

REGULATIONS OF POLYREG
a self-regulatory organisation (SRO) established
in accordance with Article 25 of the Money-Laundering Act (GwG)

§ 1 Purpose of the regulations

¹ Pursuant to paragraph 22 of the statutes of the association, these regulations set out the duties of care provided for in Chapter 2 of the Federal Law of 10 October 1997 („GwG“; SR 955.0) to combat money-laundering in the financial sector and stipulate how these duties are to be fulfilled.

² In addition, these regulations stipulate, respectively lay down:

- a) the conditions for the affiliation and exclusion of financial intermediaries;
- b) the principles for the training of affiliated financial intermediaries;
- c) the control procedure;
- d) the sanctions applied in the event of breaches of the duty of care.

§ 2 Scope

These regulations apply to all financial intermediaries affiliated to PolyReg, as well as to their governing bodies, managers and employees who carry out functions in the domain of financial intermediation.

§ 3 Guidelines

¹ The financial intermediaries are responsible for organising their own business and for taking all necessary steps to prevent money-laundering and the financing of terrorism.

² The financial intermediaries are required to comply with these regulations, the statutes and any instructions issued by PolyReg. More particularly, the financial intermediaries are required:

- a) to act at all times in accordance with the principle of good faith;
- b) to comply with the legal provisions applying to their business activity and especially all provisions of the GwG, as well as the relevant sections of the Swiss Penal Code („StGB“), including particularly Articles 305^{bis}, 305^{ter}, 260^{ter} and 260^{quinqüies} thereof;
- c) to inform customers clearly of the provisions of the law and in particular of the GwG and its effects on the business relationship;

- d) to document all business relationships in accordance with commercial principles and to preserve the documentation in the manner stipulated by law;
- e) to refrain from taking part in business transactions of a foreign parent company, affiliate or subsidiary in order to circumvent the existing anti-money-laundering regulations or controls.

A. Conditions for affiliation

§ 4 Obtaining membership

¹ A financial intermediary may apply for membership of PolyReg if, in addition to the requirements laid down in the statutes, he satisfies the following conditions:

- a) his internal regulations and organisation ensure fulfilment of the duties provided for in the GwG and these regulations;
- b) he himself, the persons entrusted with administration and management, and all employees who carry out functions in the domain of financial intermediation on his behalf enjoy a good reputation in relation to their activities as financial intermediaries and offer a guarantee of fulfilment of the duties arising out of the GwG and these regulations.

² Otherwise, acceptance is governed by the conditions and procedures for affiliation laid down in the statutes.

§ 5 Membership lists (Article 26 GwG)

¹ PolyReg shall send the Money-Laundering Control Authority („Control Authority“), in accordance with its most recent instructions at the time, information on all affiliated members, on applications for membership which have been refused, on members who have left or been excluded, and on member firms which have gone out of business.

² PolyReg shall provide the Control Authority with the following information on each member, in so far as it is available:

1. company name and address
2. registered office
3. legal form
4. date of establishment
5. corporate purpose
6. areas of business.

§ 6 Overview of the duties of the financial intermediary

¹ The financial intermediary is prohibited from accepting or holding assets deriving from crime or criminal organisations or intended to finance terrorism, or from assisting in the investment or transfer of such assets. The financial intermediary shall be liable to punishment for the offence of money-laundering in accordance with Article 305^{bis} StGB if he engages in acts which are likely to prevent the identification of the source or the tracing or seizure of assets which he knows or must assume derive from a crime.

² The financial intermediary is liable to punishment in accordance with Article 305^{ter} StGB if, while acting in a professional capacity, he accepts, holds, invests or assists in transferring third party assets and fails to establish the identity of the beneficial owner with the care required in the circumstances.

³ More specifically, affiliated financial intermediaries have the following duties:

- a) to identify the contracting party in accordance with §§ 7 et seq;
- b) to ascertain the beneficial owner party in accordance with §§ 18 et seq;
- c) to repeat the identification or to repeat the ascertainment of the beneficial owner, as well as to terminate the business relationship, in accordance with §§ 26 et seq;
- d) to fulfil the special duty of clarification in accordance with §§ 30 et seq;
- e) to fulfil the duty of documentation in accordance with §§ 36;
- f) to take organisational measures in accordance with §§ 39 et seq;
- g) to comply with the duty to report in accordance with §§ 41 et seq;
- h) to block assets and ban the disclosure of information in accordance with §§ 43 et seq.

B. Identification of the contracting party (Art. 3 GwG)

§ 7 Time of identification

¹ The financial intermediary is required to establish the identity of the contracting party by means of a probative document whenever he enters into a business relationship or carries out a spot transaction for a considerable sum with a contracting party not previously identified.

² A business relationship is deemed to be entered into at the time of conclusion of the contract.

³ Where a contract is concluded without the contracting party being present, the necessary information and documents must be obtained without delay. Until this has been done, the financial intermediary may not carry out any transaction or make any related dispositions of assets.

§ 8 Information on the contracting party

¹ Whenever the financial intermediary enters into a business relationship or carries out a spot transaction for a considerable sum within the meaning of § 13, he must obtain the following information:

for natural persons and sole traders: surname, first name (where applicable trading name), date of birth, address and nationality;

² for legal entities, as well as for partnerships and sole proprietors entered in the trade register and domiciled in Switzerland: trading name and domicile address.

³ If a contracting party originates from a country in which birth dates or home addresses are not used, this information will not apply. Such exceptional cases must be documented by means of a signed and dated memorandum.

§ 9 Identification of a natural person

¹ The identity of a natural person is determined as follows: by examining a document issued by a Swiss authority and bearing a photograph (e.g. passport, identity card or driving licence) or by examining a document that authorises entry into Switzerland¹ and is valid at the time of presentation.

² A sole proprietor with domicile in Switzerland may be identified by means of a trade register extract or equivalent document (cf. § 11).

³ In the event of doubt as to whether the document is authentic or whether the photograph is that of the person to be identified, a further probative document must be produced.

⁴ If a business relationship is entered into by letter, the contracting party must identify himself by sending a certified true copy of the means of identification, as well as the information required for identification in accordance with § 8.

§ 10 Absence of identification documents

If a natural person is not in possession of an identification document within the meaning of these regulations, his identity may, by way of exception, be established on the basis of a substitute probative document (e.g. confirmation of residence, US driver's licence, acknowledgement of receipt of documents). Any such exceptional situation must be documented in the form of a signed and dated memorandum.

§ 11 Identification of legal entities and companies

¹ The identity of a legal entity, partnership or corporation sole having its registered office in Switzerland may be established on the basis of a trade register extract issued by the registrar.

¹ This means foreign passports, respectively special travel documents accepted by the Federal Office for Immigration, Integration and Emigration in the Visa and Border Control Instructions („VKG“). The VKG may be obtained from the Federal Office for Immigration, Integration and Emigration, Quellenweg 9/15, 3003 Bern-Wabern or from the Internet at http://www.auslaender.ch/einreise/weisungen/allgemein/a2.voraussetzungen/index_d.asp#A2

² Provided that all the relevant information is supplied, legal entities or partnerships may be identified on the basis of a print-out from a database run by an official authority (e.g. ZEFIX) or from trustworthy privately managed directories or databases (e.g. Teledata, Dun & Bradstreet, Creditreform).

³ Legal entities not entered in the trade register (e.g. associations or foundations) or partnerships with legal capacity must be identified on the basis of their statutes or equivalent documents. For the present purposes, „equivalent documents“ shall be understood to mean, apart from the owner’s identification documents referred to in §9, the deed of establishment, the memorandum of establishment, an auditor’s certificate, a factory inspectorate permit or a written extract from a trustworthy privately managed directory or database (e.g. Teledata, Dun & Bradstreet, Creditreform).

⁴ The trade register extract, the auditor’s certificate or the directory or database print-out must be no more than twelve months old and must correspond to the current situation.

⁵ The financial intermediary shall himself obtain the ZEFIX print-out referred to in Para. 2 or the extract from the directories and databases referred to in Para. 3.

⁶ With the identification of associations, respectively foundations, not entered in the trade register, it is further necessary to identify the persons who enter into the business relationship, in so far as they have power of representation. This condition does not apply to the contracting parties referred to in §12.

⁷ The identity of legal entities and partnerships having their registered office abroad may be checked on the basis of a trade register extract or equivalent document (e.g. a notarised certificate of incorporation, etc) or on the basis of a written extract from an official or trustworthy privately managed database, respectively from a privately managed directory, provided that this supplies all the relevant information.

§12 Legal entities listed on a stock exchange or recognised under public law

¹ The financial intermediary may waive the identification of a legal entity which is listed on a stock exchange in Switzerland or abroad.

² Similarly, the financial intermediary may waive the identification of public law contracting parties which are recognised in Switzerland (e.g. states, cantons, communes or other public law corporate bodies, institutions and their legally competent departments or units, such as the police, fire brigade, schools, etc).

³ This exceptional situation must be documented by means of a signed and dated memorandum and the financial intermediary must satisfy himself as to the power of representation of the natural person acting for the legal entity.

§ 13 Spot transactions

¹ Provided no long-term business relationship is entered into, „spot transactions“ means all cash transactions, in particular money-changing, the sale of travellers' cheques, the encashment of cheques, the cash subscription of bearer bonds (e.g. medium term bonds or loan stock) and the sale and purchase of precious metals, as well as one-off transactions for walk-in customers.

² In the case of spot transactions, there is a duty to identify a contracting party:

- a) where one or more transactions which appear to be linked exceed the sum of CHF 25 000;
- b) where, in money-changing transactions, the denominations of notes or coins in one currency are changed, or coins or notes of one currency are exchanged for another currency and the value of the entire transaction or of a number of apparently linked transactions exceeds CHF 5 000.

³ In any event, the instructing party must be identified in the case of transfers of money and securities, including particularly the transfer of assets (except by physical transport) against receipt of cash, cheques or other means of payment in Switzerland and payment of a corresponding sum in cash or any other form abroad, through a cashless transfer, communication, remittance or other use of a payments or clearing system.

⁴ In the case of transfers of money and securities abroad, all payment orders must indicate the name and where available the account number and domicile of the instructing party or the name and an identification number. „Identification number“ means national identity card numbers, birth dates or customer identification numbers allocated by the financial intermediary.

⁵ If there are grounds for suspicion of possible money laundering in accordance with Para. 1, identification must still be carried out even if the relevant amounts are less than the figures indicated above.

§ 14 Form and handling of documents

¹ The financial intermediary shall have the identification document presented in the original or in the form of a certified true copy.

² The financial intermediary shall place the certified true copy on his files or make a copy of the original document presented. By signing and dating the copy, he confirms that he has had sight of the original or the certified true copy.

§ 15 Certification of authenticity

¹ The certification of the authenticity of the copy of the identification document may be issued:

- a) by a notary or by a public body which customarily issues such certifications

- b) by a Swiss financial intermediary in accordance with Article 2 Para. 2 or Para. 3 GwG or by a foreign financial intermediary who carries on an activity in accordance with Article 2 Para. 2 or Para. 3 GwG, provided that he is subject to an equivalent regulation and supervision in relation to combating money-laundering.

² The certification of authenticity must be no more than twelve months old at the time of the identification.

§ 16 Inability to identify the contracting party

If the contracting party cannot be identified, the financial intermediary must refuse to enter into the business relationship or must terminate it in accordance with the provisions of §§ 27 et seq.

§ 17 Identification of existing clients

¹ In the case of business relationships which were entered into before 1 April 2000, the financial intermediary must carry out a repeat identification.

² The repeat identification must include the formal identification and, where necessary, must ascertain the beneficial owner.

³ If such formal identification is impossible for objective reasons, it may be deferred to the next possible opportunity, provided that a material identification has been made, in other words, provided that the financial intermediary knows the identity of the business partner and the identification has been the object of a written memorandum.

C. Ascertaining the beneficial owner (Art. 4 GwG)

§ 18 Beneficial owner

¹ A beneficial owner may be a natural person or a legal entity carrying on a trading, manufacturing or other commercially conducted business or concluding financial transactions privately with his/its own funds.

² A domicile company cannot be a beneficial owner.

§ 19 Ascertaining the beneficial owner

¹ The financial intermediary must obtain a written declaration from the contracting party stating who the beneficial owner is:

- a) if the contracting party and the beneficial owner are not one and the same person or there is doubt in this regard;
- b) if the contracting party is a domicile company;
- c) if a spot transaction of considerable value within the meaning of Article 13 Para. 2 is being carried out.

d) if a money or securities transfer transaction within the meaning of Article 13 Para. 3 is being carried out.

² The declaration concerning the beneficial owner (Form A) must contain the following information:

- a) for natural persons: surname, first name, date of birth, home address and nationality;
- b) for legal entities: partnerships entered in the trade register and corporations sole with registered office in Switzerland: trading name, address and registered office.

³ The declaration must be signed by the contracting party or by one of its authorised signatories.

⁴ If a contracting party originates from a country in which birth dates or home addresses are not used, this information will not apply. Such exceptional cases must be documented by means of a signed and dated memorandum.

⁵ The ascertainment of the beneficial owner is waived if disclosure would be contrary to the provisions concerning the professional secrecy of lawyers and notaries in their customary activities in accordance with §47 of these regulations.

§ 20 Financial intermediary subject to special legal supervision

¹ If the contracting party is a financial intermediary subject to special legal supervision or a tax-exempt occupational pension institution within the meaning of Art. 2 Para. 4 letter b b GwG, no declaration need be obtained concerning the beneficial owner.

² The following are deemed to be a financial intermediary subject to special legal supervision:

- a) a Swiss financial intermediary within the meaning of Art. 2 Para. 2 GwG;
- b) a foreign financial intermediary who carries on an activity in accordance with Article 2 Para. 2 or Para. 3 GwG, provided that he is subject to an equivalent regulation and supervision in relation to combating money-laundering.

³ However, if abuse is suspected or if general warnings have been issued by the Control Authority with regard to an individual institution or to institutions in a particular country, then even a contracting party in accordance with Para. 1 must provide a declaration concerning the beneficial owner.

§ 21 **Collective investment undertakings or holding companies**

¹ The declaration concerning beneficial owners is waived where the contracting party is an undertaking for collective investment or holding company, if they confirm in writing to the financial intermediary that all existing and future investors have acquired or will in future acquire their participating interest exclusively through a financial intermediary in accordance with Art. 2 Para. 2 GwG. The same applies to foreign institutions analogous to those referred to in Art. 2 Para. 2 GwG if they are subject to a comparable supervision in relation to combating money-laundering.

² If the confirmation referred to in Para. 1 cannot be given, the financial intermediary must, in the case of collective investment undertakings or holding companies with more than twenty beneficial owners, obtain a declaration for those investors who alone or by mutual agreement represent at least five per cent of the assets contributed. In the case of up to twenty beneficial owners, the information required in accordance with § 19 Para. 2 must be obtained from all of them.

³ Undertakings for collective investment or holding companies which are listed on a stock exchange do not need to give any declaration with regard to the beneficial owners.

§ 22 **Doubt as to beneficial ownership**

Doubt may exist as to the beneficial ownership of the contracting party in the following cases in particular:

- a) if a power of attorney is granted to a person who is not in a sufficiently close relationship to the contracting party;
- b) if the assets contributed by the contracting party are manifestly beyond his financial resources;
- c) if the business relationship is entered into unusually without any preliminary personal discussion;
- d) if anything else unusual is revealed through the contact with the contracting party.

§ 23 **Domicile companies**

¹ Domicile companies are organised associations of persons (e.g. companies, trust companies) and organised asset vehicles (e.g. anstalts, trusts)

- a) which do not carry on any trading, manufacturing or other commercially conducted business and
- b) which do not maintain their own premises or employ their own personnel or which employ personnel solely to carry out administrative tasks.

² In the case of domicile companies, the financial intermediary must always obtain from the contracting party a written declaration of who the beneficial owner is. A domicile company cannot itself be a beneficial owner.

³ Legal entities and companies registered in Switzerland which seek to uphold the interests of their members through mutual self-help or which have mainly political, religious, scientific, artistic, charitable, social or similar objects are not deemed to be holding companies if the objects laid down in their statutes are actually pursued.

§ 24 Associations of persons, trusts and other asset structures

¹ In the case of associations of persons, trusts or other asset structures in which no specific person is the beneficial owner, the declaration by the contracting person must contain the information indicated in § 19 Para. 2 for the following persons:

- a) the effective (not fiduciary) founder,
- b) the persons who are able to issue instructions to the contracting party or its governing bodies,
- c) the persons, broken down by category, who may qualify as beneficiaries.

² In the case of revocable structures, the declaration of the contracting party must contain the information indicated in § 19 Para. 2 for the effective founder.

§ 25 Inability to ascertain beneficial ownership

If doubts remain as to the accuracy of the declaration made by the contracting party and these cannot be removed by further clarifications, the financial intermediary must refuse to enter into the business relationship or must terminate it in accordance with the provisions of §§ 27 et seq.

D. Repeat identification or establishment of the identity of the beneficial owner (Art. 5 GwG) and termination of the business relationship

§ 26 Repeat identification or determination of the beneficial owner

During the course of the business relationship, the identification of the contracting party or the determination of the beneficial owner must be repeated if doubts arise:

- a) as to whether the information on the identity is accurate,
- b) as to whether the contracting party and the beneficial owner are one and the same,
- c) as to whether the declaration given by the contracting party with regard to the beneficial owner is accurate.

§ 27 Termination of the business relationship

¹ Subject to § 29, the financial intermediary must terminate the business relationship

- a) if, even after carrying out a repeat identification or repeat determination of the beneficial owner, doubt persists with regard to the particulars of the contracting party;
- b) if the contracting party refuses a repeat identification or repeat determination of the beneficial owner.

² The existing relationship must be terminated as soon as possible without breach of contract. If, due to instructions for correspondence, the financial intermediary is unable to contact the contracting party, he may defer the termination of the business relationship until the next contact with the contracting party.

§ 28 Procedure for the withdrawal of assets

¹ If the financial intermediary terminates or refuses to enter into a business relationship for the above-mentioned reasons, he may permit the withdrawal of assets in an amount exceeding CHF 100 000 only in a form leaving a paper trail enabling the cantonal prosecution service to trace them.

² This condition does not apply to spot transactions involving cash and precious metals.

§ 29 Restriction on termination of the business relationship

If the prerequisites for the reporting obligation in accordance with Art. 9. Para. 1 GwG are satisfied, the business relationship with the contracting party may not be terminated until the asset freezing period (Art. 10 Para. 2 GwG) has expired.

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E. Special duty of clarification (Art. 6 GwG)

§ 30 Grounds for special clarification

¹ The financial intermediary must clarify the financial background and purpose of a transaction or business relationship in the following instances:

- a) if a business relationship or transaction seems unusual to him, unless it is manifestly legal;
- b) if there is evidence to suggest that assets derive from crime, or are subject to the disposition of a criminal organisation (Art. 260 ter Clause 1 StGB), or serve to finance terrorism;
- c) in the event of a business relationship or transaction carrying an increased risk, as laid down in § 31 or § 32.

§ 31 **Business relationship carrying an increased risk**

¹ A business relationship carries an increased risk:

- a) where the registered office, domicile or location of the business activity of the contracting party or the beneficial owner or his nationality relate to a country which has taken no effective steps to combat money-laundering;
- b) where the amount of the assets or the scale of the transactions appears unusual, having regard to the customer's profile or the circumstances;
- c) where the business relationship is entered into with politically exposed persons.²

² For the purposes of Para. 1, the financial intermediary may lay down his own independent criteria for business relationships carrying an increased risk for his own area of business and clientele. He must submit such criteria to the PolyReg administrative office for information.

§ 32 **Transactions with increased risk**

¹ A transaction carries an increased risk:

- a) where the amount of the assets or the scale of the transactions appears unusual, having regard to the customer's profile or the circumstances;
- b) where, in the specific business relationship or in comparable business relationships, considerable deviations are noted from customary transaction types, volumes and frequencies;
- c) where cash, bearer bonds or precious metals with a value of CHF 100 000 or more are physically contributed or withdrawn in a single transaction or series of transactions;
- d) where, in transfers of money or securities, one or more transactions which appear to be interrelated amount to or exceed a sum of CHF 5 000;
- e) where politically exposed persons within the meaning of § 31 Para. 1 letter c) are involved.

² For the purposes of Para. 1, the financial intermediary may lay down his own independent criteria for transactions with increased risk for his own area of business and clientele. He must submit such criteria to the PolyReg administrative office for information.

² Politically exposed persons (PEPs) are persons occupying prominent public positions abroad, such as heads of state, heads of government, senior politicians at national level, senior civil servants at national level in the administration, judiciary, military and political parties, top executives of state corporations of national significance, as well as undertakings and persons known to be close to the said PEPs through family, personal or business connections.

§ 33 Monitoring of business relationships and transactions

¹ The financial intermediary shall take the necessary staffing and organisational measures for an effective monitoring of business relationships and transactions.

² Upon entering into an intended long-term business relationship, the financial intermediary must obtain, document and from time to time update the information needed for monitoring purposes (customer profile).

³ In particular, the financial intermediary must, within the framework of intended long-term business relationships, know his contracting parties well enough to be able to decide whether or not a transaction or a business relationship is unusual.

§ 34 Timing and content of clarifications

¹ The financial intermediary must commence clarifications as soon as the prerequisites for a special duty of clarification are satisfied.

² Depending on the circumstances, the points to be clarified are as follows:

- a) the source of the assets contributed;
- b) the application of assets withdrawn;
- c) the background of payments received;
- d) the source of the assets of the contracting party and the beneficial owner;
- e) the professional or business activity of the contracting party and the beneficial owner;
- f) the financial situation of the contracting party and the beneficial owner;
- g) in the case of legal entities, who controls them;
- h) in the case of transfers of money and securities, the surname, first name and address of the beneficiary.

§ 35 Procedure and consequences

¹ Depending on the circumstances, the clarifications are to be effected as follows:

- a) by obtaining written or verbal information on the contracting party or the beneficial owner;
- b) by visiting the place of business of the contracting party or the beneficial owner;
- c) by consulting generally accessible public sources and databases;
- d) by making inquiries with third parties.

² The financial intermediary will check the results of the clarifications for plausibility and document them.

³ Subject to § 29, the financial intermediary must terminate the business relationship in accordance with § 27 and § 28:

- a) where, even after complying with the duty of clarification, doubt persists about the information of the contracting party;

- b) where he has a strong suspicion that he has knowingly been given false information about the identity of the contracting party or the beneficial owner.

F. Duty to document and call in third parties (Art. 7 GwG)

§ 36 Drawing up and organisation of documents

¹ The financial intermediary is required to draw up such documents and records of his relations with the contracting party and the transactions carried out as will permit a third party expert and particularly PolyReg and its inspection agencies to check the financial intermediary's compliance with the regulations and the GwG.

² The financial intermediary shall, in accordance with § 44 Para. 1 of the statutes, keep a GwG register of all business relationships relevant to the GwG and shall document identifications, findings and clarifications in accordance with § 7 to § 34, as well as reports in accordance with § 9 GwG.

³ The documents must permit the reconstruction of each individual transaction.

⁴ In accordance with Art. 7 GwG, the documents and records must be kept in a secure place so that the financial intermediary can, within a reasonable period, meet requests for information from PolyReg, its designated inspection agencies and the Control Authority, as well as seizure orders from the prosecution services.

§ 37 Conditions for calling in third parties

¹ The financial intermediary may call in another financial intermediary to identify the contracting party, to determine the beneficial owner, to carry out a repeat identification or a repeat determination of the beneficial owner and to implement the special duty of clarification, provided that such financial intermediary is subject to an equivalent supervision and regulation with regard to combating money-laundering.

² Upon written request, PolyReg may, if there are sufficient grounds, grant a financial intermediary permission to call in a third party, who is not a financial intermediary within the meaning of Para. 1, to carry out duties of care, provided that he concludes a written agreement with the said third party to ensure that this latter is carefully selected, instructed in his tasks and monitored with regard to the fulfilment of the duty.

§ 38 Responsibility of the financial intermediary where third parties are called in

¹ In any event, the financial intermediary shall remain liable for the proper fulfilment of the tasks delegated.

² The financial intermediary shall take appropriate steps (confirmation of sender, encrypted transmission, etc) to ensure that the copies in his possession and to be preserved correspond to the originals and documents which have served to fulfil the duties of care.

³ Any more extensive delegation of the tasks by the person so authorised is excluded.

G. Organisational measures (Art. 8 GwG)

§ 39 Measures to be taken by PolyReg

¹ Where necessary or when conditions change, PolyReg will take supplementary measures to prevent and combat money laundering.

² Within the framework of such measures, PolyReg may issue instructions particularly with regard to:

- a) the cases in which the executive director of PolyReg must be informed;
- b) the modalities for the practical fulfilment of the duty of documentation by the financial intermediary (e.g. by supplying forms, etc).

³ The PolyReg designated money-laundering office is available to provide the financial intermediary with advice on issues relating to the prevention and combating of money laundering. Enquiries should be addressed to the executive director or - if professional secrecy has to be protected - to a member of the executive delegation.

§ 40 Measures to be taken by the financial intermediary

A financial intermediary with more than five employees carrying on an activity subject to the GwG must draw up a written plan for control of in-house procedures. This shall include, in particular, instructions and information on:

- a) the cases of which PolyReg must be informed;
- b) the procedures to be followed when entering into a new business relationship;
- c) the persons who make decisions on entering into and continuing with business relationships carrying an increased risk;
- d) the content and management of GwG file;
- e) the archiving and storing of documents;
- f) the in-house allocation of tasks and responsibilities.

H. Duty to report (Art. 9 GwG)

§ 41 Wording of the law

¹ A financial intermediary who knows or who has a reasonable suspicion that the assets involved in the business relationship relate to a criminal activity in accordance with Article 305 *bis* StGB, or that the assets originate from a crime or are subject to the power of disposition of a criminal organisation (Article 260 *ter* Clause 1 StGB), must immediately notify the Money-Laundering Reporting Office (the „Reporting Office“ - Article 23 GwG).

² The reporting duty does not apply to lawyers and notaries, in so far as their activity is subject to the professional secrecy provisions under Article 321 StGB.

§ 42 Form of report

¹ The report must be made in writing, in accordance with Article 9 GwG.

² It must be sent by fax, or, if no fax machine is available, by first class post. An email notification is not sufficient.

³ As a rule, the report must be made on the official form provided by the Money Laundering Reporting Office.

⁴ In every case, the Reporting Office must be informed who is responsible for the report.

⁵ The financial intermediary shall ensure that the said person can be reached during business hours.

I. Freezing of assets (Article 10 GwG)

§ 43 Asset freeze and information ban

¹ After notifying the Reporting Office, the financial intermediary must immediately freeze any assets entrusted to his care which relate to the notification.

² If the financial intermediary is unable to freeze the contracting party's assets on his own, he must so inform the Reporting Office.

³ The financial intermediary must keep the assets frozen until he receives an order from the competent prosecution service. In any event, such period shall not exceed five business days from the date on which the Reporting Office was notified.

⁴ During the period of the asset freeze he has imposed, the financial intermediary must not disclose the report to the parties concerned or to third parties. The information ban referred to in Art. 10 Para. 3 GwG also applies to PolyReg.

⁵ The financial intermediary must send PolyReg a copy of the report immediately after the expiry of the asset freeze.

§ 44 Action in the absence of an official order

If the financial intermediary does not receive an order to maintain the asset freeze from the prosecution service within the statutory time limit of five business days, he may decide at his own discretion whether and within what framework he wishes to continue the business relationship.

§ 45 **Immunity from criminal responsibility and civil liability**

The financial intermediary may not be prosecuted or held liable for breach of contract or breach of official, professional or trade confidentiality, arising from the report in accordance with Art. 9 GwG or Art 305 ^{ter} Para 2 StGB and the related asset freeze, provided that he has acted with the proper care due in the circumstances.

K. Special provisions for persons subject to professional secrecy

§ 46 **Lawyers and notaries**

Lawyers and notaries are released from the provisions concerning the duty of care and the duty to report if they accept assets from third parties to which they themselves hold no beneficial title and administer such assets in accounts /safe custody deposits with regard to which they are subject to the legal obligation of professional secrecy under Article 321 StGB.

§ 47 **Accounts subject to professional secrecy**

¹ Accounts/safe custody deposits used and identified as being exclusively for the following purposes are subject to professional secrecy under Article 321 StGB:

- a) the settlement and, where expedient, the related short-term investment of advances for court costs, sureties, public law charges and the like, as well as payments to or from parties, third parties or authorities (identified for example as „Client funds - Settlement account/safe custody deposit“);
- b) the deposit and, where expedient, the related investment of assets from a pending partition or execution of an estate (identified for example as „Inheritance“ or „Partition of estate“);
- c) the deposit and, where expedient, the related investment of assets from a pending division of property in a divorce or separation (identified for example as „Division of property - divorce“);
- d) the deposit and, where expedient, the related investment of assets in civil or public law actions (identified for example as „Escrow account/safe custody deposit“, „Blocked share purchase deposit“, „Deposit of securities - contractor’s bond“, „Deposit of securities - real estate capital gains tax“, etc.);
- e) the deposit and, where expedient, the related investment of assets in civil or public law actions before ordinary courts or arbitration tribunals and in enforcement proceedings (identified for example as „Advance payments“, „Security for court costs“, „Bankruptcy assets“, „Arbitration proceedings“, etc.).

² The executive delegation of PolyReg shall be responsible for resolving issues relating to the demarcation between activity as a financial intermediary and forensic activity as a lawyer or notary, while upholding professional secrecy.

L. Checks

§ 48 Inspection agencies

¹ By accepting the statutes, the members authorise the executive board to appoint permanent independent inspection agencies, assigned the task of carrying out the periodic ordinary inspection of members.

² Checks and examinations of compliance with the duties of care and reporting by persons subject to professional secrecy will be conducted by a natural person designated by PolyReg, who is himself subject to professional secrecy (inspection office for ordinary inspections and independent investigators for extraordinary inspections). The inspection report shall be drawn up in compliance with professional secrecy and shall be sent directly to the executive delegation.

³ The inspection agencies shall act on behalf of PolyReg, but at the expense of the financial intermediary being inspected. They shall report the results of their examination in writing to the executive director, care of the executive board.

§ 49 Independent investigators

Special inspections to clarify any irregularities or violations identified shall, unless conducted by the executive director himself, be carried out by an independent investigator, acting on behalf of the executive board and reporting his findings in writing to the executive board. The financial intermediary shall bear the costs of the special inspection by the independent investigator.

§ 50 Ordinary periodic inspection

¹ PolyReg shall ensure that every member is inspected on his own premises with regard to compliance with the regulations of the association and his duties of care and reporting. The inspection will be conducted by an inspection agency once every 12 months on average.

² The executive director of PolyReg shall instruct the inspection agency to inspect a particular financial intermediary on or by a specific date. He may grant extensions for good reasons.

³ The executive director may, at the written request of a member, defer the ordinary inspection once or twice by a year:

- a) if the last examination was carried out by a PolyReg inspection agency and it was not a first inspection;
- b) if the two previous inspections did not reveal any material shortcomings; By way of derogation from letters a) and b), one previous examination is sufficient in the case of financial intermediaries who are inactive or no longer in professional operation;

- c) if there is little risk of money-laundering, given the scale of the member's business (volume of transactions, assets under management, number of clients, etc), the origin of the clients and the stability of the business relationships.

The grounds for the acceptance or rejection of the request must be documented.

⁴ The request for the first or second postponement of the inspection must be sent to the administrative office within 6 respectively 18 months of the last ordinary inspection. This shall be without prejudice to the right of PolyReg to order an ordinary inspection at any time without giving reasons.

⁵ Notice shall be given of the inspection unless its purpose requires otherwise. The inspection shall last at least as long as the previous one.

⁶ The financial intermediary being inspected must present the inspection agency with documents and records evidencing compliance with the duties. The inspection agency may have sight of the financial intermediary's bookkeeping and the vouchers for the accounts of his firm or his clients. In addition, the inspection agency must be provided with all relevant information.

⁷ The inspectors shall identify themselves to the financial intermediary by means of a letter of appointment issued by PolyReg. The inspectors and PolyReg shall protect the business or professional secrecy of the members.

§ 51 **Content of the inspection**

¹ The inspection agencies shall check compliance with the provisions of the GwG, the statutes and these regulations.

² The inspection shall proceed in accordance with the terms of the audit plan and shall, in particular, cover:

- a) whether the documents required to implement the duties of identification and documentation have been properly drawn up and preserved;
- b) whether the said documents permit it to be concluded that the duties of identification and clarification have been complied with;
- c) whether the duty to report has been properly complied with;
- d) whether the duty to provide training has been complied with and the staff have adequate knowledge, or whether an in-house training plan has been fully implemented.

³ The inspection shall also cover whether the conditions for continued membership of PolyReg are satisfied and whether all changes have been notified immediately in accordance with § 8 of the statutes.

⁴ The inspection agency shall forward a copy of its report to the executive director of PolyReg within no more than 14 days from the conclusion of its inspection. In addition, it shall give the executive director immediate verbal notice of any breaches or reasonable suspicion thereof. The executive board will decide on what action to take (appointment of an independent investigator, sanctions, report to the Control Authority).

§ 52 **Extraordinary inspection**

¹ An independent investigator will be appointed to examine any grounds for suspicion or irregularities, as well any breaches identified. He will report to the executive committee or executive delegation of PolyReg. He will conduct a detailed examination of any suspicious or obscure transactions.

² The independent investigator will gather evidence for the files and draw up a written report of his findings. His report may also call for the application of sanctions.

³ The member concerned must assist the independent investigator and permit him to carry out all necessary inspections.

⁴ The costs of the extraordinary investigation shall be determined by the executive board. As a rule, they will be borne by the member. The executive director of PolyReg will make the necessary arrangements in this regard.

M. Sanctions

§ 53 **Sanctions**

¹ The following sanctions may be applied against a financial intermediary if he is held to be in breach of the regulations, the statutes and the GwG, including in particular the duties of care (Article 3-8 GwG), the duty to report (Article 9 GwG) and the duty to provide training (Article 8 GwG):

- a) warning;
- b) penalty of CHF 300 to CHF 300 000
- c) threat of exclusion;
- d) exclusion from PolyReg.

² Where necessary, the sanction may be combined with a demand to restore the proper legal situation within a maximum period of three months. The demand may be combined with instructions and conditions for the internal organisation of the financial intermediary.

§ 54 **Financial penalties**

¹ Any financial penalties applied must be in proportion to the seriousness of the breach, the degree of culpability and the economic capacity of the financial intermediary. The fact that the state applies measures and/or penalties at the same time shall not prevent the association from imposing its own sanctions. However, such penalties should be moderated if the combination of penalties would be unreasonably harsh.

² In the case of minor breaches arising out of negligence, a warning may be given instead of a financial penalty.

§ 55 **Exclusion**

¹ Exclusion may be ordered in the event of repeated breaches of the regulations or the statutes, if despite warning, the financial intermediary concerned fails to restore the regulatory or statutory situation within the time limit set.

² A member will be excluded if he no longer satisfies the conditions required to retain membership and particularly if he does not properly fulfil his duties under the GwG, or if he can no longer guarantee irreproachable business activity in terms of personnel and organisation and fails to restore the proper situation within a fixed time limit of at most three months.

³ A member must be excluded if he breaches the provisions of the GwG wilfully or through gross negligence, particularly with regard to the duty to report.

⁴ In any event, the exclusion or threat of exclusion may also be accompanied by a financial penalty.

§ 56 **Enforcement of exclusion**

¹ If the financial intermediary consists of a single person or is a corporation sole, then he or the corporation shall be excluded from the association.

² Small businesses with fewer than 5 employees or partners shall also be excluded as a whole from the association if all concerned are to blame for a wilful breach, where through tolerance or negligence, they have contributed to it or made it possible.

³ If the financial intermediary consists of a number of persons,³ then the persons who wilfully violated the duty to report must be excluded from the financial intermediary's organisation within a maximum period of three months and must cease acting for him in the domain of financial intermediation with immediate effect.

³ For example, the affiliated financial intermediary is a natural person who has employees, or the affiliated financial intermediary is a partnership or a legal entity which has employees.

⁴ In the case referred to in the preceding paragraph, it is not only the direct initiator of the breach of the duty to report who must be excluded from the business but also other persons within the financial intermediary's organisation who, through their acts or omissions, wilfully contributed to the breach.⁴

⁵ PolyReg may decide not to exclude the financial intermediary if it can be shown that he is able to restore the situation to normal within a short period of time and in any event within a maximum of three months and that he can guarantee long-term fulfilment of his duties under the GwG. Otherwise, the financial intermediary must be excluded from PolyReg.

§ 57 Report to the Control Authority

¹ If disciplinary or exclusion proceedings which may result in financial penalties or exclusion from PolyReg are instituted against an affiliated financial intermediary, the decisions concerning the opening and conclusion of the proceedings shall be disclosed to the Control Authority.

² If the proceedings are instituted against a person subject to professional secrecy, the executive delegation must take the necessary steps to ensure that professional secrecy is maintained (for example by anonymising documents).

§ 58 Internal appeal procedure

In accordance with § 37 of the statutes, all sanction decisions may be appealed to the arbitral tribunal.

N. Training

§ 59 Duty to provide training - Implementation and dispensation

¹ Financial intermediaries and all employees concerned in the domain of financial intermediation are required to complete the PolyReg training courses. Employees must also be provided with in-house training concerning the measures and instructions adopted by the financial intermediary to prevent money-laundering.

² The training consists of basic training and annual further training.

§ 60 Implementation of training

¹ Unless training is provided directly by PolyReg itself, the responsibility for carrying out training lies with the organisation commissioned by PolyReg. The executive director may, upon prior request, recognise that the training requirements are satisfied through attendance at a different training course.

⁴ Particularly in the case of errors on the part of the training officer(s), or of managers with regard to issuing, communicating and implementing internal instructions or with regard to internal controls in connection with the implementation of the provisions to combat money-laundering.

² PolyReg may authorise in-house training to be provided by the financial intermediary himself if he has a training officer with the necessary know-how. In such an eventuality, the financial intermediary must draw up a detailed training programme to be presented to the executive board for approval. In such an eventuality, PolyReg shall supervise the implementation of the training programme. The inspection agencies shall check and document compliance on the occasion of their inspection.

³ New employees and newly accepted financial intermediaries shall be given basic training within an appropriate period and in any event within six months. Thereafter, they shall take part in further training once a year.

§ 61 Dispensation from training

¹ If new employees concerned with the domain of financial intermediation have already received training elsewhere in the duties and implementation of the GwG, the member may apply in writing to PolyReg for a dispensation. The application must be made within three months, stating the reasons. Such employees must be given further training by the member with regard to the PolyReg regulations and his own internal measures and instructions to prevent money-laundering.

² Persons employed in the domain of financial intermediation⁵ by a financial intermediary who is not professionally active shall be relieved of the obligation of annual further training so long as the member does not carry on a professional activity. However, if more than three years elapse between the last training course and a switch to professional activity, the persons concerned must attend another basic training course. The executive director may permit exceptions upon written request.

§ 62 Aim of training

¹ In order to ensure a reliable implementation of the GwG, persons employed in the domain of financial intermediation must have a knowledge of the legal requirements appropriate to their grade, of the different forms of money-laundering, of the PolyReg regulations and of the in-house measures taken to prevent money laundering.

² The training program shall impart knowledge on the regulations aimed at combating money laundering, including particularly the duties of care (Article 3-8 GwG), the duty to report (Article 9 GwG), the freezing of assets (Article 10 GwG) and the ban on informing affected parties or third parties that a report has been sent (Article 10 Paragraph 3 GwG). It must also provide information on the conditions for the implementation of the GwG, the relevant provisions of the penal code (Article 260^{ter}, Article 260^{quinquies}, Article 305^{bis} and Article 305^{ter} StGB), the PolyReg regulations and the in-house measures to prevent money laundering.

⁵ Order of 20 August 2002 issued by the Money-Laundering Control Authority concerning the professional exercise of financial intermediation in the non-banking sector (VB-GwG, the so-called Bagatellverordnung, SR 955.20)

³ PolyReg shall inform its members in writing of the training offered by the association and shall draw up a training plan to this end.

§ 63 Final provisions

These regulations were approved by the executive board of PolyReg on 10 November 2004 and shall come into effect after approval by the Money-Laundering Control Authority.