

Money laundering prevention - application for exemption from the duty to prepare documentation of risk analysis activities 2

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Money laundering prevention - application for exemption from the duty to prepare documentation of risk analysis activities

As an obliged party according to the Money Laundering Act, you must determine and assess risks of money laundering and terrorist funding related to your business activities and properly document related internal safety measures in the form of a risk analysis. In certain circumstances, you can be exempted from the duty to document a risk analysis on application.

Exemption from the duty to document

- only applies to the future regular documentation duty
- does not apply to the duty to carry out an initial risk analysis
- you still need to determine and assess risks of money laundering and terrorism funding on an ongoing basis and take suitable internal prevention measures.

The 'Fact sheet: Risk-based organisational measures' (see 'Further Information' below) includes further comprehensive information and practical examples for performing a risk analysis.

Procedure:

1. As an obliged party, you can apply with the Senate Department in charge of business matters to be exempted from the duty to prepare documentation of risk analysis activities.
2. Your application is reviewed by the competent authority.
3. You will receive notification after the review procedure is completed.

Prerequisites

• Obligated parties according to the Money Laundering Act

(https://www.gesetze-im-internet.de/gwg_2017/_2.html)

Only the following natural and legal entities are eligible to submit an application:

1. Financial enterprises in the sense of § 1 section 24 of the Money Laundering Act (GwG, obliged pursuant to § 2 section 1 item 6 GwG)
2. Insurance consultants based abroad, provided that they operate branches in Germany (obliged pursuant to § 2 section 1 item 8 GwG)
3. Service providers for companies and trust property, and trustees that perform the specific service for third parties indicated in § 2 section 1 item 13 GwG (obliged pursuant to § 2 section 1 item 13 GwG)
4. Real estate agents (obliged pursuant to § 2 section 1 item 14 GwG)
5. Bookmakers in the sense of § 2 section 1 of the Race Betting and Lottery Act (RennwLottG, obliged pursuant to § 2 section 1 item 15 b GwG)
6. Goods traders, art agents and art store keepers, provided that storage takes place in duty-free areas (obliged pursuant to § 2 section 1 item 16 GwG).

- **Authorised representative**

The person submitting the application must be a member of the company management or the company's internal/external anti-money laundering officer.

- **Clear visibility of risks**

E. g. by the account of the risks your company is exposed to and how vulnerable it is to abuse regarding money laundering or terrorism funding. Clear visibility of existing specific risks is given in particular, if your business activities

- involve no complex business operations,
- the transactions made are on a manageable scale,
- your customer structure is homogeneous, and if
- there are no other circumstances associated with increased risks.

- **Appropriate awareness of existing risks**

E. g. presentation of the security measures taken on the basis of the concrete risks (e. g. regular instruction of staff used and safety checks)

Documents required

- **Application for exemption from the duty to prepare documentation of risk analysis activities**

- You can submit the notification in text form either by mail or electronically.
- The application must include a comprehensive and justified explanation, why the risks of money laundering and terrorism funding are manageable and clearly detectable in your area of work.

- **Evidence of eligibility to submit an application**

- evidence of appointment as anti-money laundering officer, or
- outsourcing contract for internal safety measures, or
- evidence that the person submitting the application is a member of the company management (e.g. excerpt from the Trade Register or partnership agreement)

- **Up to date risk analysis**

(https://www.berlin.de/sen/wirtschaft/wirtschaft/wirtschaftsrecht/geldwaesche/merkblatt_risikomanagement.pdf)

A comprehensive account of the internal safety measures in place based on the specific determined and assessed risks related to money laundering and terrorism funding in your area of work.

- **Up to date excerpt from the Trade Register, if applicable**

(https://www.handelsregister.de/rp_web/welcome.do;jsessionid=2A22D37A1C112D6FB89E72AAA6F66A80-n1.tc032n01)

Registered companies are required to submit an up to date excerpt from the Trade Register when applying. Legal entities that are in the process of being established (GmbH, AG) are required to submit their partnership agreement or statutes.

Fees

EUR 138.00 to EUR 1,380.00, depending on the administrative effort

Legal basis

- **Money Laundering Act (GwG) § 5 section 4**
(https://www.gesetze-im-internet.de/gwg_2017/_5.html)
- **Schedule of Administrative Fees (Verwaltungsgebührenordnung (VGebO))**
(<https://gesetze.berlin.de/jportal/?quelle=jlink&query=VwGebO+BE&psml=bsbeprod.psml&max=true&aiz=true>)
- **Money Laundering Act (GwG) - committed party § 2 section 1 no. 6, 8, 13, 14, 15 b, 16**
(https://www.gesetze-im-internet.de/gwg_2017/_2.html)
- **Money Laundering Act (GwG) - financial companies § 1 section 24**
(https://www.gesetze-im-internet.de/gwg_2017/_1.html)
- **Race Betting and Lottery Act (RennwLottG) - bookmaker § 2 section 1**
(https://www.gesetze-im-internet.de/rennwlottg_2021/_2.html)

Average time to process request

up to 6 weeks

More information

- **Information about prevention of money laundering by the Senate Department for Economics**
(<https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/>)
- **Fact sheet: Risk-based organisational measures**
(https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/2021_06_28_broschuere_risikomanagement_barrierefrei_final.pdf)
- **Short overview: Risk management for goods traders**
(https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/kurz_risiko_gueter.pdf)
- **Short overview: Risk management for real estate agents**
(https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/kurz_risiko_immo.pdf)

Responsible authorities

Members of the group of enterprises listed above (see 'obliged parties according to the Money Laundering Act') who are based in Berlin, can submit their application to be exempted from the duty to prepare documentation of risk analysis activities to the Senate Department in charge of business matters.