

Frequently asked questions (FAQs)

Subjecting financial intermediaries to the AMLA and VBF

(status as of 17 July 2012)

1. Is the distribution of prepaid cards issued by foreign companies via a sales agency in Switzerland subject to the [Anti-Money Laundering Act \(AMLA; SR 955.0\)](#)?

The sales agency in Switzerland is subject to the AMLA.

2. Is the issuing of gift cards by a trading company (e.g. a gift card issued by a clothes shop) or their distribution by licensed sales agencies subject to the AMLA?

No. The criteria in margin no. 18^{bis} of [FINMA Circular 08/3](#) "Public deposits with non-banks" (credit limit of CHF 3,000 per client, purchase of goods or services only, no interest on credit) are to be strictly adhered to. (The Circular is available in German, French and Italian.)

3. Is installing and operating automated teller machines in Switzerland subject to the AMLA?

No. The simple operation of automated teller machines is not subject to the AMLA. The obligations specified in the AMLA remain with the issuer of the card who has direct contact with the client.

4. Is issuing credit and debit cards in Switzerland subject to the AMLA?

Issuers of credit and debit cards are financial intermediaries as specified in Article 2 para. 3 AMLA and have to respect the law appropriately.

5. May financial intermediaries provide services on behalf of and on the account of two money transmitters?

If financial intermediaries provide services on behalf of and on the account of at least two money transmitters, they may act as an agent for only one money transmitter as stipulated in the exclusivity clause of Article 1 para. 2 let. f no. 5 of the [Ordinance on the Professional Practice of Financial Intermediation](#) (VBF; SR 955.071; available in German, French and Italian). If they provide services for more than one money transmitter, they must comply with the due diligence obligations as if they were handling their own business relationships and keep all the documentation themselves. Article 1 para. 2 let. f no. 5 VBF is also applicable to financial intermediaries affiliated to a self-regulatory organisation.

6. Are insurance brokers subject to the AMLA as financial intermediaries if they collect the policy holders' insurance premiums on their own accounts before transferring the premiums to the insurance company?

Yes. Policy holders are the insurance brokers' clients. The business activities of insurance brokers involve payment transaction services and are subject to the AMLA since it does not concern debt collection activities as such.

7. Under what conditions is currency exchange regarded as an accessory service?

The requirements in margin nos. 86 and 87 of [FINMA Circular 11/1](#) "Financial intermediation under AMLA" (available in German, French and Italian) are alternative criteria. The company is subordinated to the law if one of the following criteria are fulfilled: if separate or interlinked exchange operations of more than CHF 5,000 are carried out or a gross profit from the money exchange business amounts to more than 10% of the company profits per calendar year. The company is not subject to the AMLA if neither of these conditions is fulfilled.

8. Are foundations that accept deposits from the public subject to the AMLA?

No – if they are not subject to any banking regulations, i.e. are not at all active in the financial sector, pursue a non-commercial purpose or a mutual self-help objective, use the deposits only for these purposes, and the deposit term of maturity is at least six months (see Art. 3a para. 4 let. d of the [Banking Ordinance](#) [BO; SR 952.02] and FINMA Circular 08/3 margin no. 26 ff.) The official translation of the Banking Act is available in German, French and Italian.

9. Is the senior management of a real estate company that delegates the administration to an administration company considered as a financial intermediary?

Yes. If the real estate company is not responsible for the administration work of the real estate under its management and is therefore not carrying out any operating activities, it is then regarded as a domiciliary company, which means its senior management is considered as financial intermediaries in the meaning of the AMLA. This is also the case if the administrator of the real estate company also acts as the senior management of the administration company in charge of the property administration. If the company manages its own property administration, for instance, by employing staff for the upkeep and management of the real estate, it is then regarded as an operating company.

10. When exactly does the senior management of a domiciliary company professionally conduct activities which are subject to the AMLA?

Article 7 para. 1 let. c VBF is applicable to domiciliary companies. An administrator who has the power to dispose over assets is considered as a professionally active financial intermediary if the amount of assets exceeds CHF 5 million. This also applies to real estate companies.

11. If several people are in the senior management of a domiciliary company does it suffice if one person is made subject to the AMLA?

Basically, all persons in senior management of a domiciliary company who have signatory rights are regarded as financial intermediaries.

12. Must the senior management of a company whose assets consist solely of movables (e.g. a yacht or an aeroplane) be considered as financial intermediaries?

If the company does not conduct any operating activities (e.g. it does not manage the movable assets itself and is only a vehicle which serves to hold assets for the account of a third party), it is regarded as a domiciliary company and its senior management is subject to the AMLA. If the company itself conducts activities that are necessary to manage the property, for instance, by employing staff for its upkeep and management (yacht, aeroplane, etc.), it is then regarded as an operating company.

13. Under Article 2 para. 4 let. d AMLA, those financial intermediaries excluded from the scope of the AMLA provide financial services only for foreign financial intermediaries that are subject to equivalent supervision. What is meant by 'equivalent supervision' and does FINMA keep a list of countries with equivalent supervision?

FINMA does not maintain any equivalent supervision lists. Consideration of equivalence is left up to the financial intermediaries on a case-by-case basis. They are responsible for any mistakes and shortcomings relating to delegation. Here also the specific business item which involves delegation must always be taken into account. Please refer to the [FATF Countries Report](#) to help you assess whether equivalence may be assumed in any specific case.

14. Whom may I contact should I have any further questions?

aml@finma.ch or phone 031 327 91 00