# Financial Intermediaries' Specific Duty of Care regarding Politically Exposed Persons (PEPs)

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- **Three types of PEPs from 1 January 2016**
- **Business relationship with increased risk**
- **Increased duty to clarify and investigate**
- **Duty to develop business policy and risk criteria also related to PEPs**

## 1. Introduction

On 12 December 2014, the Swiss parliament adopted the Federal Act on the Implementation of the revised 2012 FATF Recommendations (FATF-Implementation Act) to align Swiss anti-money laundering regulations with international standards.

Based on this FATF-Implementation Act, the amendments to the Swiss Anti-Money Laundering Act (AMLA) and the Anti-Money Laundering Ordinance of the Financial Market Supervisory Authority (FINMAAMLO) will enter into force on 1 January 2016. Going forward, the revised anti-money laundering regulations provide, inter alia, a revised definition of politically exposed persons (PEPs), which has an impact on the financial intermediaries' specific duty of care.

Thus, by no later than 1 January 2016 financial intermediaries must have a profound understanding of the amendments and consequences concerning their specific duty of care as well as their duty to clarify specific risk criteria in relation to the new definition of PEPs as outlined below.

## 2. Specific Duty of Care regarding Politically Exposed Persons (PEPs)

The definition of PEPs is newly incorporated into AMLA, and includes foreign PEPs, domestic (i.e., Swiss) PEPs, PEPs who are employed by international organizations, and individuals with close ties to such PEPs

a. Foreign PEPs:

Foreign PEPs are persons who hold or have held prominent public positions abroad, such as headsof-state or government; senior politicians on a national level; senior government, judicial, military or party officials on a national level; or senior executives of state-owned enterprises of national importance.

b. Domestic PEPs:

Domestic PEPs are persons who hold or have held prominent public positions in politics, government, military and judiciary on the national level in Switzerland as well as members of the board of directors or the management of Swiss state-owned enterprises of national importance. Such PEPs, however, fail to qualify as politically exposed persons in the sense of AMLA if a period of 18 months has elapsed since any demission of an official position (or function).

c. PEPs in international organizations:

PEPs employed by international organizations are persons who hold or have held a prominent position in international organizations (e.g., UNO or IMF) or in international sport associations (e.g., International Olympic Committee, FIFA), as either general secretary, president, vice-president, members of the administrative bodies as well as persons holding an equivalent position.

d. Persons with close ties to PEPs:

Furthermore, individuals identified as having close ties to the aforementioned PEPs for family, personal or business reasons qualify as closely related persons. According to AMLA, business relationships with foreign PEPs and persons who are closely related to foreign PEPs must be treated as business relationships with an increased risk. Also, business relationships with domestic PEPs, PEPs at international organizations, and persons who are closely related to them may be treated as business relationships with increased risk if one or more risk criteria are additionally fulfilled.

e. Business relationships with increased risk:

Business relationship with increased risk require financial intermediaries to review the background and purpose of the business relation or a transaction as well as to document the review and its results. Notably pursuant to FINMA-AMLO, because business relationships with PEPs have (or may have) increased risk, financial intermediaries must develop risk criteria for detecting associated risks. A risk criterion is, for example, the contracting party's or beneficial owner's domicile, or the amount (value) of assets deposited, transferred or received by the contracting party or beneficial owner.

In addition, financial intermediaries must clarify the specific circumstances related to the respective PEP, for example, by questioning the contracting party's status and the origin of assets as well as by consulting available public information sources. Essentially, in dealing with business relationships of increased risk, such as PEPs, financial intermediaries must investigate the veracity of information received during the (additional) clarification process

and document its results. In essence, financial intermediaries must incorporate specific risk criteria along with a business policy connected to PEPs into internal directives that, in turn, must be enacted by the board of directors or by the senior management. These internal directives shall also lay down modalities after which a business relationship of increased risk is detected, limited, and monitored.

## 3. Selected Key Points for Financial Intermediaries

Financial intermediaries should be aware that a PEPs risk-based analysis must focus on specific risk parameters to determine whether domestic PEPs and PEPs at international organizations constitute a business relationship of increased risk.

As far as business relationships of increased risk are concerned, financial intermediaries must apply an increased duty of care, respectively a duty to clarify specific circumstances. In particular, the (senior) management must decide on the establishment, the continuation, and the periodic review of business relationships with foreign PEPs and, if one or more risk criteria are fulfilled, as well as with domestic PEPs and PEPs at international organizations.

We therefore advise that you prepare a "handbook," one that lays down, e.g., the material and formal requirements for establishing business relationships with foreign PEPs, domestic PEPs, and PEPs at international organizations as well as related persons. Such a handbook should include modalities concerning the organizational assessment, the levels of escalation, and the available means to monitor the business relationships with PEPs and to clarify certain risk criteria.

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