

Money laundering prevention - notification of outsourcing of internal safety measures

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Money laundering prevention - notification of outsourcing of internal safety measures

As an obliged party according to the Money Laundering Act (GwG), you must take adequate internal business and customer-related measures to control and reduce risks of money laundering and terrorism funding, using suitable principles, methods and control processes.

You may also instruct a third party to handle such internal safety measures in the context of a contractual arrangement. However, you must inform the competent supervisory authority before outsourcing these tasks.

Internal safety measures include, for example:

1. Drawing up internal principles, methods and control processes for handling money laundering risks,
2. Compliance with reporting duties toward the Central Office for Financial Transaction Investigations (FIU) and compliance with customer due diligence duties such as identifying the contract partner and the economic beneficiary (see below "customer due diligence duties" under "More Information"),
3. Appointing an anti-money laundering officer and deputy,
4. Reviewing trustworthiness of the company's employees through suitable measures, in particular staff check and assessment systems,
5. Initial and ongoing instruction of the company's staff with regard to risks related to money laundering, current money laundering and terrorism funding methods, and relevant legal regulations and duties, including data protection rules that must be observed.

The "Fact sheet: Risk-based organisational measures" (see "More Information" below) includes further comprehensive information and practical examples of internal safety measures.

Procedure:

1. As the obligated party, you must notify the competent authority in advance of the outsourcing of specific internal security measures. You can also complete this notification online and submit it in electronic form.
2. The competent authority will check your details and request any missing evidence. You will receive information on the further procedure and will be informed about the processing status in the electronic mailbox in your BundID account.
3. You will receive a final notification via your electronic mailbox in your BundID account.

Note:

As the obliged party, you continue to be responsible for the implementation of the internal safety measures. You will remain responsible if internal safety measures are not implemented properly, due to the fact that the third party does not fulfil its contractual duties.

Prerequisites

- **Obligated parties according to the Money Laundering Act**

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

Only natural or legal persons who are active as:

- 1. financial enterprises
- 2. insurance intermediaries domiciled abroad, insofar as they maintain branches in Germany
- 3. service providers for companies and for trust assets or trustees, if they provide the services specified in § 2 section 1 no. 13 GWG to third parties
- 4. real estate agents
- 5. bookmakers
- 6. casinos
- 7. operator of a betting agency
- 8. commodity dealers, art brokers and art warehouse keepers, insofar as the warehousing takes place in duty-free zones

are authorised to apply.

- **Power of representation**

The person making the notification must be a member of the management or an internal/external (group) money laundering officer of the company.

The legal counsel of the obliged person may also make the report upon presentation of the original power of attorney and designation of the subject matter.

- **Suitability of the third party**

(https://www.gesetze-im-internet.de/gwg_2017/_6.html)

The third party must meet the following criteria to perform the internal safety measures:

- be sufficiently qualified and reliable,
- guarantee that the safety measures will be implemented properly, and
- outsourcing must not affect the obliged party's control options and the supervisory authority's monitoring activities.

- **For online applications: registration/login via BundID**

(<https://service.berlin.de/nutzerkonten/bundid/>)

To submit your application online, log in with your BundID account. If you do not yet have a BundID account, please register with BundID. The basic registration with a user name and password is sufficient for this.

Documents required

- **Notification of the intention to outsource internal safety measures**

- The application is possible in text form, please use the online procedure as a preferred option.
- In your notification you must explain plausibly that the third party is qualified and specify the measures you want to outsource.

- **Evidence of authorisation to notify**

- Proof of appointment as (group) money laundering officer or
- Contract on the outsourcing of internal security measures or
- Evidence that the person making the report is a member of the management level of the company (e.g. extract from the commercial register or shareholders' agreement) or

- If applicable, an original mandate of the representing legal counsel related to the individual case.
- **Evidence of the third party's qualification**
The third party must be sufficiently qualified for performing the safety measures. They must present:
 - their curriculum vitae detailing their professional activities in tabular form, and
 - confirmation of participation or certificates for attended training courses or similar qualification measures.
- **Certificate of good conduct for presentation to an authority**
(<https://service.berlin.de/dienstleistung/120926/>)
To verify personal reliability, information from the Federal Central Register (certificate of good conduct) is required for submission to an authority (document type O).
 - The information must not be older than three months.
 - When applying, please state "Auslagerung interner Sicherungsmaßnahmen nach GwG anzeigen" as the purpose of use. The receiving authority for the proof is the respective supervisory authority named under "competent authorities"; you will find the current addresses there.
- **Excerpt from the central business register for presentation to an authority**
(<https://service.berlin.de/dienstleistung/327835/>)
To verify personal reliability, information from the central business register is required for submission to an authority (document type 9).
 - The information must not be older than three months.
 - When applying, please state "Auslagerung interner Sicherungsmaßnahmen nach GwG anzeigen" as the purpose of use. The receiving authority for the proof is the respective supervisory authority named under "competent authorities"; you will find the current addresses there.
- **Contract with the third party**
Copy of the contract concluded with the third party to which the safety measures are to be outsourced.
- **Up to date excerpt from the Trade Register, if applicable**
(https://www.handelsregister.de/rp_web/normalesuche.xhtml)
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

- none
- 138.00 to 1,380.00 euros, per effort, in case of prohibition of outsourcing by the supervisory authority

Legal basis

- **Money Laundering Act (Geldwäschegesetz or GwG) - notification**

duty § 6 section 7 sentence 1

(https://www.gesetze-im-internet.de/gwg_2017/_6.html)

- **Money Laundering Act (Geldwäschegesetz or GwG) - prohibition § 6 section 7 sentence 2**

(https://www.gesetze-im-internet.de/gwg_2017/_6.html)

- **Schedule of Administrative Fees (Verwaltungsgebührenordnung (VGebO))**

(<https://gesetze.berlin.de/jportal/?quelle=jlink&query=VwGebO+BE&psml=bsbeprod.psml&max=true>)

More information

- **Information about prevention of money laundering by the Senate Department for Economics**
(<https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/artikel.1112998.en.php>)
- **Customer due diligence duties**
(<https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/sorgfaltpflicht/>)
- **Fact sheet: Risk-based organisational measures**
(https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/geldwaesche/2021_06_28_broschuere_risikomanagement_barrierefrei_final.pdf)
- **Casinos: Gambling Supervision at the Senate Department of the Interior**
(<https://www.berlin.de/sen/inneres/buerger-und-staat/weitere-themen/gluecksspielaufsicht/artikel.103276.php>)
- **Basic Information Money Laundering Act for Obligated Persons in the Gambling Sector of the LABO**
(https://www.berlin.de/labof_assets/buergerdienste/20190311-basisinformation-gwg-gluecksspielsektor.pdf)
- **Notes on the interpretation and application of the Money Laundering Act (AMLA)**
(https://www.berlin.de/labof_assets/buergerdienste/20190204_aua-gwg-gluecksspiel-stand-1-2-2019.pdf)
- **First National Risk Analysis**
(https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschuere_n_Bestellservice/2019-10-19-erste-nationale-risikoanalyse_2018-2019.html)
- **Central Office for Financial Transaction Investigations (FIU)**
(https://www.zoll.de/DE/FIU/fiu_node.html)

Average time to process request

https://www.ea.berlin.de/intelliform/forms/eu-dlr-ng/gewerbe/Geldwaeschepraevention_Auslagerung/index