

FAQ concerning the Register of Beneficial Owners

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1. Reporting of beneficial owners

1.1. Business Service Portal

Question 1: How is registration with the Business Service Portal carried out?

The registration or login in the Business Service Portal (USP) is done via the corresponding buttons on the USP homepage:

Assistance on questions regarding registration, application and use of the USP with regard to the Register of Beneficial Owners can be found in the comprehensive guide for setting up the Register of Beneficial Owners for obligated parties.

Further information on registering with the Business Service Portal can be found [here](#).

To use the Business Service Portal, the respective user needs a citizen card or a mobile phone signature. For information on the citizen card or mobile phone signature please see [here](#).

Question 2: Where can I find the reporting forms in the USP?

To get to the reporting forms, select the button "eForms" on the USP start screen under the heading "My USP" under "My Services". This takes you to the form sheet area where you can create a number of different forms. The report to the Register of Beneficial Owners is one of them. In this overview, you can also see reports that have already been made and their status, for example, in process.

Now use the button "New report" and select "BORA – Report of beneficial owners" by clicking on "Create report".

1.2. Reporting obligation beneficial owners

Question 1: How to tell whether an entity entered in the register of companies, the register of associations or the supplementary register for other affected parties is subject to reporting to the Register?

For all companies that fall within the scope of the Beneficial Owners Register Act (BORA), the form page "Legal entity" in the reporting form is pre-filled with the current data from the respective master registers (name of the legal entity, master register, master number, etc.).

The data of trusts and trust-like arrangements pursuant to Article 1 II 17 and 18 of the BORA are displayed only if they have also been created in the supplementary register for other affected parties (Ergänzungsregister für sonstige Betroffene, ERsB www.ersb.gv.at) with the correct legal form. If no data are displayed for such a legal entity, it must always be checked whether this legal entity is correctly entered in the supplementary register.

Question 2: *By when must the beneficial owner be reported in the case of newly established legal entities?*

The beneficial owners are to be reported within four weeks of their first entry into the respective master register (i.e. register of companies, register of associations or supplementary register) or, in the case of trusts and trust-like arrangements, after the establishment of the administration in Austria (Article 5 I of the BORA).

Question 3: *The beneficial owner has changed; by when must a new report be submitted?*

A new report must be submitted within four weeks of the change in the beneficial owner becoming known. Such knowledge may result from the application of the annual due diligence obligations of the legal entity, or from information provided by the beneficial owner. In the case of data of the legal entity itself, which are entered in the respective master register, knowledge is to be presumed in any case from the date of their entry into the respective master register. If circumstances have an effect on the beneficial owners of a legal entity already before entry in the master register, the beginning of the reporting period shall be taken as the point in time at which such effect begins. In the event of an exemption from reporting obligation pursuant to Article 6, the reporting obligation the changes shall not apply if an application for entry in the respective master register is made within four weeks.

Question 4: *A legal entity is being wound up (for example due to insolvency). Is there still a reporting obligation to the register?*

Legal entities that are in the process of wind-down or undergoing reorganisation or insolvency proceedings are also entered into the Register of Beneficial Owners. They are also subject to a reporting obligation to the register. Here, too, the beneficial owners are to be determined under Article 2 BORA. The legal owners can therefore still be beneficial owners. The exemptions from reporting pursuant to Article 6 of the BORA also apply.

In case of subsidiary determination of the beneficial owners pursuant to Article 2 I b BORA, it must be checked who is the top management level of the legal entity subject to reporting. In this case, the respective organs of the legal entity are still to be regarded as the top management level. In particular, the liquidator or insolvency administrator is not a corporate body of the company, which is why the same does not belong to the top management level of the company and is therefore not a subsidiary beneficial owner either.

1.3. Exemptions from the reporting obligation under Article 6 of the BORA

Question 1: How to know that there is an exemption from reporting?

If there is an exemption from reporting according to Article 6 BORA, this is indicated in the reporting form on the form page "Legal entity".

Befreiung von der Meldepflicht gemäß § 6 WiEReG

Eine Befreiung von der Meldepflicht gemäß § 6 WiEReG liegt vor ⓘ

Verzicht auf Befreiung der Meldepflicht gemäß §6 WiEReG* ⓘ

Exemption from the reporting obligation pursuant to Article6 BORA
There is an exemption from the reporting obligation pursuant to Article6 BORA
Yes
Waiver of the exemption from the reporting obligation pursuant to Article6 BORA*

Question 2: In addition to the beneficial owners, persons who are not beneficial owners are also entered into the register. Is there an obligation to submission of a report?

There is no obligation to submission of a report in these cases. If entry of these persons into the Register of Beneficial Owners is not desired, a report may be submitted. If a report is submitted, there is also an obligation to report changes in beneficial ownership.

Question 3: Are listed stock corporations under Austrian law exempt from the reporting obligation?

All stock corporations under Austrian law are within the scope of the BORA and are therefore obligated to report their beneficial owners. The beneficial owners are to be determined on the basis of Article 2 I BORA and to be reported to the register via the Business Service Portal.

If no individual can be identified as a direct or indirect beneficial owner, the Executive Board is to be reported as the beneficial owner on a subsidiary basis.

There is no exemption from reporting.

1.4. Questions about the content of the report

Question 1: *Can an individual be reported as both a direct and indirect beneficial owner?*

When the same person holds a direct and indirect interest in a company, that person has both direct and indirect ownership. If, according to the definition in Article 2 BORA, both direct and indirect ownership exists, then this person is to be reported as both direct and indirect beneficial owner, together with the relevant top-level legal entity. In this case, on the form page "Indirect beneficial owners", the directly and indirectly held interest must be stated together. On the form page "Direct beneficial owners", the directly held interest must be stated if exceeding 25%. In this way, the handling of the respective beneficial interest for direct and indirect ownership is correctly mapped in each case. It is irrelevant whether the individual shares add up to more than 100%, since even in the case of unequal shareholdings and voting rights, more than 100% can occur in total.

Question 2: *An indirect beneficial owner also holds a direct interest, but this is below the reporting threshold. Does this person also have to be reported as direct beneficial owner?*

No. A direct participation of an indirect beneficial owner below 25% does not have to be reported. This participation must be added to the indirect participation.

1.5. Reports from professional party representatives

Question 1: *Who may submit reports for clients/customers as a professional party representative?*

The following professional party representatives may submit reports on behalf of their clients:

- Lawyers and notaries
- CPAs and tax advisors
- Accountants, bookkeepers and payroll accountants

Question 2: *What are the requirements for reporting as a professional party representative?*

The application for querying and reporting beneficial owners is automatically activated for all professional party representatives. A flat-rate user charge must also be paid for the performance of reports for clients/customers.

2. Identification and verification of beneficial owners

2.1. Due diligence obligations of the legal entities in relation to their beneficial owners

Question 1: What due diligence obligations does a legal entity have under the BORA?

The legal entities shall establish the identity of their beneficial owners and take reasonable steps to verify their identity. This includes taking appropriate measures to understand the ownership and control structure. The legal entities must fulfil these due diligence obligations at least annually and check whether the beneficial owners reported to the register are still up-to-date.

Copies of the documents and information used for the fulfilment of due diligence obligations shall be kept for at least five years after the end of the beneficial ownership of the individual.

Question 2: How to identify a beneficial owner?

In general, beneficial owners are those individuals who ultimately own or control the legal entity. The starting point for determining the beneficial owner is the definition of the beneficial owner in Article 2 BORA. Examples and further information on the identification and verification of beneficial owners can be found at [„Identification and verification of beneficial owners – Case studies“](#) (in German).

Question 3: What documents are required to establish and verify the identity of a beneficial owner under Article 31 of the BORA, and what information must be provided when reporting?

Legal entities subject to reporting must take “reasonable measures” to verify the identity of their beneficial owner as part of their due diligence obligations. This also includes appropriate measures to understand the ownership and control structure. This means that in cases of indirect beneficial ownership, the legal entity subject to reporting must also understand what the position of its indirect beneficial owner is derived from. Knowledge of the intermediate links in the chain between the legal entity subject to reporting and the beneficial owner is a necessary element in this respect.

In order to fulfil the due diligence obligations, the legal entity must obtain appropriate evidence of the beneficial owner or of the ownership and control relationships in accordance with the national standard and practice. Sources of knowledge are in particular publicly accessible register extracts and non-public documents (articles of association or similar contracts for the establishment of a legal entity). Since in the case of a top-level legal entity basic information is to be reported to the register as well, the evidence in accordance with the national standard and practice should accordingly also comprise at least the following information:

- Name of the legal entity
- Legal form

- Master register and master number (if available)
- Address of the registered office of the legal entity (street name, house number, town, postcode and state code)

If the owners of the legal entity are not apparent in the corresponding register extracts, or if such register extracts or non-public documents are not available due to customary national practice, further evidence in accordance with the national standard and practice on the beneficial owner or on the ownership and control relationships must be consulted. Such other documents and information may be consulted if they originate from reliable and objective sources of information (for example annual financial statements, queries from databases or own [internet] search). Depending on the type of company and the country of registration of the legal entity, the required evidence may therefore vary in terms of form.

Question 4: *Are legal and beneficial owners under an obligation to cooperate?*

In order to facilitate identification and verification, the legal and beneficial owners are required under Article 4 BORA to provide the legal entity with the necessary documents and information.

Question 5: *What are top-level legal entities?*

When reporting indirect beneficial owners, the relevant top-level legal entities must always be fully reported as well, regardless of their domicile address.

Top-level legal entities are those entities in a chain of ownership that are directly controlled by indirect beneficial owners, and those entities in which indirect beneficial owners directly hold shares or interests, if together with the aforementioned entity or entities the latter establish beneficial ownership. In addition, a foundation, trust or trust-like arrangement is a top-level legal entity in relation to its functionaries.

Only the master number (for example company register number) and the master register (for example register of companies) are required to report a domestic top-level legal entity. In the case of a top-level legal entity domiciled abroad, the name, legal form and domicile address must also be given. Entry of the master register and the master number is required if the state in which the company is registered provides for an entry into a register comparable to the register of companies.

Question 6: *What measures are needed to understand the ownership and control structure?*

In order to understand complex ownership and control structures, it is necessary to obtain the relevant evidence in accordance with the national standard and practice of the beneficial owner or the ownership and control relationships. For legal entities with domestic ownership structures, extended extracts from the register are a source of information for the determination of the ownership structure, as they comprise a presentation of the relevant participation structure and calculated beneficial owners and top-level legal entities. Interest held directly

and indirectly is automatically taken into account here. The presentation and calculation is based on the data of the Austrian Register of Companies, Register of Associations and Supplementary Register.

If participation strands run abroad, then only the first foreign level can be shown for the relevant participation structure. In these cases, the relevant foreign participation structure must be determined and documented on the basis of (foreign) register extracts (organisational chart). In this case, in particular, publicly accessible register extracts and non-public documents (articles of association or similar agreements establishing a legal person) are appropriate means.

Measures are also needed in order to be able to assess whether trusteeship agreements establish beneficial ownership. Depending on the type of company and the country of registration of the legal entity, the required evidence may therefore vary in terms of form.

On the basis of these documents and information, it is advisable to graphically map the relationships up to the beneficial owner in the form of a complete organisational chart, indicating the proportion of shares, holdings, control or voting rights, in order to better understand complex ownership and control relationships.

However, only direct and indirect beneficial owners and their relevant top-level legal entities must be reported to the register. Reporting of the intermediate levels is not provided.

Question 7: When must the annual due diligence obligations be carried out, and what measures do they include?

Prior to initial reporting, the legal entity shall identify and verify its beneficial owners. These requirements are called due diligence obligations.

The legal entity must then fulfil these due diligence obligations at least annually and check whether the beneficial owners reported to the register are still up-to-date. The maximum interval between the fulfilment of the due diligence obligations is one year. However, the exact time can as a rule be determined by the legal entity, for example during the audit of the annual financial statements. When fulfilling the annual due diligence obligations, it must be checked whether changes in the ownership and control structure relevant to the beneficial ownership of the legal entity have occurred.

Legal entities that are not exempt from the reporting obligation (Article 6 BORA) must report the changes identified within four weeks of the due date of the annual review or, if no changes have occurred, confirm the data stored in the register.

Question 8: The legal owner refuses presentation of documents, especially of a copy of a passport. How to proceed?

In order to fulfil the due diligence obligations of Article 3 BORA, the legal entity subject to reporting may be dependent on the cooperation of its legal and beneficial owners. They are therefore obligated under Article 4 BORA to provide all the necessary documents and information. If the legal and/or beneficial owners refuse to provide the necessary documents, the legal entity subject to reporting must demonstrably inform its owners of

their obligation to cooperate under Article 4 BORA and of the penal provisions provided for them pursuant to Article 15 BORA.

If the legal entity subject to reporting is ultimately unable to identify its beneficial owners due to lack of cooperation of the owners and despite exhaustion of all other means, the members of the top management level are to be reported to the register as subsidiary beneficial owners, since a report must be submitted to the register in any case.

In this context, it should be noted that this procedure is without prejudice to the fulfilment of the due diligence obligations of the obligated parties under other supervisory laws (for example, Financial Markets Anti-Money Laundering Act [Finanzmarkt-Geldwäschegesetz, FM-GwG]).

It may also happen that the legal entity identifies a natural individual without a residence in Austria as the beneficial owner, and said individual refuses to provide a copy of an official photo ID. In such cases, the legal entity must request the beneficial owner to provide a copy of an official photo ID, with reference to the obligation of the owners pursuant to Article 4 of the BORA and the penal provisions provided for the legal entity subject to reporting pursuant to Article 15 of the BORA, refusal constituting a breach of the reporting obligation. If the beneficial owner continues to refuse to provide a copy of an official photo ID, the actual existence of the beneficial owner may be established by other means. Such evidence can be provided, for example, by a certified copy of the photo ID or an extract from officially maintained registers (for example personal details of the beneficial owner from the register of residents, register of persons, census authority or a conclusive proof of the top-level legal entity from a register comparable to the Register of Companies, provided that this comprises the complete details of the beneficial owner). The relevant evidence is to be uploaded as other proof of identity in lieu of a copy of the ID card.

Exceptionally, where the identity of the beneficial owner can be established and verified but individual reporting data cannot be identified, the word "Unknown" may be entered in the relevant box. This presupposes that the entity has requested the beneficial owner and the top-level legal entity to provide the necessary documents or information, and this has not been complied with within a reasonable time. Reference should be made to the obligation to cooperate under Article 4 BORA and to the penal provisions (Article 15 BORA) provided for the legal entity.

It should be noted, however, that as a rule the absence of an official photo ID or other information in the case of beneficial owners without a principal residence in Austria constitutes the objective facts of a breach of the reporting obligation pursuant to Article 15 I and II of the BORA. However, if the procedure described above is adhered to, the organs of the legal entity subject to reporting will generally not be assumed to have acted with intent or gross negligence. Yet, the legal or beneficial owner who fails to meet the obligation under Article 4 of the BORA may be held liable under criminal financial law as a contributory offender. Moreover, financial offences under the BORA can also lead to an association fine under Article 28a of the Financial Criminal Procedure Act (Finanzstrafgesetz, FinStrG).

2.2. Determination of the beneficial owner in the case of legal entities directly or indirectly (majority) owned by the Federal Government, a State, a municipality, or another public corporation

Question 1: Who is to be determined as the beneficial owner if a company is (majority) owned by the Federal Government or another public corporation ("KöR")?

If a public corporation is a direct owner with at least 75% or an indirect owner with more than 50% of a legal entity subject to reporting and there is no other form of beneficial ownership by an individual, no beneficial owner can be identified for this entity, since by definition a public corporation has no legal owners. Thus, this legal form does not fulfil the concept of a legal entity according to Article 1 II BORA and accordingly cannot be a top-level legal entity. In particular, none of the functionaries of a public corporation fulfils the definition of control, and therefore none can be a beneficial owner either.

Question 2: Who is to be determined as the beneficial owner if a company is (majority) owned by the Federal Government or another regional or local authority, and no individuals directly or indirectly hold a sufficient share in the company?

The Federal Government or another public corporation has no beneficial owners and does not fulfil the concept of a top-level legal entity either. Nor can the Federal Government or any other regional or local authority act as beneficial owner (beneficial owners as defined by the BORA can only be individuals). Accordingly, neither the Federal Government nor any other regional or local authority can be reported as the beneficial owner.

The question may arise as to whether the respective Federal Minister can exert control within the meaning of Article 2 I, final part, of the BORA. In particular so, if the office of the Federal Minister is associated with the sole exercise of the share rights in the company by virtue of a statutory order. Then the Federal Minister may also have all voting rights and also the right to appoint or dismiss the majority of the members of the management and supervisory bodies.

It should be noted in this respect that a Federal Minister is the supreme body of execution pursuant to Article 19 I of the Federal Constitution. This organ acts through the respective organ administrator for the Federal Government, i.e. through the respective Federal Minister and his/her administrative apparatus. A Federal Minister in his or her executive role therefore does not exert control for himself or herself as an individual, but for the Federal Government itself. In this case, control is exerted by the relevant regional or local authority, which in turn has no beneficial owners.

Since no beneficial owner can be determined in such cases, Article 2 I b BORA mandates that the members of the top management level of the respective company subject to reporting be identified and verified as beneficial owners. The persons who belong to the top management level are to be reported to the register, and the data must be kept up to date. If a public corporation is a managing partner of a partnership (OG, KG or EWIV), then the

bodies authorised to represent this public corporation are to be reported as subsidiary beneficial owners. As these manage the business of the partnership and are therefore the top management level of the partnership.

Question 3: *Who is to be identified and reported as the beneficial owner if the superordinate company is owned by the Federal Government or another regional or local authority?*

In these cases, no beneficial owner can be determined for the company, which is why, pursuant to Article 2 I b of the BORA, the top management level of the company subject to reporting must be determined and verified as the beneficial owner.

It follows that each company in a group whose ultimate parent company is owned by the Federal Government or another regional or local authority must identify its respective management level as beneficial owner and report it to the register.

Question 4: *At the end of the investment chain there is a foreign state fund. Who is to be identified as the beneficial owner?*

If a fund is owned by the state (state fund), it does not meet the concept of a top-level legal entity. According to the definition (Article 2 BORA), the state cannot act as beneficial owner either, and accordingly cannot be reported as the beneficial owner.

If there is no other direct or indirect beneficial owner, then according to Article 2 I b BORA the top management level of the legal entity subject to reporting must be determined and verified as the beneficial owner. The persons who belong to the top management level of the legal entity subject to reporting are to be reported to the register, and the data must be kept up to date.

2.3. Associations, private foundations, charitable foundations and funds, trusts and trust-like arrangements as top-level legal entities

Question 1: *A private foundation, trust or trust-like arrangement domiciled in Austria is the top-level legal entity. Must the founder, the beneficiaries, the foundation council, etc. be reported as indirect beneficial owners?*

If a domestic private foundation (or a trust or trust-like arrangement) directly or indirectly holds more than 25% of the shares, voting rights or an interest of more than 25% in a legal entity through control, the respective functionaries (founder, beneficiaries, foundation council, etc.) of this private foundation are indirect beneficial owners of the company. However, there is a simplification in so far as in such cases only the domestic private foundation as the top-level legal entity needs to be reported. Pursuant to Article 5 I 2, final part, of the BORA, it is not necessary to report the beneficial owners of the private foundation, as they have to be reported to the register by the private foundation anyway. This also applies if the domestic private foundation has not submitted a report yet.

Question 2: *A foundation or trust domiciled abroad holds an interest of more than 25% in a legal entity subject to reporting (GmbH, OG, KG or similar). Who is the beneficial owner, and who is to be reported?*

If a foundation or trust domiciled abroad holds an interest of more than 25% in a company, then the respective functionaries (founder, beneficiaries, foundation board, etc.) of the foundation or trust are also indirect beneficial owners of the company and must therefore also be reported. The same applies if the foundation or trust domiciled abroad exerts control at superordinate levels. In addition, it must be checked with which of the legal forms mentioned in Article 1 BORA there is comparability. This legal form (trust/foundations or comparable legal entities/trust-like arrangements) must be selected when stating the top-level legal entity. Whether a person is a beneficiary of such a top-level legal entity with its registered office abroad is determined by the law applicable to that entity. No distinction is made between beneficiaries and one-time beneficiaries.

Question 3: *An association or another ownerless company is the "top-level legal entity". Are these to be reported?*

A top-level legal entity is present if and only if an indirect beneficial owner exerts control. If an association or another ownerless company has no beneficial owners, but has subsidiarily reported the top management level, then that association or ownerless company cannot be a top-level legal entity. If the reporting entity is reported as owned by such an association and no other persons can be identified as beneficial owners, the members of the top management level of the legal entity subject to reporting are to be reported to the register as subsidiary beneficial owners.

An association or another ownerless company can be a top-level legal entity only if it is under the control of one or more individuals. In this case, these individuals may also become indirect beneficial owners. In this case, the association or the other ownerless company would be a top-level legal entity.

3. Subsidiary reporting of beneficial owners

Question 1: *For which legal entities may a subsidiary report be filed?*

Subsidiary reporting of the top management level is possible only for companies according to Article 2 I b BORA. Private foundations, charitable foundations or funds, trusts and trust-like arrangements (Article 2 II and III BORA) cannot file a subsidiary report of the top management level, as their beneficial owners should in any case be known to them.

Question 2: *Who is to be reported as the top management level in subsidiary reporting pursuant to Article 2 I b BORA?*

First of all, it must be stated that the top management level is to be reported as the beneficial owner on a subsidiary basis. In a further sub-form, the persons who belong to the top management level of the company making the report must then be specified. These are, for example, the members of the executive board of a stock corporation under Austrian law or the managing directors of a limited liability company.

Question 3: *Is it necessary to keep the data on the persons reported as top management level up to date?*

Yes, provided that it is a legal entity for which no subsidiary reporting with semi-automatic data transfer (Article 5 V BORA) is possible (see Question 6). Changes in the persons are to be reported to the register within four weeks of becoming known. For example, four weeks after the appointment of a new executive board of a stock corporation under Austrian law. Changes to personal data, such as residence, surname upon marriage, and citizenship, do not have to be reported to the register for persons with a registered principal residence in Austria. The corresponding changes are automatically transferred from the central register of residents.

Question 4: *When are all possibilities to establish a beneficial owner "exhausted"?*

If legal entities subject to reporting come to the conclusion, after all options have been exhausted, that no individual meeting the criteria of Article 2 I a BORA exists, the individuals who belong to the top management level of the legal entity are to be reported to the register as beneficial owners on a subsidiary basis. Identification and verification of a subsidiary beneficial owner is permissible only as a last resort and after all other means of establishing the identity of the beneficial owner have been exhausted. The steps carried out by the legal entity subject to reporting must be documented in order to be able to prove this to the register authority.

In order to fulfil the due diligence obligations of Article 3 BORA, the legal entity subject to reporting may be dependent on the cooperation of its legal and beneficial owners. They are therefore obligated under Article 4 BORA to provide all the necessary documents and information. If the legal and/or beneficial owners refuse to surrender the necessary documents, the legal entity subject to reporting must demonstrably inform its owners of their obligation to cooperate under Article 4 BORA and of the penal provisions provided for them pursuant to Article 15 BORA.

If the legal entity subject to reporting is ultimately unable to identify its beneficial owners due to lack of cooperation of the owners and despite exhaustion of all other means, the members of the top management level are to be reported to the register as subsidiary beneficial owners, since a report must be submitted to the register in any case. In such cases, it is mandatory to report, by activating the corresponding checkbox, that all options for identification of the beneficial owners have been exhausted.

Art der Meldung

Auswahl*

- Meldung von wirtschaftlichen Eigentümern
- Subsidiäre Meldung der obersten Führungsebene
- Subsidiäre Meldung der obersten Führungsebene mit automatischer Datenübernahme
- Subsidiäre Meldung, da nach Ausschöpfung aller Möglichkeiten kein wirtschaftlicher Eigentümer ermittelt werden konnte.

Type of report
Select*
Reporting of beneficial owners
Subsidiary reporting of the top management level
Subsidiary reporting of the top management level with automatic data transfer
Subsidiary reporting, as no beneficial owner can be identified after all options have been exhausted.

In this context, it should be noted that this procedure is without prejudice to the fulfilment of the due diligence obligations of the obligated parties under other supervisory laws (for example the FM-GwG).

Question 5: *One or more of the beneficial owners cannot be identified and verified:*

If – after all options have been exhausted – individual items of information on beneficial owners are not available to a company subject to reporting, but the identity of the beneficial owners could be established and verified, then proceed in accordance with the answer to “Question 8: The legal owner refuses presentation of documents, especially of a copy of a passport. How to proceed?” under the heading “Due diligence obligations of the legal entities in relation to their beneficial owners”.

If, on the other hand, after all options have been exhausted, a company subject to reporting is not aware of individual beneficial owners, or if it can be assumed that there are other beneficial owners in addition to the known beneficial owners, no incomplete report may be submitted. In these cases, a subsidiary report of the top management level must be submitted under Article 2 I b BORA.

Example: A GmbH subject to reporting has as shareholders an individual who holds an interest of 30%, and a company based abroad as shareholder that holds an interest of 70%. The shareholder of the foreign company is a trustee and refuses disclosure of the name of the trustor. Even if the direct beneficial owner is known, only a subsidiary report may be submitted, as it is not possible to determine who is behind the foreign company. Reporting of the individual as the direct beneficial owner would lead to the (incorrect) conclusion that the 70% shareholding of the foreign company does not result in any further beneficial owners.

Question 6: *What is a subsidiary report with semi-automatic data transfer (Article 5 V BORA)?*

A subsidiary report according to Article 5 V BORA is a subsidiary report of the management level, in which the top management level of the reported company is semi-automatically reconciled against the top management level entered in the register of companies and kept up to date.

The system is not limited to direct company register entries for the reporting legal entity, but can also correctly break down more complex issues. In the case of partnerships, all participation levels entered in the register of companies are taken into account, and the correct management level is determined.

Example: A general-partner GmbH manages a limited partnership under Austrian law. In the case of a subsidiary report, the management of the general-partner GmbH are to be reported here. The system detects the participation and management structure and registers the managing directors of the general-partner GmbH as beneficial owners.

Question 7: *When is a subsidiary report with semi-automatic data transfer (Article 5 V BORA) permissible?*

The same rules apply to a subsidiary report pursuant to Article 5 V of the BORA as do to regular subsidiary reports (see Questions 4 and 5 above), but such a report is permissible only for legal entities pursuant to Article 1 II 1, 2, 3, 4, 9, 10, 11 and 13 of the BORA.

First of all, a manual subsidiary report must be carried out. The system checks whether semi-automatic transfer of the top management level is possible. If this is the case, the legal entity is automatically converted to Article 5 V BORA, and all changes are carried over from the register of companies and kept up to date.

For all subsidiary reports already filed before the subsidiary reporting with automated data transfer (Article 5 V BORA) was put into operation, it was checked whether they could be converted to semi-automatically data transfer. Insofar as data on the top management level was available, a conversion was made to reporting under Article 5 V BORA.

Question 8: *Why do I still need a subsidiary report if I can carry out a subsidiary report with semi-automatic data transfer (Article 5 V BORA)?*

There are ownership constellations in which subsidiary reports under Article 5 V BORA are not possible. If, for example, a public corporation manages a partnership, as is very often the case with municipal limited partnerships, the system cannot automatically carry over the management, because the partnership is not registered in the register of companies. Data transfer is not possible either if a foreign corporation manages a partnership. In such cases, a manual subsidiary report is still required, which must subsequently be kept up to date manually.

If, after successful conversion to a subsidiary report under Article 5 V BORA, for the above reasons semi-automatic data transfer is no longer possible, the report is terminated and the legal entity is obligated to make a manual report of the top management level within four weeks of becoming aware of the change.

4. Disclosure of trusteeships to the Register

Question 1: *The shares in the company are held in trust by one person. In the event of a report, must the trustor and the trustee be reported to the Register?*

If beneficial ownership is established by the interest held by the trustor on the part of the trustee, both the trustee and the trustor are to be reported to the Register, and the trusteeship must be stated in the reporting form. See

the examples on the homepage of the Federal Ministry of Finance and the corresponding section in the decree ("Establishment of control through trusteeship agreements").

Question 2: *A person A holds 30% interest in a limited liability company subject to reporting and holds these shares for person B. Must the trusteeship be disclosed in this case?*

The interest held directly by person A, amounting to more than 25% of the shares in the GmbH subject to reporting, establishes direct beneficial ownership (Article 2 I a sublit. aa of the BORA). Through the trusteeship agreement, person B (trustor) exercises control over the trust property (the shares). Since the shares amount to more than 25% of the legal entity subject to reporting, the trusteeship must also be disclosed accordingly. In this case, the trustor and the trustee would have to be reported as follows:

- Person A (ownership) – 30 % – existence of trusteeship: Yes (trustee)
- Person B (control) – 30 % – existence of trusteeship: Yes (trustor)

5. Deceased beneficial owners

Question 1: *The beneficial owner has died. Who is to be reported to the register?*

If a beneficial owner is deceased, he/she is nevertheless to be reported to the register as the beneficial owner. When reporting to the register, "deceased" must be selected for the residence. In this case, only the first and last name, the existence of a fiduciary relationship and the nature and extent of the beneficial interest must then be reported.

Documentary evidence that the founder has died can be, for example, the death certificate or a decision of devolution. However, it is neither necessary nor technically possible to send the corresponding evidence electronically together with the report.

For determination of the beneficial ownership, item 4.4 of the BORA BMF Decree must be observed.

Question 2: *A previously reported beneficial owner with principal residence in Austria has died. What is the next step?*

If the beneficial owner is a person who has been reported to the register with a principal residence in Austria, the fact that the beneficial owner has died is automatically carried over from the Central Register of Residents. In the BORA, an execution is entered which has the consequence that this person is marked as deceased. An amendment report is required only if death terminates the beneficial ownership. Example: In the case of beneficial owners reported in a subsidiary manner, membership of the top management level ends upon death. In these cases, the new managing director/executive board/etc. is to be reported as the subsidiary beneficial owner.

If the legal entity is exempt from the reporting obligation, there is also an execution made by which the beneficial owner is marked as deceased. It should be noted, however, that if the register of companies enters the estate as a legal entity as shareholder, this leads to termination of the exemption from reporting. Example: The shareholder

of a GmbH exempt from reporting dies. The attribute "deceased" is set by execution. If the estate is later registered as a legal entity by the register of companies court, the exemption from reporting ends. The GmbH must file a report and report the deceased beneficial owner and/or beneficial owners resulting from the probate proceedings. See item 4.4.2 of the BORA BMF Decree.

Question 3: *A previously reported beneficial owner without a principal residence in Austria has died. What is the next step?*

In contrast to Question 2, an amendment report is required if the deceased beneficial owner with a principal residence abroad has been reported to the register, since in these cases the attribute "deceased" cannot be automatically set by the Central Register of Residents. In this case, the amendment report must be submitted within four weeks of the date of the death of the beneficial owner.

6. Reporting of one-time beneficiaries (grants of less than € 2,000 per calendar year)

Question 1: *When are one-time beneficiaries to be reported?*

If, from a group of persons from which beneficiaries are selected on the basis of a separate determination (Article 5 of the Austrian Private Foundation Act, [Privatstiftungsgesetz, PSG]) (group of beneficiaries), any persons receive grants from a private foundation (or trust) whose value exceeds € 2,000 in a calendar year, they are considered to be beneficiaries in the calendar year in question (one-time beneficiaries).

For the reporting of one-time beneficiaries, the reporting period of four weeks applies from the date on which they have received grants of more than € 2,000.

Question 2: *Until when can one-time beneficiaries be reported who receive a one-time benefit in December?*

One-time beneficiaries who received benefits in December of one year can be entered until the end of January of the following year for the previous year. To do this, select the year in which the grant was made. In this case, the one-time beneficiaries are immediately historicised and visible only in extracts with historical data.

Question 3: *Are one-time beneficiaries automatically historicised?*

Provided that the correct term "one-time beneficiary" has been used in the reporting form, one-time beneficiaries are automatically historicised at the end of the respective calendar year and do not have to be deleted manually by means of an amendment report.

Question 4: *How long are the data on the one-time beneficiaries stored?*

Data on one-time beneficiaries will be deleted after 10 years.

7. Legal entities in liquidation, reorganisation or bankruptcy proceedings

Question 1: *A legal entity (GmbH, KG, OG etc.) has already been dissolved but not yet deleted from the register of companies. Is there a reporting obligation?*

Legal entities whose dissolution has been entered in the register of companies are still subject to reporting pursuant to Article 5 BORA until they are deleted from the register of companies.

Question 2: *A legal entity is undergoing liquidation, reorganisation or insolvency proceedings. Is there still a reporting obligation to the register?*

Legal entities undergoing liquidation, reorganisation or insolvency proceedings are also still subject to reporting under Article 5 BORA until deleted from the register of companies. A fine according to Article 16 of the BORA will therefore be threatened semi-automatically if there is no exemption from reporting according to Article 6 of the BORA and the reporting obligation is not fulfilled.

The closure of the company ordered in the insolvency proceedings has no influence on the reporting obligation. The reporting obligation ends only with the deletion of the legal entity from the respective master register (i.e. register of companies, register of associations or supplementary register).

Question 3: *Who are the beneficial owners of a legal entity undergoing liquidation, reorganisation or insolvency proceedings?*

Here, too, the beneficial owners are to be determined under Article 2 BORA. The legal owners can therefore still be beneficial owners. The exemptions from reporting pursuant to Article 6 of the BORA also apply.

In case of subsidiary determination of the beneficial owners pursuant to Article 2 I b BORA, it must be checked who is the top management level of the legal entity subject to reporting. In this case, the respective organs of the legal entity are still to be regarded as the top management level. In particular, the liquidator or insolvency administrator is to be reported as the top management level only if the legal entity no longer has any such level. Liquidators, on the other hand, are to be considered as top management level and may also be subsidiary beneficial owners.

If no further organ has been appointed for the company (no managing director or liquidator), a subsidiary report can still be submitted for the company from 01 October 2018. In this case, the insolvency administrator is semi-automatically carried over as subsidiary beneficial owner until a managing director is entered in the register of companies again. In this case, the latter is semi-automatically carried over as the beneficial owner.

Question 4: *A postal redirection order ("Postsperre") was imposed on the debtor (legal entity) under Article 78 II of the Austrian Insolvency Act (Insolvenzordnung, IO). What is the next step?*

Threats or imposition of fines and agreements about notices are subject to the postal redirection order, unless they were provided with an official notice indicating the admissibility of delivery despite the postal redirection order. However, normally this is not provided for.

The insolvency administrator may open the consignments handed over to him/her pursuant to Article 78 III of the IO. He/she shall return any judicial and other official documents not affecting the assets involved in the insolvency proceedings with a notice indicating that the insolvency proceedings are pending. This also applies to threats or imposition of fines and agreements about notices.

Question 5: *Who is subject to the reporting obligation for legal entities that are in liquidation or insolvency proceedings (reorganisation or bankruptcy proceedings)?*

The legal entity itself is always the addressee of the reporting obligation according to Article 5 BORA. The organs of the legal entity having power of representation are responsible for the fulfilment of this obligation.

In the case of legal entities which are in liquidation proceedings, the reporting obligation must be fulfilled by the liquidators.

In the case of legal entities that are in the process of reorganisation (with or without self-administration) or bankruptcy proceedings, the respective tax group representatives of the legal entity (for example the managing directors of a GmbH) are obligated to make the report under Article 5 BORA. For this purpose, the tax group representatives of the legal entity are also entitled to submit reports via the Business Service Portal of the Federal Government, or to instruct a professional party representative to submit the report.

According to Article 83 I of the IO, the insolvency administrator is not entitled to file reports pursuant to Article 5 BORA or to appoint another party representative to carry out the report. The execution of reports under Article 5 BORA is not a matter affecting the assets involved and is therefore not an obligation that fulfilment of the duties of insolvency administrator entails. Even if there are no longer any tax group representatives of the legal entity with the capacity to act, this obligation shall not pass to the insolvency administrator.

Question 6: *Fines have been imposed on a legal entity that is in insolvency proceedings (reorganisation or insolvency proceedings). How are these to be treated?*

Fines pursuant to Article 15 BORA imposed on the association (legal entity) as such, and fines pursuant to Article 16 BORA are penalties within the meaning of Article 58 II of the IO and therefore excluded claims.

They are to be distinguished from penalties under Article 15 BORA imposed on tax group representatives of the legal entity. Their fiscal criminal liability remains unchanged in force.

Question 7: *The insolvency proceedings were terminated. What is the next step?*

As long as the legal entity has not been deleted from the respective master register, the reporting obligation pursuant to Article 5 BORA continues to apply.

8. Fines according to Article 16 BORA

Question 1: *The threat of a fine was served. How can imposition of the fine be prevented?*

If a report is submitted within the grace period of six weeks, the threatened fine will not be imposed. This is semi-automatically considered. A separate legal remedy against the threat of the fine is not permitted.

Question 2: *Is threat of a fine accompanied by initiation of financial criminal proceedings pursuant to Article 15 BORA?*

With the threat of a fine, the reporting according to Article 5 BORA is supposed to be enforced. The threat and imposition of the fine are carried out under Article 111 BAO regardless of fault. A breach of the reporting obligation – and thus also the failure to submit a report – is punishable as a financial offence under Article 15 of the BORA in the event of intent or gross negligence if no report is submitted despite two warnings. It is incumbent upon the competent fiscal penal authority to assess whether financial criminal proceedings should be initiated in the individual case.

Question 3: *What happens if no report is filed within the grace period of six weeks?*

The fine is fixed, and an increased fine is threatened with a further grace period of six weeks.

Question 4: *As the tax representative of a legal entity subject to reporting, I was served with a threat of a fine. What are the duties of the tax representative?*

The client must be informed about the threat of the fine. Only the legal entity, but not the tax representative, is subject to the reporting obligation. However, the tax representative may identify, verify and report the beneficial owners to the register on behalf of the legal entity if he/she has been authorised and instructed by the client.

Question 5: *Can an extension of the six-week grace period be requested?*

An extension of the grace period is not possible, as this is a legal deadline that cannot be extended.

9. Financial offences according to Article 15 BORA

Question 1: Is it possible to obtain immunity from prosecution for violations of Article 15 of the BORA by filing a voluntary disclosure pursuant to Article 29 of the FinStrG?

Violations of Article 15 BORA are financial offences, and therefore the rules on voluntary disclosure according to Article 29 FinStrG also apply.

Question 2: How and where is a voluntary disclosure pursuant to Article 29 FinStrG to be filed in order to achieve an exonerating effect?

A voluntary disclosure due to violation of the reporting obligation according to Article 15 BORA has to be filed with a tax office (Article 29 I FinStrG). It is recommended to file a voluntary disclosure with the tax office having competence over the legal entity. The voluntary disclosure must describe the breach of the reporting obligation. At the same time, report to the Register of Beneficial Owners must be made via the Business Service Portal.

Note: It is recommended to file the voluntary disclosure as a submission to the tax authority via FinanzOnline and to send the report to the Register of Beneficial Owners directly afterwards via the Business Service Portal.

Under no circumstances may a voluntary disclosure be filed with the register authority, since this is not a tax office within the meaning of Article 29 I of the FinStrG.

10. Applications for restriction of access under Article 10a of the BORA

Question 1: Who may request the restriction?

Pursuant to Article 10a I of the BORA, the application must be submitted in writing to the register authority by the beneficial owner directly or a party representative appointed by the beneficial owner.

Important: If the person is the beneficial owner of more than one legal entity, the application shall list all legal entities for which a restriction of access is to be requested.

Question 2: How is the application to be made?

The application shall be submitted in writing to the register authority (Federal Ministry of Finance, Johannesgasse 5-5A, A-1010 Vienna). The application can also be submitted by email (BORA-registerbehoerde@bmf.gv.at).

Question 3: What information is to be included with the application?

In addition to the name and date of birth of the person to be restricted, the application must contain the names and master numbers of the legal entities concerned, as well as a substantiation showing that, taking into account

all the circumstances of the individual case, there are overriding interests of the beneficial owner that are worthy of protection against inspection (Article 10a III of the BORA).

For minors registered in Austria, only the name and date of birth are required to be reported. In the case of minors not registered in Austria, however, a copy of the birth certificate or other public document confirming the minor must be enclosed.

Question 4: *How does the restriction of access take place?*

After the application has been filed, the register authority shall order the restriction of access within 14 days, unless the application is manifestly unsubstantiated. For this purpose, the person for whom inspection is to be restricted must already exist in the register on the basis of a previous report.

Note: If the report of the beneficial owner, whose inspection is to be restricted, has not yet been made at the time the application is submitted under Article 10a BORA, there may be an intentional breach of the reporting obligation under Article 15 BORA. Exemption from punishment can be obtained only by voluntary disclosure to the responsible tax office. Under no circumstances can a voluntary disclosure be filed with the register authority, since this is not a tax office within the meaning of Article 29 I of the FinStrG.

Question 5: *How long is the restriction of access granted?*

The restriction of access is granted for five years, in the case of minors until they reach the age of majority. Thereafter, a new application for restriction of access must be filed. The application may be made even before the end of the period of restriction of access.

Question 6: *How is the restriction implemented in the extract, and who may still inspect the restricted beneficial owner after the restriction of access?*

After restriction of access, only authorities pursuant to Article 12 BORA and credit and financial institutions pursuant to Article 9 I 1 and 2 and notaries pursuant to Article 9 I 7 of the BORA may see the beneficial owners for whom inspection has been restricted. In the case of these beneficial owners, a notice of the restriction of access is displayed.

For all other obligated parties, inspection-restricted beneficial owners do not appear in any extract of the legal entities for whom the restriction was imposed or approved. This also applies to historical extracts. Instead, an empty owner field is displayed, so that it is clear that there is a beneficial owner, but inspection of this owner has been restricted. A corresponding execution can be found in the execution list.

WIRTSCHAFTLICHE EIGENTÜMER	
Direkte wirtschaftliche Eigentümer	
Vollzüge gemäß § 10a WEReG: [2][14]	
[11]	→ A Name: -
[11]	Art: -
[11]	Umfang: -
[11]	Treuhandchaft: -

Beneficial owners
Direct beneficial owners
Executions according to Article 10a BORA
Name:
Nature:
Extent:
Trusteeship:

Question 7: The report is made by a party representative. After restriction of access for a beneficial owner of the entity, can the party representative continue to report on behalf of that legal entity? How to proceed if another party representative is to be authorised to make the report?

Party representatives who have already reported for a legal entity for which a restriction of access has been granted may continue to make reports for this legal entity.

Other party representatives can search for the legal entity, but cannot report for that legal entity or view its data in the reporting form. Towards the register authority, they must refer to the power of attorney issued, which may entitle the party representative to report. The legal entity itself can always inspect its own data and submit reports, even if a restriction of access has been granted.

The administration of the authorised party representatives is carried out by the register authority. The latter may add or delete authorised party representatives to any legal entity upon application.