

Information leaflet for the engagement of third parties (external auxiliary personnel) for the performance of duties of due diligence and / or as AMLA Special Department

1. General

An external auxiliary person (third party) is any person who is neither a body nor an employee of the member.

Subject to the provisions of Art. 85 et seq. of the SRO Regulations, a member may engage the services of external auxiliary personnel for the following activities, in particular:

- a) As AMLA Special Department (AMLA Officer and AMLA Deputy)
- b) For the fulfilment of the following duties of due diligence:
 - Identification of the customer
 - Establishment of the controlling person and/or beneficial owner of the assets
 - Additional clarifications

2. Admissible external auxiliary personnel

A prerequisite for any engagement of an external auxiliary person is that the person concerned was carefully selected by the member and provides assurance of proper business conduct. The member must also instruct and control the external auxiliary person in relation to his duties. Part of the careful selection and instruction is to ensure that the external auxiliary person is trained and receives regular ongoing training in the areas of the AMLA and SRO Regulations that are relevant to him.

The VQF SRO deems, in principle, in relation to the external auxiliary person, that the obtaining of a curriculum vitae and a current extract from the criminal records is sufficient evidence that a natural person was carefully selected. If the third party is to be engaged solely for the performance of individual, simple duties of due diligence (e.g. solely for the production of copies of identification documents), after consultation with the VQF SRO the evidence may also be provided by other means. If the member is active in a field of business that is considered to be of increased risk (e.g. the money and asset transfer business), the VQF SRO may require the provision of additional information / documents on the external auxiliary person as evidence of careful selection. Legal entities as external auxiliary persons are deemed to have been carefully selected, in principle, if they are subject to equivalent supervision and regulation with regard to the prevention of money laundering and terrorist financing.

In principle, only an expert natural person whose domicile or habitual residence is in Switzerland may be engaged as the AMLA Special Department (AMLA Officer and AMLA Deputy)¹.

A natural person or legal entity domiciled or resident in Switzerland or abroad may be engaged for the fulfilment of duties of due diligence pursuant to section 1 b).

¹ Subject to the exemption provision of Art. 86 para. 5 SRO Regulations for specialised compliance companies etc.

3. Special exemption by the VQF SRO

Prior special exemption by the VQF SRO is necessary in principle if the AMLA Special Department is to be manned by external auxiliary personnel².

The written agreement between the member and the external auxiliary person (see section 4) must be submitted with the application for a special exemption. In addition, the member must state in his application the reason or reasons why in relation to its size or organisation it is unable to establish its own Special Department, or why the establishment of such would be disproportionate.

Special exemption is not necessary in principle for the engagement of an external auxiliary person for the fulfilment of duties of due diligence pursuant to section 1 b). VQF verifies compliance with the regulatory requirements on the occasion of the periodic SRO audits. However, the member may voluntarily submit the relevant agreement with the external auxiliary person to VQF for a review (subject to a charge).

If a member wishes to engage a third party in relation to other duties of due diligence, it must previously submit an enquiry to the VQF SRO concerning whether and under what conditions this is permitted.

Engagement of	Financial intermediary	Person / Company within Group structure	Other
for the fulfilment of duties of due diligence acc. to Art. 85 para. 1 SR Regulations	Possible No written agreement required	Possible Upon provision of evidence of Group structure, no written agreement required	Possible Written agreement required
for the fulfilment of other duties of due diligence	Application for exemption to AK Other requirements in individual cases	Application for exemption to AK Other requirements in individual cases	Application for exemption to AK Other requirements in individual cases
for the implementation of the duty to report and the freezing of assets	Not possible	Not possible	Not possible
as AMLA Officer and / or AMLA Deputy	Application for exemption to AK Written agreement required Evidence of need / disproportionality	Possible Upon provision of evidence of Group structure and employment relationship, also possible without application for exemption and written agreement	Application for exemption to AK Written agreement required Evidence of need / disproportionality

4. Written agreement between member and external auxiliary person

The member must in principle conclude a written agreement with the external auxiliary person.

This applies in any case where the AMLA Special Department is to be outsourced to a third party². If the above-mentioned duties of due diligence pursuant to section 1 b) are merely delegated to

² Subject to the exemption provision of Art. 87 SRO Regulations for corporate group structures.

a third party, a written agreement is not necessary if the third party is an affiliate within the corporate group or another financial intermediary who is subject to equivalent supervision and regulation with regard to the prevention of money laundering and terrorist financing³.

Depending on whether an external auxiliary person is to be engaged for the AMLA Special Department or for the fulfilment of duties of due diligence, other or additional elements must be regulated in the written agreement (see table below). The member is free to supplement the agreement with the external auxiliary person with additional items.

	Items to be regulated	Agreement concerning delegation of AMLA Special Department (section 1 a)	Agreement concerning delegation of duties of due diligence (section 1 b)
1.	Detailed description of the delegated field of activity (exactly which tasks and which duties of due diligence is the third party to perform?).	X	X
2.	Duty to report pursuant to Art. 9 AMLA and duty to freeze assets pursuant to Art. 10 AMLA only with the participation of an in-house person or the member (employee or body of the member).	X	X
3.	Duty to comply with the AMLA, the VQF SRO Regulations and - if applicable - the member's internal policies.	X	X
4.	Duty to transfer files: The third party is obliged to transfer to the member all the documents that have served the fulfilment of his duties. In addition, the third party must confirm that the transferred documents correspond to the originals.	X	X
5.	Member's right to instruct and control (including the member's right to instruct and control with respect to the basic and advanced training to be attended by the external auxiliary person).	X	X
6.	Designation of an in-house person who is responsible for controlling the external auxiliary person.	X	--
7.	Right of member and VQF SRO to access and inspect all relevant documents.	X	--
8.	Duty of direct disclosure to the VQF SRO.	X	--
9.	Prohibition of further delegation, i.e. the third party may not engage any other external auxiliary personnel for	X	X

³ For the precise requirements for a waiver of a written agreement see Art. 85 para. 2 SRO Regulations.

	the performance of its duties.		
10.	Compensation (who compensates the external auxiliary person, and in what way?).	X	X

VQF may in individual cases prescribe additional requirements for the agreement. This applies, in particular, when a member systematically outsources duties of due diligence or operates in a field of business which is considered to be of increased risk (e.g. the money and asset transfer business).

5. Other

In cases where no SRO affiliation or FINMA authorisation exists, the provisions of Art. 2 para. 2 letter b MLO⁴ apply for the involvement of external auxiliary personnel in financial intermediary activities (e.g. the performance of asset management). In this case, the written agreement between the member and the external auxiliary person must (also) include the items pursuant to Art. 2 para. 2 letter b numerals 1-5 MLO.

Engagement of:	Financial intermediary	Person / Company within Group structure	Other
For the exercise of FI activities	Requirements acc. to Art. 2 para. 2 letter b MLO	Requirements acc. to Art. 2 para. 2 letter b MLO	Requirements acc. to Art. 2 para. 2 letter b MLO

Authorisation from the VQF SRO is not necessary for the involvement of external auxiliary personnel in financial intermediary activities. VQF verifies compliance with the legal requirements on the occasion of the periodic SRO audits. However, the member may voluntarily submit the relevant agreement with the external auxiliary person to VQF for a review (subject to a charge).

Collaboration with an illegally operating financial intermediary may violate the member's assurance of proper business conduct.

⁴ Ordinance on the Prevention of Money Laundering (Money Laundering Ordinance of 11 November 2015 (SR 955.01)
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