

Money Laundering Act (*Geldwäschegesetz – GwG*)

Enactment date: 13 August 2008

Full title:

"Money Laundering Act of 13 August 2008 (Federal Law Gazette I p. 1690), last amended by Article 1 of the Act of 22 December 2011 (Federal Law Gazette I p. 2959)"

Part 1

Definitions and institutions and persons covered by the Act

Section 1 Definitions

(1) For the purposes of this Act, "identification" or "identify" means:

1. establishing identity by collecting information; and
2. verifying identity.

(2) For the purposes of this Act, "terrorist financing" means:

1. providing or collecting funds in the knowledge that they will or are intended to be used, either in whole or in part, for the purpose of
 - a) committing an offence under section 129a, also in conjunction with section 129b of the Criminal Code (*Strafgesetzbuch – StGB*); or
 - b) committing any other offences set forth in Articles 1 to 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, p. 3);

or for the purpose of instigating or aiding and abetting any such offence.

2. committing an offence under section 89a (1) of the Criminal Code in cases where subsection (2) no. 4 of the Criminal Code applies, or participating in any such offence.

(3) For the purposes of this Act, "business relationship" means any business or professional relationship which is directly connected with the business or professional activities of the institutions and persons covered by this Act, and which is expected, at the time of forming the relationship, to have an element of duration.

(4) For the purposes of this Act, "transaction" means any act aimed at or resulting in a transfer of funds or other movement of assets or property.

(5) For the purposes of this Act, electronic money as defined in section 1 (14) of the Banking Act (*Kreditwesengesetz – KWG*) shall be deemed equivalent to cash.

(6) For the purposes of this Act, "beneficial owner" means the natural person who ultimately owns or controls the contracting party, or the natural person on whose behalf a transaction is ultimately carried out or a business relationship is ultimately established. The term "beneficial owner" includes, in particular:

1. in the case of corporate entities that are not listed on an organised market as defined in section 2 (5) of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) and are not subject to transparency requirements with regard to voting rights consistent with Community laws, or are not subject to equivalent international standards, any natural person who directly or indirectly holds more than 25% of the capital stock or controls more than 25% of the voting rights;
2. **in the case of foundations with legal capacity and legal arrangements used to manage or distribute assets or property on “*Treuhand*”, or through which third parties are instructed with the management or distribution of assets or property, or similar legal constructs:**
 - a) **any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;**
 - b) **any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;**
 - c) **where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed;**
 - d) **any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.**
3. **in the case of a party acting on behalf of another, the other person. Where contracting parties act as “*Treuhänder*”, they are deemed to be acting on behalf of another.**

(6a) For the purposes of this Act, "equivalent third country" means any country which imposes requirements equivalent to those laid down in this Act, and in which the institutions and persons bound by such requirements are subject to equivalent supervision for compliance with those requirements and equivalent requirements for admission to the market.

(7) The Federal Ministry of Finance (Bundesministerium der Finanzen) may, with the agreement **of the Federal Ministry of the Interior** (Bundesministerium des Innern), **the Federal Ministry of Justice** (Bundesministerium der Justiz) and the Federal Ministry of Economics and Technology (Bundesministerium für Wirtschaft und Technologie), by means of a Regulation not requiring the consent of the Bundesrat, and having regard to the **measures** adopted by the **European Commission** on the basis of Article 40(1)(a) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, p. 15), refine and particularise the above definitions.

(1) For the purposes of this Act, "institutions and persons covered by the Act" means the following institutions and persons in the practice of their business or profession:

1. credit institutions as defined in section 1 (1) of the Banking Act (with the exception of the institutions and enterprises set forth in section 2 (1) nos. 3 to 8 of the Banking Act) and German branches of credit institutions domiciled abroad;
2. financial services institutions as defined in section 1 (1a) of the Banking Act (with the exception of the institutions and enterprises set forth in **section 2 (6) sentence 1 nos. 3 to 10 and 12** and (10) of the Banking Act) and German branches of financial services institutions domiciled abroad;
- 2a. institutions as defined in section 1 (2a) of the Payment Services Supervisory Act (*Zahlungsdiensteaufsichtsgesetz – ZAG*) and German branches of institutions as defined in section 1 (2a) of the Payment Services Supervisory Act domiciled abroad;
- 2b. agents as defined in section 1 (7) of the Payment Services Supervisory Act and e-money agents as defined in section 1a (6) of the Payment Services Supervisory Act ;
- 2c. enterprises and persons who distribute or redeem e-money as defined in section 1a (3) of the Payment Services Supervisory Act on behalf of a credit institution as defined in section 1a (1) no. 1 of the Payment Services Supervisory Act;**
3. financial enterprises as defined in section 1 (3) of the Banking Act that do not fall under no. 1 or 4 and whose principal activity corresponds with one of the principal activities set forth in section 1 (3) sentence 1 of the Banking Act, or with a principal activity of an enterprise designated by means of a Regulation enacted pursuant to section 1 (3) sentence 2 of the Banking Act, and German branches of such enterprises domiciled abroad;
4. insurance undertakings to the extent that they conduct business covered by Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, p. 1), or to the extent that they offer accident insurance with premium refund, and German branches of such undertakings domiciled abroad;
- 4a. the *Bundesrepublik Deutschland - Finanzagentur GmbH*;
5. insurance intermediaries as defined in section 59 of the Insurance Contracts Act (*Versicherungsvertragsgesetz – VVG*) to the extent that they broker life insurance or investment-related services (with the exception of insurance intermediaries operating in accordance with section 34 (3) or (4) of the Industrial Code (*Gewerbeordnung – GewO*)), and German branches of such insurance intermediaries domiciled abroad;
- 6. investment stock companies as defined in section 2 (5) of the Investment Act (*Investmentgesetz – InvG*) and asset management companies as defined in section 2 (6) of the Investment Act and German branches of EU management companies as defined in section 2 (6a) of the**

Investment Act;

7. lawyers, legal advisors who are members of a chamber of lawyers, patent attorneys and notaries whenever they are involved in planning or carrying out the following transactions for their clients:

- a) buying and selling real estate or commercial enterprises;
- b) managing money, securities or other assets;
- c) opening or managing bank, savings or securities accounts;
- d) procuring funds for the purpose of establishing, operating or managing companies or partnerships;
- e) establishing, operating or managing trusts, companies, partnerships or similar arrangements;

or if they carry out financial or real estate transactions in the name and for the account of their clients;

7a. legal advisors who are not members of a chamber of lawyers and registered persons as defined in section 10 of the Legal Services Act (*Rechtsdienstleistungsgesetz – RDG*) whenever they are involved in planning or carrying out the following transactions for their clients:

- a) buying and selling real estate or commercial enterprises;**
- b) managing money, securities or other assets;**
- c) opening or managing bank, savings or securities accounts;**
- d) procuring the necessary funds for establishing, operating or managing companies or partnerships;**
- e) establishing, operating or managing trusts, companies, partnerships or similar arrangements;"**

or if they carry out financial or real estate transactions in the name and for the account of their clients.

8. auditors, chartered accountants, tax advisors and tax agents;

9. service providers for companies, partnerships and trusts or trustees who are not members of the professions referred to in no. 7 or 8 whenever they provide any of the following services for third parties:

- a) establish a legal person or partnership;
- b) act as the director or manager of a legal person or partnership, a partner of a partnership, or act in a similar position;
- c) provide a registered office, business address, address for administration or correspondence and other related services for a legal person, a partnership or a legal arrangement as defined in section 1 (6) sentence 2 no. 2;

- d) act as a trustee of a legal arrangement as defined in section 1 (6) sentence 2 no. 2;
 - e) act as a nominee shareholder for another person other than a corporate entity listed on an organised market as defined in section 2 (5) of the Securities Trading Act that is subject to transparency requirements with regard to voting rights consistent with Community laws, or subject to equivalent international standards;
 - f) arrange for another person to perform the functions described in b), d) and e) above;
- 10. real estate agents;
 - 11. casinos;
 - 12. persons who deal in goods.

(2) **The Federal Ministry of Finance may**, having regard to the measures adopted by the **European Commission** in accordance with Article 40(1)(d) of Directive 2005/60/EC with respect to **the institutions and persons** defined in **subsection (1) nos. 1 to 12 above, by means** of a Regulation not requiring the consent of the *Bundesrat*, and within the limits **of its jurisdiction** over the institutions and persons defined in subsection (1) nos. 1 to 6 above who carry out a financial activity on an occasional or very limited basis, and who represent a low risk of money laundering or terrorist financing, prescribe exemptions from statutory obligations to prevent money laundering and terrorist financing. The Federal Ministry of Finance may delegate this authority to the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) by means of a Regulation not requiring the consent of the *Bundesrat*. The Federal Ministry of Economics and Technology shall have the authority to enact Regulations in respect of institutions and persons defined in subsection (1) no. 5 above.

Part 2

Due diligence requirements and internal controls and safeguards

Section 3

General due diligence requirements

(1) The institutions and persons defined in section 2 (1) shall, in the cases set forth in subsection 2 below, fulfil the following general due diligence requirements:

- 1. identification of the contracting party in accordance with section 4 (3) and (4);
- 2. obtain information on the purpose and intended nature of the business relationship where this is not already clear from the business relationship in

the individual case;

3. clarify whether the contracting party is acting on behalf of a beneficial owner and, if so, identify the beneficial owner in accordance with section 4 (5); if the contracting party is not a natural person, this includes an obligation to take adequate measures to understand the ownership and control structure of the contracting party;
4. continuously monitor the business relationship, including the transactions carried out in the course of the business relationship, in order to ensure that they are consistent with the information obtained by the institution or person covered by this Act about the contracting party and, if applicable, the beneficial owner, their business and client profile and, where necessary, with the information obtained about the origin of their assets or property; in the course of their continuous monitoring activities, institutions and persons covered by the Act shall ensure that the relevant documents, data or information are updated at appropriate intervals.

(2) The due diligence requirements described in subsection (1) above shall be fulfilled:

1. whenever a business relationship is established;
2. whenever a transaction with a value of EUR 15,000 or more is carried out outside an existing business relationship; the foregoing also applies where multiple transactions with a combined value of EUR 15,000 or more are carried out if there is reason to suspect that such transactions are linked. **The due diligence requirements under subsection (1) above shall also apply to any transfer of funds as defined in Article 2(7) of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ L 345, 8.12.2006, p. 1), where such transfer occurs outside an existing business relationship and involves an amount of EUR 1,000 or more;**
3. **whenever factual circumstances exist to indicate that the assets or property connected with a transaction or business relationship are the product of an offence under section 261 of the Criminal Code or are related to terrorist financing, notwithstanding any exceptions, exemptions or thresholds set forth in this Act,**
4. whenever there is doubt as to the veracity of the information collected pursuant to this Act in relation to the identity of the contracting party or the beneficial owner. Sentence 1 nos. 1 and 2 shall not apply to the persons defined in section 2 (1) no. 12. **Notwithstanding the thresholds set forth in sentence 1 no. 2, the requirements under subsection (1) nos. 1 and 4, section 7 (1) and (2) and section (8) shall apply to the institutions and persons defined in section 2 (1) nos. 2b and 2c whenever they issue e-money as defined in the Payment Services Supervisory Act. Section 25i (2), (4) and (5) of the Banking Act shall apply *mutatis mutandis*.** Without prejudice to sentence 1 nos. 3 and 4, the persons defined

in section 2 (1) no. 12 shall fulfil the due diligence requirements under subsection (1) whenever they accept cash to the value of EUR 15,000 or more; **sentence 1 no. 2 second half-sentence** shall apply *mutatis mutandis*.

(3) Without prejudice to subsection (2) above, the institutions defined in section 2 (1) no. 11 shall be required to verify the identity of customers who buy or sell gambling chips with a value of EUR 2,000 or more. The identification requirement may also be met by verifying the identity of customers upon entry to the casino, **provided the institution covered by the Act also ensures that each transaction of EUR 2,000 or more associated with buying, selling or exchanging gambling chips can be traced to the respective customer.**

(4) In fulfilling the due diligence requirements set forth in subsection (1) above, institutions and persons covered by the Act shall adopt a risk-sensitive approach to determining the specific scope of their measures based on the individual contracting party, business relationship or transaction. Institutions and persons covered by the Act must be able to demonstrate to the competent authorities set forth in section 16 (2) upon request that the measures they have adopted are to be deemed adequate based on the risk of money laundering and terrorist financing.

(5) Insurance intermediaries as defined in section 2 (1) no. 5 who collect premiums on behalf of insurance undertakings as defined in section 2 (1) no. 4 shall notify the relevant insurance undertaking whenever premiums are paid in cash and the amount exceeds EUR 15,000 in one calendar year.

(6) If institutions and persons covered by the Act are unable to fulfil the due diligence requirements under subsection (1) nos. 1 to 3, they may not establish or continue the business relationship or carry out any transactions. Where a business relationship already exists, the institutions and persons covered by the Act shall terminate or otherwise end the business relationship regardless of any other statutory provisions or contractual terms. Sentences 1 and 2 above shall not apply to the persons defined in **section 2 (1) nos. 7 and 8** if the contracting party is seeking legal advice or legal representation, unless the person covered by the Act knows that the contracting party is seeking the legal advice for the purpose of money laundering or terrorist financing.

Section 4 Identification

(1) Institutions and persons covered by the Act shall identify contracting parties and, if applicable, beneficial owners, before establishing a business relationship or carrying out a transaction. The identification process may be completed while the business relationship is being established if this is necessary in order to avoid interrupting the normal course of business and there is a low risk of money laundering or terrorist financing involved.

(2) Institutions and persons covered by the Act may dispense with identification if they have already identified the relevant contracting parties and beneficial owners and made a record of the information obtained, unless external circumstances lead

them to doubt the veracity of the information obtained during the earlier identification process.

(3) Institutions and persons covered by the Act shall collect the following information in order to establish the identity of the contracting party:

1. in the case of natural persons, their name, place and date of birth, nationality and address;
2. in the case of legal persons or partnerships, the company, partnership or trading name, legal form, commercial register number if available, the address of its registered office or head office, and the names of the members of its representative body or of its legal representative; if a member of its representative body or the legal representative is a legal person, information shall be collected on that legal person's company, partnership or trading name, legal form, commercial register number if available, and the address of its registered office or head office.

(4) For the purposes of verifying the contracting party's identity, institutions and persons covered by the Act shall satisfy themselves of the veracity of the information collected in accordance with subsection (3) above based on the following documents, to the extent that the relevant information is contained in such documents:

1. in the case of natural persons, except as provided in section 6 (2) no. 2, a valid official identification card which includes a photograph of the holder and satisfies German requirements for identification cards and passports, including, in particular, German passports, personal identification cards or their substitutes, or passports, personal identification cards or their substitutes recognised or accepted under foreign law;
2. in the case of legal persons or partnerships, an extract from the commercial register or register of cooperative societies, or an extract from a similar official register, the documents of incorporation or documents of equivalent probative value, or by inspection of the entries in the register;

The Federal Ministry of the Interior may, with the agreement of the Federal Ministry of Finance, designate further documents as appropriate for verifying identity by means of a Regulation not requiring the consent of the *Bundesrat*.

(5) Institutions and persons covered by the Act shall establish the identity of beneficial owners by at least establishing their name and, where appropriate given the existing risk of money laundering or terrorist financing in the individual case, by collecting further identifying information. For the purposes of verifying the beneficial owner's identity, institutions and persons covered by the Act shall **always** satisfy themselves of the veracity of the information collected in accordance with sentence 1 above by taking risk-adequate measures.

(6) Contracting parties shall provide institutions and persons covered by the Act with the information and documents necessary for fulfilling the requirements under the preceding subsections and shall advise them without undue delay of any changes arising during the course of the business relationship. **Contracting parties shall**

disclose to institutions and persons covered by the Act whether they intend to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner. Such disclosure to institutions and persons covered by the Act shall also include information that verifies the identity of the beneficial owner.

Section 5 Simplified due diligence

(1) Except where the criteria of section 6 are met, institutions and persons covered by the Act may, subject to carrying out a risk assessment based on the specific circumstances of the individual case, adopt simplified due diligence measures in the cases referred to in subsection (2) nos. 1 to 4 below. Simplified due diligence measures include identifying as referred to in section 3 (1) no. 1 and, in the case of business relationships, continuously monitoring the business relationship as referred to in section 3 (1) no. 4; the scope of measures to verify identity as referred to in section 4 (4) and to monitor may be reduced as appropriate. Section 3 (4) sentence 2 shall apply *mutatis mutandis*.

(2) Except as **provided** in section 25d of the Banking Act, also in conjunction with section 6 (5) of the Investment Act and section 80e of the Insurance Supervisory Act (*Versicherungsaufsichtsgesetz – VAG*), only the following situations qualify as low-risk:

1. transactions by or for the benefit of and upon establishing business relationships with institutions and persons as defined in section 2 (1) nos. 1 to 6; the foregoing also applies in the case of credit or financial institutions as defined in Directive 2005/60/EC which are domiciled in a member state of the European Union or in an **equivalent** third country;
2. transactions by or for the benefit of and upon establishing business relationships with listed companies whose securities are admitted to trading on an organised market as defined in section 2 (5) of the Securities Trading Act in one or more member states of the European Union, and with listed companies from third countries that are subject to transparency requirements with regard to voting rights that are equivalent with Community laws;
3. establishing the identity of the beneficial owner in the case of escrow accounts of institutions and persons as defined in section 2 (1) no. 7, provided the institution where the account is held can obtain, on request, information on the identity of the beneficial owner from the holder of the escrow account; the foregoing also applies to the escrow accounts of notaries or other independent legal professionals who reside in a member state of the European Union, and to the escrow accounts of notaries or other independent legal professionals domiciled in an **equivalent** third country;
4. transactions by or for the benefit of and upon establishing business relationships with German authorities as defined in section 1 (4) of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz – VwVfG*) and in the corresponding provisions of the administrative procedure laws of the

federal states (*Länder*); the foregoing also applies to foreign authorities or foreign public institutions entrusted with public functions pursuant to the Treaty on European Union, the Treaties establishing the European Communities or the secondary law of the Communities, provided their identity is transparent and can be publicly verified and it is clear beyond doubt that their activities and accounting practices are transparent, and they are accountable to a Community institution or to the authorities of a member state of the European Union, or their activities are subject to other means of supervision and control.

Section 25d of the Banking Act shall apply *mutatis mutandis* to institutions and persons as defined in section 2 (1) no. 3.

(3) Subsections (1) and (2) above shall not apply if institutions and persons covered by the Act obtain information about a specific transaction or business relationship indicating that its risk of money laundering or terrorist financing is not low.

(4) **The Federal Ministry of Finance may, with the agreement of the Federal Ministry of the Interior, the Federal Ministry of Justice** and the Federal Ministry of Economics and Technology, by means of a Regulation not requiring the consent of the *Bundesrat*:

1. stipulate further criteria for determining when a low risk of money laundering or terrorist financing exists in order to implement **measures** adopted by the **European Commission** in accordance with Article 40(1)(b) of Directive 2005/60/EC;
2. implement a decision adopted by the **European Commission** in accordance with Article 40(4) of Directive 2005/60/EC with regard to the cases described in Article 12 of that Directive.

Section 6 Enhanced due diligence

(1) Where a higher risk of money laundering or terrorist financing could potentially exist, institutions and persons covered by the Act shall adopt additional, risk-adequate enhanced due diligence measures. Section 3 (4) sentence 2 and (6) shall apply *mutatis mutandis*.

(2) A higher risk shall be assumed in the following cases in particular, requiring the enhanced due diligence requirements set forth below to be fulfilled:

1. **institutions and persons covered by the Act shall adopt appropriate risk-based procedures to determine whether the contracting party and, if applicable, the beneficial owner is a natural person who exercises or has exercised a prominent public function, or is an immediate family member or person known to be a close associate of such a person as defined in Article 2 of Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due**

diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 4.8.2006, p. 29). As a rule, public offices below the national level are not considered prominent public functions unless their political significance is comparable with similar positions at the national level. Institutions and persons covered by the Act who must clarify whether the contracting party or the beneficial owner is a close associate of a person who exercises a prominent public function shall be required to do so only to the extent that such relationship is known to the public, or they have reason to believe that such a relationship exists; however, they are not required to conduct investigations into the matter. The following shall apply if the contracting party or beneficial owner is a politically exposed person in this sense:

- a) the establishment of a business relationship by a person acting on behalf of institutions and persons covered by the Act shall be subject to the approval of a superior;
- b) adequate measures shall be adopted to determine the origin of the assets or property to be used in the business relationship or transaction; and
- c) the business relationship shall be subject to continuous, enhanced monitoring.

In the event that the contracting party or beneficial owner first exercises a prominent public function during the course of the business relationship, or institutions and persons covered by the Act only become aware that the contracting party or beneficial owner exercises a prominent public function after the business relationship is established, the superior of the person acting on behalf of the relevant institution or person covered by the Act shall be required to approve the continuation (rather than the establishment) of the business relationship. Contracting parties shall provide institutions and persons covered by the Act with the necessary clarifying information and advise them without undue delay of any changes arising during the course of the business relationship. Where the contracting party or beneficial owner is a politically exposed person who exercises a prominent public function in Germany or as a member of the European Parliament who has been elected in Germany, or who has not exercised a prominent public function for at least one year, the general due diligence requirements under section 3 shall apply, subject to a risk assessment being carried out in the individual case.

2. Where the contracting party is a natural person and is not physically present for identification purposes, institutions and persons covered by the Act shall verify the contracting party's identity by means of:
 - a) a document as defined in section 4 (4) sentence 1 no. 1;

- b) a certified copy of a document as defined in section 4 (4) sentence 1 no. 1;
- c) the electronic identification process referred to in section 18 of the Personal Identification Act (*Personalausweisgesetz – PauswG*); or
- d) a qualified digital signature as defined in section 2 no. 3 of the Signature Act (*Signaturgesetz – SigG*).

Where the contracting party's identity is verified in accordance with sentence 1 a), b) or d), institutions and persons covered by the Act shall ensure that the first transaction is carried out directly from an account opened in the name of the contracting party with a credit institution covered by Directive 2005/60/EC or with a credit institution domiciled in an equivalent third country. Where the contracting party's identity is verified by means of a qualified digital signature, institutions and persons covered by the Act shall check the validity of the certificate, the notification filed by the provider of the certification service in accordance with section 4 (3) of the Signature Act, the integrity of the certificate and its connection with the digitally signed data.

3. Institutions and persons covered by the Act shall investigate any situation that appears potentially suspicious or unusual in order to be able to monitor and assess the risk associated with the respective business relationship or transaction and, if applicable, determine whether a reporting requirement exists under section 11 (1). The findings of this investigation shall be recorded and kept in accordance with section 8 (1) to (5).
 4. Where factual circumstances or ratings given by national or international agencies established to combat money laundering and terrorist financing justify the assumption that a higher risk exists in other cases, particularly in connection with compliance with due diligence requirements in a certain country, the relevant competent authority designated in section 16 (2) no. 2h to no. 9 may order that institutions and persons covered by the Act must enhance their monitoring of a transaction or business relationship, particularly the origin of the assets or property contributed by a client who resides in such a country and used in the business relationship or transaction, and must fulfil additional risk-adequate due diligence and organisational requirements. In derogation of sentence 1, such orders shall be issued by the Federal Chamber of Lawyers (*Bundesrechtsanwaltskammer*) for lawyers and legal advisors who are members of a chamber of lawyers, the Federal Chamber of Tax Advisors (*Bundessteuerberaterkammer*) for tax advisors and tax agents, the Federal Chamber of Notaries (*Bundesnotarkammer*) for notaries who are members of a chamber of notaries, and the competent supreme authority at *Länder* level in cases in which section 11 (4) sentence 4 applies.
- (3) **The Federal Ministry of Finance** may, with the agreement of the **Federal Ministry of the Interior, the Federal Ministry of Justice** and the Federal Ministry of Economics and Technology, without the consent of the *Bundesrat*, by means of a

Regulation:

1. stipulate additional measures in the cases referred to in subsection (2) to be adopted by institutions and persons covered by the Act in order to counter the higher level of risk;
2. having regard to the **measures** adopted by the **European Commission** in accordance with Article 40(1)(c) of Directive 2005/60/EC and to Article 13(6) of that Directive, designate additional cases in which a higher risk of money laundering or terrorist financing exists and lay down measures to be adopted by institutions and persons covered by the Act in order to counter the higher level of risk.

Section 7

Performance by third parties

(1) Institutions and persons covered by the Act may engage third parties in order to fulfil the due diligence requirements under section 3 (1) nos. 1 to 3. However, institutions and persons covered by the Act shall remain ultimately responsible for fulfilling such due diligence requirements. **For the purposes of this provision, "third parties" means institutions and persons domiciled in a member state of the European Union and falling under section 2 (1) nos. 1, 2a, 4, 5, 6, 7 and 8, as well as those falling under section 2 (1) no. 2, provided they are financial services institutions as defined in section 1 (1a) sentence 2 nos. 1, 2 to 5 and 8 of the Banking Act.** Credit institutions, lawyers, notaries, auditors and tax advisers domiciled in an **equivalent** third country shall also be deemed "third parties", provided they are subject to a statutory registration, licensing or admission requirement with regard to their business or profession, as well as insurance undertakings domiciled in an equivalent third country where they engage in business covered by Directive 2002/83/EC or offer accident insurance with premium refund. If due diligence requirements equivalent to those under section 3 (1) nos. 1 to 3 are fulfilled by a third party in another member state of the European Union, it is sufficient if the laws of such state concerning the requirements for collected data and information and verified documents are complied with. In the cases described in this subsection, third parties shall, directly and without undue delay, transmit to institutions and persons covered by the Act the data and information obtained upon carrying out measures equivalent to those under section 3 (1) nos. 1 to 3 and, upon request, any copies they have kept, and documents for identifying any contracting party and, if applicable, any beneficial owner.

(2) Institutions and persons covered by the Act may delegate performance of the measures necessary in order to fulfil the due diligence requirements under section 3 (1) nos. 1 to 3 to another person on the basis of a contractual arrangement. Doing so may not hinder the institutions and persons covered by the Act in properly performing their obligations as laid down by this Act, nor interfere with the ability of their management to supervise and oversee such institutions and persons, nor interfere with the powers and ability of the competent authority under section 16 (2) to audit and oversee such institutions and persons. Before cooperating with another person, institutions and persons covered by the Act shall satisfy themselves of the

reliability of such person, and during the course of the cooperation satisfy themselves of the appropriateness and propriety of the measures adopted by such other person by means of spot checks. The measures adopted by the other person shall be attributed to the institutions and persons covered by the Act. Section 25a (2) of the Banking Act shall remain unaffected. **Where a contractual arrangement as referred to in sentence 1 is entered into with German embassies, foreign chambers of commerce or consulates, they shall be deemed suitable persons by agreement. Sentence 3 shall not apply in this case.**

(3) **The Federal Ministry of Finance** may, with the agreement of **the Federal Ministry of the Interior, the Federal Ministry of Justice** and the Federal Ministry of Economics and Technology, by means of a Regulation not requiring the consent of the *Bundesrat* for the purpose of implementing a decision adopted by the **European Commission** in accordance with Article 40(4) of Directive 2005/60/EC, stipulate exceptions to the cases in which institutions and persons covered by the Act may engage, in accordance with subsection (1), third parties domiciled outside the European Union to fulfil their due diligence obligations.

Section 8 Record-keeping

(1) Where due diligence requirements exist under this Act, the data and information collected on contracting parties, beneficial owners, business relationships and transactions shall be recorded. In the cases set forth in section 4 (4) sentence 1 no. 1, the type, number and issuing authority of the document presented for verification of identity shall also be recorded. A copy of the document presented for verification of identity pursuant to section 4 (4) sentence 1 no. 1 and a copy of the documents presented or used for verification of identity pursuant to section 4 (4) sentence 1 no. 2 shall qualify as a record of the information contained therein; in case of an inspection of electronic register entries, a print-out shall qualify as a record of the information contained therein. If a repeat identification is dispensed with pursuant to section 4 (2), the name of the person to be identified and the fact that the person was identified on a previous occasion shall be recorded. Where, in the case of section 6 (2) no. 2, a natural person's identity was verified by means of a qualified digital signature and corresponding checks of that signature were performed, the fact that such verification was carried out shall also be recorded. Where, in the case of section 6 (2) no. 2, a natural person's identity is verified by means of an electronic identification process as described in section 18 of the Personal Identification Act, the indicator relating to the specific service and card (instead of the type, number and issuing authority) shall be recorded, as well as the fact that verification was carried out by means of an electronic identification process.

(2) The records may also be stored on an image recording or other data storage medium. It must be ensured that the stored data are consistent with the information gathered, are available for the duration of the retention period and can, within a reasonable period of time, be made readable at any time.

(3) Notwithstanding any statutory provisions to the contrary, the records as defined in subsection 1 and other evidence pertaining to business relationships and transactions shall be kept for at least five years. In the case of section 3 (2) sentence 1 no. 1, the retention period shall begin upon conclusion of the calendar

year in which the business relationship is terminated. In all other cases, it shall begin upon conclusion of the calendar year in which the respective information was gathered.

(4) Where documents to be retained shall be presented to a public agency, section 147 (5) of the Fiscal Code (*Abgabenordnung – AO*) shall apply *mutatis mutandis*.

Section 9 Internal controls and safeguards

(1) Institutions and persons as defined in section 2 (1) must implement appropriate internal controls and safeguards to ensure that they cannot be misused for the purpose of money laundering and terrorist financing. For institutions and persons defined in section 2 (1) nos. 7 **and 7a**, this shall apply only to the extent that they carry out the transactions referred to thereunder on a regular basis.

(2) For the purposes of subsection 1, "internal controls and safeguards" means:

- 1. for institutions and persons as defined in section 2 (1) nos. 3 and 11, the appointment of a compliance officer (money laundering) directly subordinate to the management to act as contact person for the prosecution authorities, the Financial Intelligence Unit (*Zentralstelle für Verdachtsmeldungen*) of the Federal Bureau of Criminal Investigation (*Bundeskriminalamt – BKA*) and the competent authorities referred to in section 16 (2); in the event of the compliance officer (money laundering) being unavailable, a deputy compliance officer (money laundering) shall be appointed; the appointment and removal of such compliance officer shall be reported to the competent authorities under section 16 (2); the compliance officer (money laundering) shall be provided with unrestricted access to all information, data, records and systems that may be of relevance in the performance of his functions; the compliance officer (money laundering) shall use the data and information solely for the purpose of performing his duties; the compliance officer (money laundering) shall be granted adequate powers for performing his function;**
- 2. for institutions and persons as defined in section 2 (1) nos. 2b to 3, 5, 7 to 12, the development and updating of appropriate business and customer-oriented safeguards and controls to prevent money laundering and terrorist financing; this also includes preventing the misuse of new technological developments for purposes of money laundering and terrorist financing or for promoting the anonymity of business relationships or transactions;**
- 3. processes and information to acquaint employees with the typologies and current methods of money laundering and terrorist financing, and**

the existing obligations to prevent money laundering and terrorist financing through suitable measures;

- 4. appropriate risk-based measures for reliability screening of employees. An employee shall be deemed reliable if he/she offers assurance that he/she will diligently comply with the obligations under this Act, any other obligations relevant to money laundering and the principles, procedures, controls and codes of conduct established at the institutions and persons covered by the Act for the prevention of money laundering and terrorist financing, report any factual circumstances as referred to in section 11 (1) to his/her superior or compliance officer (money laundering), if such has been appointed, and does not itself actively or passively participate in potentially suspicious transactions or business. The employee control and appraisal systems of the institutions and persons covered by the Act are intended, in principle, to ensure regular reliability screening of employees.**

(3) If any person defined in section 2 (1) nos. 7 to 10 or no. 12 pursues his/her professional activity as an employee of an enterprise, the obligation under subsection 1 shall be incumbent upon such enterprise. Subject to the prior approval of the competent authority under section 16 (2), the institutions and persons covered by subsection 1 may, on the basis of contractual arrangements, assign third parties to implement internal controls and safeguards as described in section 2 and to keep records as described in section 8. Such approval may only be granted if the third parties provide assurance that the measures will be carried out properly and that the management capabilities by the institutions and persons covered by the Act and supervision by the competent authority under section 16 (2) will not be affected.

(4) The competent authority under section 16 (2) may issue orders to the effect that institutions and persons as defined in section 2 (1) nos. 2b, 2c, 5, 7 to 10 and 12 will be required to appoint a compliance officer (money laundering) where it considers this appropriate. In derogation of sentence 1, such orders shall be issued by the Federal Chamber of Lawyers for lawyers and legal advisors who are members of a chamber of lawyers, the Federal Chamber of Tax Advisors for tax advisors and tax agents, the Federal Chamber of Notaries for notaries who are members of a chamber of notaries, and the competent supreme authority at *Länder* level under section 11 (4) sentence 4 for notaries who are not members of a chamber of notaries. The authority referred to in sentence 1 shall issue orders for the appointment of a compliance officer (money laundering) to persons as defined in section 2 (1) no. 12, where their principal activity consists of dealing with high-value goods. High-value goods as referred to in sentence 2 are items which, by their very nature, their market value or intended use distinguish themselves from everyday utilitarian objects or which, given their price, are not considered an everyday acquisition. These generally include precious metals such as gold, silver and platinum, precious stones, jewellery and watches, works of art and antiques, motor vehicles, ships, motor boats and aircraft.

(5) In individual cases, the competent authority under section 16 (2) may issue orders that are appropriate and necessary to implement the internal controls and safeguards as defined in subsection 2 no. 2. Such authority may determine

that the provisions of subsections 1 and 2 shall be appropriately applied to individual or groups of institutions and persons as defined in section 2 (1) based on the type of business they conduct and the size of the business operation, taking into account the vulnerability of such business or business operation to misuse for money laundering and terrorist financing purposes. The competent authority under section 16 (2) no.9 may determine that institutions and persons covered by the Act may be exempted from appointing a compliance officer (money laundering) as defined in subsection 2 no. 1 sentences 1 to 6, if it is ensured that there is no risk of loss or lack of information as a result of an enterprise structure in which labour is divided, and other risk-sensitive precautions are taken in order to prevent business relationships and transactions connected with money laundering and terrorist financing.

Part 3

Financial Intelligence Unit, reporting requirements and use of data

Section 10 Financial Intelligence Unit

(1) As central agency within the meaning of section 2 (1) of the Federal Bureau of Criminal Investigation Act (*Bundeskriminalamtgesetz – BKAG*), **the Financial Intelligence Unit (*Zentralstelle für Verdachtsmeldungen*) of the Federal Bureau of Criminal Investigation** shall support the federal and state (*Länder*) police forces in the prevention and prosecution of money laundering and terrorist financing. **The Financial Intelligence Unit of the Federal Bureau of Criminal Investigation** shall:

1. collect and analyse **suspicious transaction reports** transmitted pursuant to sections 11 and 14 and, in particular, arrange for the cross-checking of data stored by other agencies;
2. notify the federal and *Länder* prosecution authorities without undue delay of any information concerning them and of any connections identified between criminal offences;
3. keep statistics regarding the numbers and information referred to in Article 33(2) of Directive 2005/60/EC;
4. **publish an annual report analysing the suspicious transaction reports pursuant to no. 1; and**
5. regularly inform the institutions and persons subject to reporting obligations under this Act of the typologies and methods of money laundering and terrorist financing;

(2) The **Financial Intelligence Unit** of the Federal Bureau of Criminal Investigation shall cooperate with the financial intelligence units of other countries responsible for the prevention and prosecution of money laundering and terrorist financing. It is the financial intelligence unit as defined in Article 2(3) of the Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation

between financial intelligence units of the Member States in respect of exchanging information (OJ L 271, p. 4).

(3) To the extent necessary for the performance of its functions pursuant to subsections 1 and 2, the **Financial Intelligence Unit** of the Federal Bureau of Criminal Investigation may collect, process and use personal data in accordance with sections 7 to 14 and sections 27 to 37 of the Federal Bureau of Criminal Investigation Act. In section 7 (2) of the Federal Bureau of Criminal Investigation Act, the functions listed in subsections 1 and 2 shall replace the function as financial intelligence unit pursuant to section 2 (2) no. 1 of the Federal Bureau of Criminal Investigation Act. Section 14 (1) of the Federal Bureau of Criminal Investigation Act shall apply subject to the proviso that transmission to other countries' financial intelligence units shall also be permissible. The Financial Intelligence Unit of the Federal Bureau of Criminal Investigation may request information from the Federal Financial Supervisory Authority pursuant to section 24c (3) sentence 1 no. 2 of the Banking Act where necessary to perform its functions in accordance with subsections and 2.

(4) The **Financial Intelligence Unit** of the Federal Bureau of Criminal Investigation may use the data transmitted by financial intelligence units of other countries only on the terms and conditions stipulated by the financial intelligence unit transmitting the data. In transmitting data to the financial intelligence unit of another country, it may, for its part, impose restrictions and conditions on the use of the data transmitted.

Section 11 Suspicious transaction **reports**

(1) Whenever factual circumstances exist to indicate that the assets or property connected with a transaction or business relationship are the product of an offence under section 261 of the Criminal Code or are related to terrorist financing, institutions and persons covered by this Act shall promptly report such transaction, irrespective of the amount involved, or such business relationship to the Financial Intelligence Unit of the Federal Bureau of Criminal Investigation or the competent prosecution authorities orally, by telephone, fax or via electronic data transmission. The reporting obligation pursuant to sentence 1 shall exist even where factual circumstances indicate that the contracting party failed to comply with its duty of disclosure under section 4 (6) sentence 2.

(1a) A requested transaction may not be executed before the public prosecutor's office has informed the institution or person covered by this Act of its consent, or before the expiry of the second working day following the transmission date of such suspicious transaction report unless the transaction's execution was prohibited by the public prosecutor's office; in this respect Saturday shall not be considered a working day. If it is impossible to postpone the transaction, or if doing so could frustrate efforts to pursue the beneficiaries of a suspected criminal offence, the execution of the transaction shall be permitted; the suspicious transaction report shall be filed subsequently without undue delay.

(2) A suspicious transaction report made orally or by telephone pursuant to subsection 1 shall be repeated in writing, by fax or electronic data transmission. The Federal Ministry of the Interior may, with the agreement of the Federal Ministry of Finance and the Federal Ministry of Economics and Technology, by means of a Regulation not requiring the consent of the *Bundesrat*, enact more detailed provisions concerning the form of reporting under subsection (1) or section 14 (1) and the permitted data media, methods of transmission and data formats to the extent this is necessary for the Financial Intelligence Unit of the Federal Bureau of Criminal Investigation to perform its functions.

(3) In derogation of subsection 1, the institutions and persons referred to in section 2 (1) nos. 7 and 8 shall be exempted from the reporting obligation if the reportable facts relate to information they obtained in the context of providing legal advice or the legal representation of the contracting party. The reporting requirement shall continue to exist if the institutions or persons covered by the Act know that the contracting party has used or is using their legal advice for the purpose of money laundering or terrorist financing.

(4) In derogation of subsection 1 sentence 1, the institutions and persons referred to in section 2 (1) nos. 7 and 8, who are members of a professional chamber, shall transmit the **report pursuant to subsection 1** to the competent federal professional chamber. Such chamber may comment on the **report pursuant to subsection 1**. The chamber concerned shall transmit the **report pursuant to subsection 1** together with its comments in accordance with subsection 1 sentence 1 to **the Financial Intelligence Unit of the Federal Bureau of Criminal Investigation** without undue delay. This shall apply *mutatis mutandis* for notaries who are not members of a chamber of notaries subject to the condition that the supreme authority at *Länder* level responsible for the regulation of their profession shall take the place of the chamber of notaries.

(5) The reporting requirement pursuant to subsections 1 and 2 does not rule out the voluntary nature of the **report** within the meaning of section 261 (9) of the Criminal Code.

(6) The contents of a **report** pursuant to subsection 1 may be used only for the criminal proceedings referred to in section 15 (1) and (2) sentence 3, for criminal proceedings related to a criminal offence liable to maximum punishment of more than three years of imprisonment, for taxation proceedings, for the supervisory functions of competent authorities pursuant to section 16 (2) and for the purpose of averting threats.

(7) The Federal Ministry of the Interior and the Federal Ministry of Finance may, by means of a Regulation requiring the consent of the *Bundesrat*, for the purpose of combating money laundering and terrorist financing define individual types of transactions which must always be reported in accordance with subsection 1 sentence 1 by the institutions and persons covered by this Act.

(8) In criminal proceedings for which a **report** was filed pursuant to subsection 1 or section 14, and in other criminal proceedings relating to an offence pursuant to

section 261 of the Criminal Code or in which suspected offences within the meaning of section 1 (2) are being investigated, the competent public prosecutor's office shall inform the **Financial Intelligence Unit** of the Federal Bureau of Criminal Investigation of the commencement of public prosecution and the outcome of proceedings, **including any decisions to close proceedings**. Such notification shall be effected by sending a copy of the indictment, the decision to stay proceedings setting out the reason for such decision, or the verdict. Institutions and persons covered by this Act who filed a **report** pursuant to subsection 1 may, upon request in accordance with section 475 of the Code of Criminal Procedure, be provided with information from the files if this proves necessary to verify their **report**; section 477 (3) of the Code of Criminal Procedure shall not apply in this respect. Institutions and persons covered by this Act may use personal data obtained pursuant to sentence 3 solely for purposes of verifying their **report** and must delete such data when no longer needed for this purpose.

Section 12 Prohibition against tipping-off

(1) Institutions and persons covered by this Act shall be prohibited from disclosing to the instructing party of the transaction or other third parties the **filing or intended filing of a report** pursuant to section 11 (1) or a preliminary investigation initiated in response thereto. This shall not apply to disclosures:

1. to governmental bodies and the competent authorities referred to in section 16 (2);
2. between institutions and enterprises from member states of the European Union or from an **equivalent** third country which belong to the same group of institutions as referred to in section 10a (1) or (2) of the Banking Act, the same financial holding group as referred to in section 10a (3) of the Banking Act, the same financial conglomerate as referred to in section 1 (20) sentence 1 of the Banking Act, the same insurance holding company as referred to in section 104a (2) no. 4 of the Insurance supervisory act, or the same mixed insurance holding as referred to in section 104a (2) no. 5 of Insurance supervisory act, or the same mixed financial holding company as referred to in section 104k no. 3 of the Insurance supervisory act or the same financial conglomerate as referred to in section 104k no. 4 of the Insurance supervisory act,
3. between persons as defined in **section 2 (1) nos. 7 to 8** from member states of the European Union or from **equivalent** third countries, where such persons are self-employed or employed by the same legal person or within a structure having a joint owner or joint management or joint supervision of compliance with requirements to prevent money laundering and terrorist financing;
4. between institutions and persons referred to in **section 2 (1) nos. 1 to 2a, 3, 4 and 6** in cases related to the same contracting party and the same transaction involving two or more such institutions and persons, provided that they are domiciled in a member state of the European Union or in an **equivalent** third country, and that they are from the same professional category and are

subject to equivalent obligations as regards professional secrecy and personal data protection.

Information disclosed pursuant to the sentence 2 may be used solely for the purpose of preventing money laundering or terrorist financing.

(2) Where persons referred to in **section 2 (1) nos. 7 to 8** seek to dissuade a client from engaging in illegal activity, this shall not constitute tipping off.

(3) In individual cases, institutions and persons referred to in **section 2 (1) nos. 1 to 6** may provide each other with information other than that listed in subsection 1 sentence 1 when fulfilling their due diligence requirements under sections 3, 5 and 6, sections **25c**, 25d and 25f of the Banking Act and **sections 80d to 80f** of the Insurance supervisory act, where an irregular or unusual situation in relation to money laundering or terrorist financing is concerned and there is actual reason to suspect that the recipient of the information needs the information to decide whether **to report the matter pursuant to section 11 (1)** or file a criminal complaint in accordance with section 158 of the Code of Criminal Procedure. The recipient may use the information solely for the purpose of preventing money laundering or terrorist financing and only subject to the conditions imposed by the institutions and persons covered by the Act providing the information.

(4) **The Federal Ministry of Finance** may, with the agreement of the **Federal Ministry of the Interior**, **the Federal Ministry of Justice** and the Federal Ministry of Economics and Technology, by means of a Regulation not requiring the consent of the *Bundesrat* for the purpose of implementing a decision adopted by the **European Commission** in accordance with Article 40(4) of Directive 2005/60/EC, enact further regulations prohibiting tipping off and define the institutions and persons in third countries with respect to which no information may be disclosed.

Section 13 Accountability

(1) **Anyone who files a report under section 11 (1) sentence 1 or criminal complaint pursuant to section 158 of the Code of Criminal Procedure cannot be held to account for such report or criminal complaint unless the filing of a false report or criminal complaint is based on wilful intent or gross negligence.**

(2) The same shall apply to any employee who **reports suspicious activity to his/her superior or to an in-house body** for the reporting of such activity.

Section 14 Suspicious transaction reporting by authorities

(1) Where factual circumstances exist to indicate that the assets or property connected with a transaction or business relationship are the product of an offence under section 261 of the Criminal Code or are related to terrorist financing, the competent authorities referred to in section 16 (2) shall promptly report such circumstances to the Financial Intelligence Unit of the Federal Bureau of Criminal Investigation and the competent prosecution authorities.

Section 11 (3) shall apply *mutatis mutandis* for the authorities referred to under section 16 (2) nos. 4 to 8.

(2) Subsection 1 shall apply *mutatis mutandis* with respect to the authorities responsible for the oversight of cross-border traffic and those responsible for monitoring the stock, foreign exchange and financial derivatives markets.

Section 15 Reference to and use of records

(1) Records made pursuant to section 8 (1) may be referred to or used solely for the purpose of prosecuting offences as defined in section 261 of the Criminal Code or offences referred to in section 129a (2) or section 261 (1) of the Criminal Code.

(2) Where criminal proceedings are initiated as a result of a criminal offence described in subsection 1, the tax authorities shall be notified thereof together with the underlying facts, as soon as a transaction is identified which could be of relevance for the tax authorities for the initiation or conduct of taxation or tax-related criminal proceedings. If, in the criminal proceedings, the prosecution authority considers records as referred to in section 8 (1), these records may also be transmitted to the tax authorities. The notifications and records may be used for taxation and tax-related criminal proceedings.

Part 4 Supervision, cooperation and administrative fines

Section 16 Supervision

(1) The competent authorities referred to in subsection 2 shall exercise supervision over the institutions and persons defined in section 2 (1). The competent authorities may, as part of the functions assigned to them by law, take the appropriate and necessary measures and issue orders to ensure compliance with the requirements stipulated under this Act **and in Article 55(1) of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community ((OJ L 302, 18.11.2010, p. 1)**. To this end, they may also exercise the powers granted to them for other supervisory functions. **In order to cover the administrative expenses, the competent authority referred to in subsection 2 no. 9 may charge for the costs (fees and expenses) connected with the measures and orders pursuant to this provision. The competent authority under subsection 2 no. 2 g) and h) and no. 9 may ban the practice of a business or profession where institutions and persons as defined in section 2 (1) nos. 2b to 3, 5 and 9 to 12 or persons instructed with the management of the business or profession have wilfully or negligently infringed the provisions of this Act, the Regulations enacted to enforce these laws or the orders issued by the competent authorities, continue in such**

conduct in spite of a warning issued by the competent authorities and where this is a sustained infringement.

(2) The competent authority for the enforcement of this Act shall be:

1. for the KfW Banking Group and Bundesrepublik Deutschland - Finanzagentur GmbH (*Kreditanstalt für Wiederaufbau*): the Federal Ministry of Finance;
2. the Federal Financial Supervisory Authority (BaFin) for:
 - a) all other credit institutions with the exception of the German Bundesbank;
 - b) financial services institutions and **institutions as defined in section 1 (2a) of the Payment Services Supervisory Act**;
 - c) German branches of credit institutions, financial services institutions and institutions as defined in section 1 (2a) of the Payment Services Supervisory Act domiciled abroad;
 - d) investment stock corporations as defined in section 2 (5) of the Investment Act;
 - e) asset management companies as defined in section 2 (6) of the Investment Act;
 - f) German branches of EU management companies as defined in section 2 (6a) of the Investment Act;
 - g) agents and e-money agents as defined in section 2 (1) no. 2b; and**
 - h) enterprises and persons as defined in section 2 (1) no. 2c;**
3. for insurance undertakings and the German branches of such undertakings: the competent supervisory authority for the insurance industry;
4. lawyers and legal advisors who are members of a chamber of lawyers: the competent local chamber of lawyers (sections 60, 61 of the Federal Lawyers' Code (*Bundesrechtsanwaltsordnung* – BRAO));
5. for patent attorneys: the Chamber of Patent Attorneys (section 53 of the Patent Attorneys' Code (*Patentanwaltsordnung* – PatanwO));
6. for notaries: the respective President of the Regional Court in whose jurisdiction the notaries practise (section 92 no. 1 of the Federal Notaries' Code (*Bundesnotarordnung* – BNotO));
7. for auditors and chartered accountants: the Chamber of Public Accountants (section 57 (2) no. 17 of the Public Accountants' Code (*Wirtschaftsprüferordnung* – WiPrO));
8. tax advisors and authorised tax agents: the competent local chamber of tax advisors (section 76 of the Tax Advisory Act (*Steuerberatungsgesetz* –

StBerG));

9. for all others: the authority responsible under Federal or *Land* law.

(3) Institutions and persons covered by the Act, the members of their governing bodies and their employees shall, upon request and free of charge, provide the competent authority as defined in subsection 2 **no. 2, if the supervisory activity relates to the institutions and persons referred to in g) and h) thereunder, and no. 9**, as well as the persons and institutions used by the competent authority in the performance of its functions, with information on all business matters and shall produce any documents relevant to compliance with the requirements laid down in this Act. The competent authority may, also without specific reason, conduct examinations of compliance with the requirements laid down in this Act at the offices or premises of institutions and persons covered by the Act and at their cost; the competent authority may delegate the conduct of such examinations to third parties. Officials of the competent authority and other persons used by the competent authority in conducting its examinations may, for this purpose, enter and inspect the offices or premises of institutions and persons covered by the Act during normal business hours. The institutions and persons concerned shall tolerate the measures described in sentences 2 and 3.

(4) The person required to provide information may refuse to do so in response to any questions the answering of which would place him or one of his relatives as designated in section 383 (1) nos. 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) liable to criminal prosecution or proceedings under the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten* – OWiG).

(5) The competent authority pursuant to subsection 2 shall regularly provide the institutions and persons covered by the Act with up-to-date interpretation and practice notes to implement the due diligence requirements and internal controls and safeguards as set forth in this Act.

(6) **Following information by the Federal Ministry of Finance**, the competent authority within the meaning of subsection 2 shall inform institutions and persons covered by the Act of the countries that are recognised as equivalent third countries within the meaning of section 1 (6a). In derogation of sentence 1, such information shall be provided by the Federal Chamber of Lawyers for lawyers and legal advisors who are members of a chamber of lawyers, the Federal Chamber of Tax Advisors for tax advisors and tax agents, the Federal Chamber of Notaries for notaries who are members of a chamber of notaries, and the competent supreme authority at *Länder* level under section 11 (4) sentence 4 for notaries who are not members of a chamber of notaries. The information relating to the equivalence of a third country shall not operate to release the institutions and persons covered by the Act from the obligation of conducting their own risk assessment in the individual case.

Section 16a

Cooperation with the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

(1) Where the competent authorities under section 16 (2) exercise supervision over the institutions and persons defined in section 2 (1) nos. 1 to 6, they shall, for the purposes of Directive 2005/60/EC, and in accordance with:

- 1. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12);**
- 2. Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48); and**
- 3. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84),**

cooperate with the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

(2) Where the competent authorities under section 16 (2) exercise supervision over the institutions and persons defined in section 2 (1) nos. 1 to 6, they shall, upon request, provide the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority in accordance with Articles 35 of Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010 all information necessary for the performance of their functions based on Directive 2005/60/EC and Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010.

Section 17 Administrative fines

(1) An administrative offence shall be deemed to be committed by anyone who wilfully or gross negligently:

- 1. contrary to section 3 (1) no. 1 fails to identify the contracting party correctly, completely, in the prescribed manner, in due time or at all, or contrary to section 3 (2) sentences 3 and 4, fails to identify the customer when accepting or issuing, either correctly, completely, in the prescribed manner, in due time or at all;**
- 2. contrary to section 3 (1) no. 3 fails to establish clarity regarding the existence of a beneficial owner, or fails to do so correctly, completely or in due time;**
- 3. contrary to section 4 (5) sentence 1 fails to establish the name of the beneficial owner;**

4. **contrary to section 6 (2) no. 2 sentence 1 fails to verify the identity of the contracting party correctly, completely or at all, or fails to ensure that the first transaction is carried out from an account opened in the name of the contracting party;**
5. **contrary to section 8 (1) sentence 1, 2, 4 or 5 fails to record any data or information correctly, completely or at all;**
6. **contrary to section 8 (3) fails to keep records and other evidence for at least five years or at all;**
7. **contrary to section 11 (1) sentence 1 fails to file a report correctly, completely, in due time or at all;**
8. **contrary to section 12 (1) sentence 1 discloses information to the instructing party or any third party;**
9. **contrary to section 16 (3) sentence 1 fails to provide any information correctly, completely or at all or fails to produce any documents correctly, completely, in due time or at all; or**
10. **contrary to section 16 (3) sentence 4 fails to tolerate any measure specified thereunder.**

(2) The administrative offence may be punishable by a fine of up to one hundred thousand euros.

(3) The authority designated in section 16 (2) nos. 2 and 3 shall also be the administrative authority as defined in section 36 (1) no. 1 of the Act on Administrative Offences. For tax consultants and tax agents, the tax office (*Finanzamt*) shall be the administrative authority as defined in section 36 (1) no. 1 of the Act on Administrative Offences. Where the competent authority under section 16 (2) no. 9 is the authority responsible under Federal or *Land* law, it shall also be the administrative authority as defined in section 36 (1) no. 1 of the Act on Administrative Offences.

(4) Where the tax office is the administrative authority under **subsection 3** sentence 2, section 387 (2), section 410 (1) nos. 1, 2, 6 to 11, (2) and section 412 of the Fiscal Code shall apply *mutatis mutandis*.