

Checklist – AMLO Auxiliary Person Agreement

A financial intermediary may engage agents as auxiliary persons for the performance of its AMLA-relevant activities without requiring them to join a self-regulatory organization (SRO) as financial intermediaries themselves. However, in order for such auxiliary persons to be covered by the financial intermediary's regulatory framework, they must comply with the requirements set out in Art. 2 para. 2 lit. b of the Ordinance on Combating Money Laundering and Terrorist Financing (AMLO).

In particular, auxiliary persons must:

- be subject to the instructions and supervision of the appointing financial intermediary;
- be carefully selected by the financial intermediary. At a minimum, this means:
 - The auxiliary person must be trustworthy and have a good reputation (references, criminal record extracts, background checks regarding previous activities);*
 - The auxiliary person must possess sufficient knowledge for the activities to be performed and be capable of carrying them out diligently and properly (CV, diplomas, certificates);*
 - The auxiliary person must have implemented adequate organizational measures enabling it to properly perform the delegated activities;*

(*to be documented by the principal)

The auxiliary person must enter into a written agreement with the financial intermediary (= the principal). This agreement must **expressly** regulate:

- how the auxiliary person will be integrated into the financial intermediary's organizational measures for the prevention of money laundering and terrorist financing pursuant to Art. 8 AMLA and how appropriate training and continuing education will be ensured;
- the appropriate integration into AMLA-relevant control and monitoring processes. In particular, this must include ensuring a comprehensive detection of threshold exceedances and the fulfilment of the related due diligence obligations. These requirements apply irrespective of whether the auxiliary person itself is regulated as a financial intermediary;
- that the auxiliary person acts exclusively in the name of and on behalf of the financial intermediary;
- that and how the auxiliary person is remunerated by the financial intermediary (and not by the end customer).

In the case of money or value transfer services (→ within the meaning of §14 para. 2 footnote 1 of the SRO PolyReg Regulations), the agreement must additionally and explicitly stipulate:

- that the auxiliary person acts exclusively for a single affiliated financial intermediary (= the principal) (exclusivity declaration of the auxiliary person).

Important: If the auxiliary person cannot or does not wish to provide the exclusivity declaration in the agreement, or if this exclusivity is effectively circumvented in practice, the agent **cannot** qualify as an auxiliary person within the meaning of the AMLO and must instead be properly **regulated** as an independent **financial intermediary**, for example through membership in an SRO. The conclusion of a pure **agency agreement** remains permissible in such cases. However, the principal must verify the regulatory status of the agent before entering into the agreement.*

The agreements concluded with auxiliary persons as well as the financial intermediary's compliance with the above-mentioned requirements (in particular supervision, training and continuing education of auxiliary persons) will be reviewed by SRO PolyReg during the ordinary AMLA audit of the financial intermediary.