry authority may be requested by anyone electronically. This excerpt contains the following information:

1. the details pursuant to Article 9 para. 4 nos. 1 to 3 about the legal entity and pursuant to Article 9 para. 4 no. 5 lits. a and b about direct beneficial owners and the details pursuant to Article 9 para. 4 no. 6 lits. a and b about indirect beneficial owners as well as their respective countries of residence and
2. with regard to the nature and scope of the beneficial interest, information about whether this arises from
  - a) a capital holding, where a case exists as set out in Article 2 no. 1 lit. a on grounds of ownership,
  - b) being a member of the senior management, where a case exists as set out in Article 2 no. 1 lit. b,
  - c) the identification of the performance of a function, where a case exists as set out in Article 2 no. 2 lit. a to d, Article 2 no. 3 lit. a sublits. aa to cc or Article 2 no. 3 lit. b sublits. aa to cc, or
  - d) the identification of control, where a case exists as set out in Article 2 no. 1 lit. a on the grounds of control existing, where a case exists as set out in Article 2 no. 2 lit. e, Article 2 no. 3 lit. e sublit. dd, or Article 2 no. 3 lit. b sublit. dd.

#### **Restriction of inspection of the Register under extraordinary prevailing circumstances**

**Article 10a.** (1) Following an application in writing submitted by a beneficial owner the registry authority shall decide that details about this beneficial owner shall not be shown in excerpts from the Register for obliged entities pursuant to Article 9 para. 1 nos. 3 to 6 and 8 to 15, where the beneficial owner proves that such an inspection, taking into consideration all circumstances in relation to the case in hand, would be contrary to the legitimate specific interests of the beneficial owner (restriction of inspection). In the application the legal entities should be designated, for whom inspection is intended to be restricted. The restriction of inspection has the effect in the case of excerpts from the Register about the requested legal entity that the details about the beneficial owner shall not be shown and instead a reference advising about the restriction of inspection pursuant to this Article shown.

(2) Legitimate specific interests of the beneficial owner shall be deemed to exist where facts justify the assumption that the inspection would expose the beneficial owner to a disproportionate risk of becoming the victim of own of the following crimes:

1. an act of fraud pursuant to Articles 146 to 148 StGB,
2. a kidnapping for ransom pursuant to Article 102 StGB or extortion pursuant to Articles 144 and 145 StGB,
3. an offence against limb and life pursuant to Article 75, Article 76 and Articles 83 to 87 StGB,
4. a coercion pursuant to Article 105 and Article 106 StGB, a dangerous threat pursuant to Article 107 StGB or persistent stalking pursuant to Article 107a StGB.

Legitimate specific interests of the beneficial owner shall in any case exist where the beneficial owner is either a minor or legally incapable. A risk shall be considered as disproportionate where the probability of the occurrence

of a crime against the beneficial owner appears considerably higher on the basis of facts than for average beneficial owners in a comparable position, in particular where crimes had already been committed or threatened against the beneficial owner or their close relatives in the past, or because a particular risk situation exists as a result of other circumstances. The mere fact that the beneficial ownership is known does not generally constitute a disproportionate risk. Specific interests of the beneficial owner do not exist where the data is already available from other public registers.

(3) The registry authority shall have to ensure within fourteen days from receipt of the application, that the details about the beneficial owner to which they refer are not shown in excerpts from the Register for the named legal entity, unless the application is clearly unfounded. Within twelve months of receipt of the application the registry authority shall be required to finalise this by means of an administrative decision, taking into consideration all circumstances that relate to the case in hand. The application for restriction of inspection may be partially or fully responded to, in particular with regard to the legal entities, for whom the inspection of the details of a beneficial owner is restricted. Appeals against decisions by the registry authority shall be recognised by the Federal Administrative Court (*Bundesverwaltungsgericht*).

(4) The restriction of inspection shall be granted for a period of five years. In the case of beneficial owners who are minors, this restriction shall apply until they reach the age of majority. Where the requirements for the restriction of inspection are no longer satisfied prior to expiry of this period, then the beneficial owner shall notify the registry authority about this in writing. An extension of the restriction of inspection shall be permissible where the beneficial owner proves to the registry authority that extraordinary legitimate specific interests of the beneficial owner continue to preclude inspection.

(5) Where an obliged entity is searching for a beneficial owner, for whom inspection is restricted for one or several legal entities, then instead of showing the details of the legal entity note should be shown that inspection has been restricted pursuant to this provision. This shall not apply for obliged entities pursuant to Article 9 para. 1, nos. 1, 2 and 7.

(6) Where a new report leads to a record about a beneficial owner being amended, then the restriction of inspection shall also apply to the amended record, provided that the beneficial owner in question is clearly identified by means of a sector-specific personal indicator for the sector "Taxes and Fees" ("Steuern und Abgaben - SA").

(7) The registry authority shall publish statistical data on the website of the Federal Ministry of Finance annually about the number of exceptions granted as well as the justifications for doing so in a generalised format, and shall submit them to the European Commission.

#### **Due diligence obligations of obliged entities towards customers**

**Article 11.** (1) Obligated entities shall not be allowed to exclusively rely on the information contained about the beneficial owners of a legal entity in the Register in the application of their due diligence towards customers, but shall proceed in the fulfilment of their due diligence duties in accordance with a risk-based approach. The excerpt from the Register pursuant to Article 9 para. 4 and pursuant to Article 10 may be applied for identifying the beneficial owners, but not for verifying the identity of the beneficial owner. Prior to establishing a business relationship with a trust or an arrangement of a similar nature to a trust and during the application of due diligence towards existing customers on a risk-based basis, the obliged entities shall have to ascertain with proof that the trust or the arrangement of a similar nature to a trust is entered in the Register. Prior to the notarisation or recording of a notarial deed for the purpose of purchasing a plot of land located in Austria by foreign legal entities subject to reporting obligations as well as trusts and arrangements of a similar nature to trusts, the management of which is not situated in Austria or in another Member State, the notary shall be required to ascertain that the said entities have reported their beneficial owners pursuant to Article 5.

(2) The verification of the identity of the beneficial owner may be conducted on the basis of a complete extended excerpt from the Register pursuant to Article 9 para. 5, provided that no factors exist that confirm an increased risk, and the obliged entity has ascertained by asking its customer, that no control relationships or trustee relationships (*Treuhandschaften*) exist that deviate from those set out in the extended excerpt, and the customer is therefore satisfied about knowing who the beneficial owner is. In all other cases it is necessary to assess on a risk-based basis what additional measures are to be taken to check the identity of the beneficial owner.

(2a) An obliged entity may identify the beneficial owners of a customer on the basis of an extended excerpt and while verifying the identity of the beneficial owner may refer to the documents and evidence received in a complete and valid compliance package, provided that no indications exist on the basis of the risk-based application of due diligence obligations, which throw doubt for it about the correctness of the report or the authenticity, up-to-dateness, correctness and completeness of the documents and evidence contains in the compliance package.

(3) Where an obliged entity determines in the application of its customer due diligence that for a customer that is a legal entity as defined in this Federal Act, that the beneficial owners entered in the Register does not correspond with those it has determined during its customer due diligence measures and is convinced that it knows that the data entered in the Register about the beneficial owners are incorrect or incomplete, then it shall make a remark electronically using the Unternehmensserviceportal and the reasons for making a remark are to be submitted in a

standardised format. The obligation to set a remark lapses where the obliged entity advises its customer about the incorrect or incomplete entry, and the customer makes a correction within an appropriate time frame. When a circumstance exists that must be reported to the Financial Intelligence Unit (*Geldwäschemeldestelle*) by way of a suspicious activity report, then the obliged entities shall not be allowed to make a remark, and instead shall advise the Financial Intelligence Unit (*Geldwäschemeldestelle*) that a remark has been omitted to be set due to the suspicious activity report being made.

(4) In the event that an obliged entities has reported pursuant to para. 3 that the beneficial owner entered could not be verified, then Bundesanstalt Statistik Österreich shall make a remark including the date in the Register stating that the entry was not able to be verified. In the event of there being a remark in the entry, the obliged entities shall take additional measures in identifying and verifying the identity of the beneficial owner so that they are satisfied that they know who the beneficial owner is. It shall not be necessary to classify the customer in a higher risk category solely on the basis of this remark.

(5) Bundesanstalt Statistik Österreich as the processor of the registry authority shall inform the Unternehmensserviceportal electronically about the circumstance of a remark having been made, stating reasons in a standardised format. The legal entity must be informed by the registry authority through via the Unternehmensserviceportal about the circumstance of a remark being set, with reasons for doing so also being stated. Where the legal entity makes a new report pursuant to Article 5, then the remark is to be closed by Bundesanstalt Statistik Österreich. The obliged entity that made the remark, is to be informed electronically through the Unternehmensserviceportal about the notification of the legal entity. Where the placing of the remark was unlawful, then it may be expunged by the registry authority upon request.

(6) The obliged entities shall keep records of the actions taken in order to identify the beneficial owner.

(7) Claims for damages may not be asserted in the case that an obliged entity or employee of the obliged entity sets a remark in negligent ignorance in relation to the suspicion of the incorrectness or incompleteness of a record in the Register.

(8) Paras. 1 to 7 shall not apply to the authorised operators of gaming machines and betting companies that have been established on the basis of an authorisation under regional law.

#### **Inspection of the Register by Authorities**

**Article 12.** (1) The following authorities shall be authorised to inspect the Register:

1. the registry authority within the powers conferred upon it in accordance with this Federal Act;
2. the Financial Intelligence Unit (*Geldwäschemeldestelle*) (Article 4 para. 2 BKA-G) within the powers conferred upon it in accordance with the BKA-G;
3. the following supervisory authorities within their duties for preventing the financial system from being used for the purpose of money laundering and terrorist financing:
  - a) the FMA in relation to its supervision of credit institutions and financial institutions pursuant to Article 25 FM-GwG;
  - b) the Federal Minister of Finance in relation to its supervision of holders of government-approved licences pursuant to Articles 14 and 21 GSpG;
  - c) the competent regional authorities with regard to the supervision of regionally authorised parties for the operation of gaming machines and providers of betting services pursuant to Article 9 para. 1 no. 5 within the meaning of the regulations set out under regional law;
  - d) the Bar Association within the scope of its supervision of attorneys;
  - e) the Austrian Chamber of Notaries (*Notariatskammer*) within the scope of its supervision of notaries;
  - f) The Chamber of Professional Accountants and Tax Advisors (*KWT; Kammer der Wirtschaftstreuhänder*) within the scope of its supervision of external auditors and tax advisors;
  - g) the President of the Austrian Economic Chambers (WKO) within the scope of the WKO's supervision of balance sheet accountants, accounts and payroll accountants pursuant to Article 1 BiBuG 2014;
  - h) the local administrative authorities within the scope of supervision of financial institutions pursuant to Article 9 para. 1 no. 3, traders on a commercial basis including auctioneers, provided that they accept payments in cash of at least EUR 10 000 pursuant to Article 365m1 para. 2 no. 1 GewO, real estate agents pursuant to Article 365m1 para. 2 no. 2 GewO, business consultants pursuant to Article 365m1 para. 2 no. 3 GewO, insurance brokers pursuant to Article 365m1 para. 2 no. 4 GewO;
4. the local administrative authorities for the purposes of initiating and conducting of administrative penal proceedings;
5. the law enforcement authorities, public prosecutors and criminal law courts;
6. the fiscal penal authorities and the Federal Fiscal Court (Bundesfinanzgericht) for purposes under fiscal penal law;
7. the Federal Government's tax authorities and the Federal Fiscal Court (Bundesfinanzgericht) for tax law purposes, where this is expedient and reasonable for the purpose of collection of taxes;



8. the Oesterreichische Nationalbank for the purposes of the performance of its duties pursuant to Article 8 of the Sanctions Act (SanktG) and Article 5 of the Foreign Exchange Act of 2004 (DevG; Devisengesetz 2004);
9. the Federal Minister of the Interior for the purposes of performing the duties conferred pursuant to Article 8 SanktG;
10. the security authorities for the purposes of security policing.

(2) Inspection of the Register pursuant to para. 1 shall take place electronically. Article 9 paras. 2, 4, 5 and 8 shall apply accordingly. An inspection pursuant to para. 1 shall be possible for every reporting date on which data has been captured in the Register. Where such a request is made, historical data pursuant to Article 9 para. 4 nos. 1 to 4, no. 5 lits. a to d to g, para. 6 lits. a to d and lits. f to h, nos. 7 and 8 as well as para. 5 no. 2 shall be imported into a simplified or extended excerpt. Furthermore, it may also be requested that all legal entities shall also be displayed, for whom a specific legal entity was notified as being the ultimate legal entity. The closing part of Article 9 para. 4 shall only apply analogously to authorities pursuant to para. 1 no. 3 lits. d to g.

(3) The registry authority, the Financial Intelligence Unit (*Geldwäschemeldestelle*) and the criminal police, the public prosecutor's offices and courts may for purposes in relation to penal law search all legal entities by entering one or several identifiers about a natural person, for which this person has been reported as being a beneficial owner, and request an excerpt containing all data stored in the Register about this person. This excerpt shall bear an official signature of the registry authority.

(4) The registry authority, the Financial Intelligence Unit (*Geldwäschemeldestelle*) and the criminal police, the public prosecutor's offices and courts, for purposes in relation to penal law about a reported ultimate legal entity, may search all legal entities for which this ultimate legal entity was reported.

(5) The authorities listed in para. 1 shall in the provision of assistance pursuant to Article 10 submit excerpts to the competent authorities and central reporting bodies in other Member States.

(6) The registry authority shall be allowed to inspect compliance packages submitted pursuant to Article 5a. Other authorities pursuant to para. 1 shall only be allowed to inspect compliance packages, where such packages are not restricted.

(7) The Financial Intelligence Unit (*Geldwäschemeldestelle*) and the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*) (Article 1 para. 3 of the Act concerning Police Protection of the State (PStSG; Polizeiliches Staatsschutzgesetz) shall be allowed by the registry authority for the purposes of the prevention of money laundering and terrorist financing to be granted inspection rights of certain information in the risk assessment pursuant to Article 14 para. 3 no. 1 via a display tool and a web service shall be established to incorporate the Register. The registry authority shall be free to cooperate with the Financial Intelligence Unit (*Geldwäschemeldestelle*) and the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*) with regard to both the design for the risk assessment and the web service. Expenditures that are associated with the design and performance of the risk assessments, the display tool and the web service are to be borne by the Financial Intelligence Unit (*Geldwäschemeldestelle*) and the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*) jointly on the basis of a coefficient that is to be determined.

#### **Report by an authority about the beneficial owner and remark made by an authority**

**Article 13.** (1) Where the registry authority arrives at the conclusion that the information about the beneficial owner of a legal entity are incorrect, and the registry authority is convinced that it knows who the beneficial owner(s) of a legal entity is/are, or which information in a report must be corrected, then it may make a notification by electronic means under the according application of Article 5 paras. 1 and 4. The Bundesanstalt Statistik Österreich shall import the data reported by the authority about the beneficial owner with a remark that they have been reported as a report by the authority about the beneficial owner pursuant to Article 13 para. 1.

(2) The legal entity shall be informed by the registry authority about the report by the authority by means of the Unternehmensserviceportal. This report shall be required to contain a note that it does not constitute a legally effective finding and that the legal entity may make a report pursuant to Article 5 para. 1 at any time.

(3) Where one of the authorities listed in Article 12 para. 1 arrives at the conclusion while conducting its activities, that the information about the beneficial owners of a legal entity is incorrect, then it may set a remark electronically, and shall submit the reasons for setting the remark in a standardised format. The registry authority may also state the reasons for adding a remark in written form. Bundesanstalt Statistik Österreich shall make a remark including the date in the Register stating that the entry was not able to be verified. In the event of there being a remark in the entry, the obliged entities shall take additional measures in identifying and verifying the identity of the beneficial owner so that they are satisfied that they know who the beneficial owner is. It shall not be necessary to classify the customer in a higher risk category solely on the basis of this remark.

(4) Bundesanstalt Statistik Österreich as the processor of the registry authority shall inform the Unternehmensserviceportal by electronic means about the fact that a remark was made, and about the standardised reasons as well as in the case of reasons in written form to also inform the registry authority about the reasons. The legal entity must be informed by the registry authority through the Unternehmensserviceportal about the fact that a remark has been made including detailed about the standardised reasons as well as reasons submitted in written form. Where the legal entity makes a new report pursuant to Article 5, then the remark by the Bundesanstalt Statistik Österreich must be closed. Where the placing of the remark was unlawful, then it may be expunged by the registry authority upon request.

### **Institutional oversight**

**Article 14.** (1) The Federal Minister of Finance shall be the registry authority.

(2) The registry authority shall be authorised in operating the Register to process data and to perform analyses for ensuring the correctness and completeness of the data as well as for the prevention of money laundering and terrorist financing. For this purpose the Bundesanstalt Statistik Österreich shall, where technical capabilities permit, make analyses and evaluations available to the registry authority about all the details stored in the Register. The details shall in particular include the following:

1. remarks pursuant to Article 11 para. 4 and Article 13 para. 3;
2. reports made by the authority pursuant to Article 13 para. 1;
3. exemptions from the obligation to report and reports pursuant to Article 6 para. 6;
4. legal entities for whom no beneficial owners have been entered, and
5. evaluations of data fields.

(3) The registry authority shall take the following measures for the purposes of guaranteeing that the data stored in the Register are appropriate, precise and up-to-date:

1. analysis by automated means of reports with the purpose of classifying them into risk categories and to identify potentially incorrect reports,
2. checking using a random sample of incoming reports on the basis of the risk assessment pursuant to no. 1 and then additionally following a random selection being made,
3. conducting ongoing monitoring of the incoming remarks and a conducting a random check of those legal entities, that have not replaced a remark within six weeks by a new report,
4. conducting of ad hoc and prospective analyses pursuant to para. 2.

(4) The registry authority may request information from legal entities and their legal and beneficial owners at any time about necessary information required for the assessment of beneficial ownership of the relevant legal entity, as well as the submission of relevant certificates and other written documentation.

(5) Instead of the amount stated in Article 5 para. 3 VVG for the enforcement of an administrative decision by the registry authority the amount of EUR 30 000 shall apply for legal persons, and EUR 15 000 for natural persons.

(6) The imposing of coercive penalties pursuant to Article 16 as well as their levying, safekeeping and collection shall be the responsibility of the Federal Government's tax authorities. The locally competent tax office for the collection of taxes on income of the legal entity pursuant to Article 16, or which would be competent pursuant to Article 1 no. 3 of the Corporation Tax Act (KStG; Körperschaftsteuergesetz), shall be competent for the imposing of coercive penalties.

(7) If a data subject requests a rectification or erasure of personal data pursuant to Article 16 or Article 17 of Regulation (EU) 2016/679, then the registry authority shall have to rectify the personal data in the event that the conditions set out in Article 16 of the Regulation exist, or to erase the personal data in the event that the conditions set out in Article 17 of the Regulation exist. A remark is to be made if data have been rectified pursuant to Article 16 of Regulation (EU) 2016/679 or have been erased pursuant to Article 17 Regulation (EU) 2016/679. In the event that a data subject additionally demands a restriction of processing pursuant to Article 18 of Regulation (EU) 2016/679, then the registry authority shall have to mark the restriction of processing in the Register, in the event that the conditions set out in Article 18 (1) of Regulation (EU) 2016/679 exist. The effect of the restriction of processing is that the data relating to the data subject are not displayed in excerpts from the Register, and a remark is made about the restriction of processing pursuant to Article 19 of Regulation (EU) 2016/679. The registry authority shall inform the affected legal entity about any rectification, erasure and restriction of processing, and shall make a remark pursuant to Article 13 para. 3.

(8) The registry authority shall retain reports, remarks and log files, which record accesses to the Register in electronic form for a period of ten years. Log files that are kept for technical reasons must be kept for a period of one year.

(9) The registry authority may determine by means of an administrative decision that no authorisation exists pursuant to Article 9 to inspect the Register, or it may exclude, an obliged entity from inspecting the Register pursuant to Article 9 by means of an administrative decision for a specific or an unspecific period of time, in the case that the obliged entity has used or is using the Register illegally or is misusing it. An appeal against such

administrative decisions shall not be granted suspensory effect. The registry authority shall grant the obliged entity the right of inspection upon request again twelve months after the date of the administrative decision, in which an obliged entity is excluded from the right of inspection pursuant to Article 9, where it is to be expected that the illegal or abusive conduct will not be repeated. Appeals against decisions by the registry authority pursuant to this provision shall be handled by the Federal Administrative Court (Bundesverwaltungsgericht).

#### **Penal provisions**

**Article 15.** (1) A financial offence is committed by anyone, who

1. submits an incorrect or incomplete report (Article 5) and therefore does not disclose the beneficial owners,
2. fails to comply with their reporting obligation (Article 5) despite twice being requested to do so,
3. fails to submit or submits an incorrect or incomplete report and thereby fails to disclose beneficial owners in the case of a reporting exemption in accordance with Article 6 no longer existing, or in the cases listed in Article 3 para. 8 prior to the notarisation or recording of a notarial deed for the purpose of purchasing a plot of land located in Austria,
4. fails to submit amendments to the details about the beneficial owners within four weeks of becoming aware about the change (Article 5 para. 1),
5. fails to disclose their status as a trustee pursuant to Article 3 para. 4 and to submit the details about the beneficial owners of the trust or the arrangement of a similar nature to a trust pursuant to Article 3 para. 4, or
6. fails to disclose their status as a foreign legal entity subject to reporting obligations pursuant to Article 3 para. 6 and fails to submit the details about the beneficial owners of the foreign legal entity subject to reporting obligations pursuant to Article 3 para. 6

shall be punished with a fine of up to EUR 200 000 in the case of being deliberately committed. Anyone committing the act due to gross negligence shall be punished by a fine of up to EUR 100 000.

(2) Anyone who in breach of Article 3 para. 2 fails to store the required copies of the documents and information for at least five years following the ending of the beneficial ownership of the natural person required for fulfilling due diligence obligations pursuant to Article 3 para. 1, commits a financial offence and shall be punished with a fine of up to EUR 75 000 in the case of being deliberately committed. Anyone committing the act due to gross negligence shall be punished by a fine of up to EUR 25 000.

(3) Anyone who, without fulfilling the offence listed in para. 1, deliberately submits false or falsified documents to the register during the submission of a compliance package, commits a financial offence, and shall be punished with a fine of up to EUR 75 000.

(4) Anyone who, without fulfilling the offence listed in para. 1 or 3, deliberately submits an incorrect or incomplete report, commits a financial misdemeanour, and shall be punished with a fine of up to EUR 25 000.

(5) Anyone who, without fulfilling the offence listed in para. 1 or 3, deliberately in the submission of a compliance package (Article 5a para. 1) fails to submit required documents or fails to fulfil other obligations in accordance with Article 5a, commits a financial misdemeanour, and shall be punished with a fine of up to EUR 10 000.

(6) Any person deliberately transmitting records marked as being prohibited for disclosure to third parties or with a restriction of inspection (Article 10a), or any person deliberately passing on records that contain such records to third parties also commits a financial offence, and shall be punished with a fine of up to EUR 50 000.

(7) The financial offences in accordance with paras. 1 to 6 shall never be required to be sanctioned by the court.

(8) Where a reasonable suspicion exists within the professional field of activity of the registry authority of the existence of a financial offence or a financial misdemeanour in accordance with paras. 1 to 6, then the registry authority shall inform the competent fiscal penal authority pursuant to Article 58 FinStrG.

#### **Coercive penalties**

**Article 16.** (1) If the report pursuant to Article 5 is not made, the tax authority may force the report to be made by imposing a coercive penalty pursuant to Article 111 BAO. The threat of a coercive penalty shall be issued with a deadline of six weeks to comply.

(2) Coercive penalties pursuant to para. 1 shall be considered as levies as defined in Article 213 para. 2 BAO.

#### **Fees for usage**

**Article 17.** (1) The Federal Minister of Finance shall prescribe by means of a Regulation a usage fee for the Register for the following kinds of use of the Register:

1. Inspection pursuant to Article 10;
2. Inspection of obliged entities by means of basic excerpts pursuant to Article 9 para. 4;
3. Inspection of obliged entities by means of extended excerpts pursuant to Article 9 para. 5;
- 3a. Inspection of obliged entities by means of extended extracts pursuant to Article 9 para. 5 while simultaneously inspecting a compliance package pursuant to Article 9 para. 5a;

4. Inspection of obliged entities by means of a flat-rate annual usage fee. The flat-rate annual usage fee shall allow access to basic excerpts pursuant to Article 9 para. 4, extended extracts pursuant to Article 9 para. 5 and extended extracts pursuant to Article 9 para. 5 while simultaneously inspecting a compliance package pursuant to Article 9 para. 5a as well as for submitting reports as the representative for legal entities. An annual usage fee that has been paid may not be refunded. The flat-rate usage fee may be defined in accordance with the expected amount of usage of the Register.

(2) The registry authority shall charge the usage fee prior to the Register being used by means of an electronic payment procedure. If obliged entities are already making use of inspection pursuant to para. 1 no. 4, then the registry authority shall electronically request via the Unternehmensserviceportal the obliged entities four weeks prior to the commencement of the new usage period to pay the usage fee for the following usage period. In the case that the obliged entity not execute a payment until the start of the new usage period, then use pursuant to para. 1 no. 4 shall end when the usage period expires.

(3) The usage fee shall be collected by Bundesrechenzentrum GmbH for the registry authority and shall be credited on a continuous basis to an account established for this purpose. In this case Bundesrechenzentrum GmbH merely acts as a payment agent. The collected usage fees shall be paid in full to the Federal Minister of Finance on a monthly basis by the 15<sup>th</sup> day of the following calendar month. At the same time, the costs for operating the Register and its further development pursuant to Article 8 shall be reimbursed to Bundesrechenzentrum GmbH.

(4) The usage fees pursuant to para. 1 shall not be allowed to exceed the administrative costs caused by usage. Administrative costs consist of:

1. all expenditures for the establishment of the Register,
2. all expenditures for the operation of the Register,
3. a surcharge of 50% of the amount in no. 2 for institutional oversight, and
4. expenditures for future further developments of the Register, if they are already suitably certain and will be incurred within the next three years.

The Federal Minister of Finance shall check on an annual basis whether the total of the collected usage fees is less than the total of the administration costs. The last ten calendar years respectively, starting with the 2016 calendar year shall be decisive in this instance. If the total of the collected usage fees exceeds the total of the administrative costs, then the Federal Minister of Finance shall reduce the usage fees for the next calendar year accordingly. The Federal Minister of Finance may increase the usage fees, where it is not expected, that the total of the collected usage fees shall exceed the administrative costs for the next calendar year.

(5) The Federal Minister of Finance may prescribe by means of a Regulation the technical capabilities for the proposed connection of registers on a European level pursuant to Directive (EU) 2015/849 as well as additional technical possibilities for the inspection of the Register and may determine a separate usage fee for this.

#### **Transitional regulations**

**Article 18.** (1) Legal entities shall submit reports pursuant for the first time pursuant to Article 5 para. 1 until 1 June 2018.

(2) Possibilities for inspecting the Register pursuant to Article 9, Article 10 and Article 12 shall be made available from 2 May 2018.

(3) and (4) *repealed with effect from the end of 31 December 2020.*

#### **Entry into force**

**Article 19.** (1) This Federal Act shall enter into force on 15 January 2018 with the exception of Articles 1 and 2. Articles 1 and 2 shall enter into force on the following day after publication.

(2) Article 5 para. 3 and Article 7 in the version of the Federal Act amended in Federal Law Gazette I 150/2017 shall enter into force on the following day after its publication. Article 9 para. 3 and Article 10 para. 2 in the version of the Federal Act amended in Federal Law Gazette I no. 150/2017 shall enter into force on 15 January 2018.

(3) Article 2 no. 1, Article 5 para. 3, Article 6 paras. 1 to 6, Article 9 para. 1 no. 1, Article 12 para. 3, Article 14 para. 3, Article 15 paras. 3 to 5, Article 16 para. 1 and Article 20 para. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 37/2018 shall enter into force on 1 August 2018. Article 5 para. 5 shall enter into force on 1 October 2018. For all legal entities addressed by Article 5 para. 5 that have notified beneficial owners pursuant to Article 2 no. 1 lit. b prior to this date, on this date the natural persons who belong to the top level of management of the legal entity are to be imported by the Bundesanstalt Statistik Österreich from the Commercial Register and to be kept up-to-date on a constant basis.

(4) Articles 9 para. 2, 10a, 15 para. 4 and 20 para. 1 as well as the change to the table of contents in the version of the Federal Act amended in Federal Law Gazette I No. 62/2018 shall enter into force on 1 October 2018.

(5) Article 1 para. 2 nos. 17 and 18 and para. 4, Article 2 no. 2 lits. a and c, Article 3 para. 3 to 5, Article 4, Article 5 para. 1 no. 3 lits. a and b as well as the final part of para. 1, Article 5 para. 5, Article 7 para. 3, Article 9 para. 1 no. 15 and 16, para. 2, 3, 5 no. 2 and para. 9, Article 10, Article 11 paras. 1, 3, 5 and 8, Article 12 paras. 3

to 5 and 7, Article 13 paras. 1 to 4, Article 14, Article 15 paras. 1, 2, 4, 6 to 8, Article 16 para. 1, Article 17 para. 1 no. 1 and Article 20 para. 2 no. 2 as well as the changes to the table of contents shall enter into force in the version of the amendment published in Federal Law Gazette I No. 62/2019 on 10 January 2020. Article 3 para. 2, Article 5 para. 1 no. 4 and para. 7, Article 5a including its heading, Article 9 para. 4 nos. 7a to 7c, Article 9 paras. 5a and 5b, Article 11 para. 2a, Article 12 para. 6, Article 15 paras. 3 and 5, Article 17 para. 1 nos. 3a and 4 as well as the changes to the table of contents shall enter into force in the version of the amendment published in Federal Law Gazette I No. 62/2019 on 10 November 2020. Article 5 para. 6 shall enter into force on 10 March 2021. The amendments in Article 5 para. 1 no. 3 lits. a and b shall apply to reports that are submitted after 10 January 2020.

(6) Article 14 para. 6 and Article 16 para. 1, respectively in the version of the Federal Act amended in Federal Law Gazette I No. 104/2019, shall enter into force on 1 July 2020.

(7) Article 18 paras. 3 and 4 in the version of the Federal Act amended in Federal Law Gazette I No. 23/2020 enter into force at the end of the day of the announcement of the Federal Act, and shall be repealed at the end of 31 December 2020.

(8) Article 1 para. 2 introductory sentence, Article 1 para. 2 nos. 17 to 19, Article 1 para. 2 final part, Article 3 paras. 6 to 8, Article 5a para. 1 no. 3, Article 5a paras. 5 and 8, Article 7 para. 2, Article 9 para. 1 no. 11, Article 9 para. 2, Article 9 para. 9, Article 11 para. 1, Article 15 para. 1 nos. 3 and 6 and Article 20 para. 1 no. 25 in the version of the Federal Act amended in Federal Law Gazette I No. 25/2021 shall enter into force on 01 April 2021. This Federal Act in the version of the Federal Act amended in Federal Law Gazette I No. 25/2021 shall apply to foreign legal entities subject to reporting obligations as well as trusts and arrangements of a similar nature to a trust, in the case that their management is not in Austria or in another Member State, that have committed after 01 April 2021, to acquire the ownership of a plot of land located in Austria.

### References

**Article 20.** (1) Where references are made in this Federal Act to the following laws, they shall apply to their respective current versions unless specified otherwise:

1. Company Code (UGB; Unternehmensgesetzbuch), published in Reich Law Gazette p. 219/1897;
2. Fiscal Code (BAO; Bundesabgabenordnung), published in Federal Law Gazette no. 194/1961;
3. Savings Bank Act (SpG; Sparkassengesetz), published in Federal Law Gazette No. 64/1979;
4. Income Tax Act 1988 (EStG 1988; Einkommensteuergesetz 1988), published in Federal Law Gazette No. 400/1988;
5. Gaming Act (GSpG; Glücksspielgesetz), published in Federal Law Gazette No. 620/1989;
6. Commercial Register Act (FBG; Firmenbuchgesetz), published in Federal Law Gazette No. 10/1991;
7. Residence Reporting Act 1991 (MeldeG; Meldegesetz 1991), published in Federal Law Gazette No. 9/1992;
8. Commercial Code 1994 (GewO; Gewerbeordnung 1994), published in Federal Law Gazette No. 194/1994;
9. Bundesrechenzentrum GmbH Act (BRZ GmbH; Bundesrechenzentrum GmbH), published in Federal Law Gazette No. 757/1996;
10. Tax Advising and Related Professions Act 2017 (WTBG 2017; Wirtschaftstreuhänderberufsgesetz 2017), BGBl. I No. 137/2017;
11. Federal Act on the Austrian Statistics Agency (Bundesstatistik) 2000 (Bundesstatistikgesetz 2000), published in Federal Law Gazette I No. 163/1999;
12. Criminal Intelligence Service Austria Act (BKA-G; Bundeskriminalamt-Gesetz), published in Federal Law Gazette I No. 22/2002;
13. Associations Act 2002 (VerG; Vereinsgesetz 2002), published in Federal Law Gazette I No. 66/2002;
14. Foreign Exchange Act 2004 (Devisengesetz 2004), published in Federal Law Gazette I No. 123/2003;
15. Business Service Portal Act (USPG; Unternehmensserviceportalgesetz), published in Federal Law Gazette I No. 52/2009;
16. Sanctions Act 2010 (SanktG; Sanktionengesetz 2010), published in Federal Law Gazette I No. 36/2010;
17. Balance Sheet Accounting Act 2014 (BiBuG 2014; Bilanzbuchhaltungsgesetz 2014), published in Federal Law Gazette I No. 191/2013;
18. Insurance Supervision Act 2016 (VAG 2016 - Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No. 34/2015;
19. Act on Joint Reporting Standards (GMSG; Gemeinsamer Meldestandard-Gesetz), published in Federal Law Gazette I No. 116/2015;
20. Federal Act on Foundations and Funds 2015 (BStFG 2015; Bundes-Stiftungs- und Fondsgesetz 2015), published in Federal Law Gazette I No. 160/2015;

21. Financial Markets Anti-Money Laundering Act (FM-GwG; Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I No. 118/2016;
22. Federal Act on the Creation of a Wind-Down Entity (GSA; Gesetz zur Schaffung einer Abbaueinheit), published in Federal Law Gazette I No. 51/2014;
23. Federal Act on the Recovery and Resolution of Banks (BaSAG; Bundesgesetz über die Sanierung und Abwicklung von Banken), published in Federal Law Gazette I No. 98/2014,
24. Criminal Code (StGB; Strafgesetzbuch) published in Federal Law Gazette no. 60/1974.
25. Real Estate Transfer Tax Act 1987 (GrEStG 1987; Grunderwerbsteuergesetz 1987), published in Federal Law Gazette no. 309/1987.

(2) Where references are made in this Federal Act to EU Directives, unless instructed otherwise, the following listed versions thereof shall apply:

1. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 86, most recently amended by Directive 2014/102/EU, OJ L 334, 21.11.2014, p. 86;
2. Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 05.06.2015, p. 73; most recently amended by Directive (EU) 2018/843, 30.05.2018.

(3) Where references are made in this Federal Act to EU Regulations, unless instructed otherwise, the following listed version thereof shall apply:

1. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 of 04.05.2016 p. 1.

#### **Gender-neutral use of language**

**Article 21.** Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

#### **Enforcement Clause**

**Article 22.** The Federal Minister of Finance shall be responsible for enforcing this Federal Act.