

## DIRECTIVE 2

RELATING TO THE VERIFICATION OF THE IDENTITY OF THE CONTRACTING PARTY

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## Principle

- 1 The financial intermediary shall verify the identity of the contracting party of each of his business relationships which are subject to the MLA as from the establishing of contractual links.

## Cash transactions

- 2 However, the financial intermediary who carries out a cash transaction outside a lasting business relationship shall be required to verify the identity of the contracting party only if one or more apparently connected transactions exceed CHF 25'000.--.
- 3 For foreign exchange transactions this threshold shall be set at CHF 5'000.--.
- 4 Should there be any indicia of money laundering or terrorism financing, as well as in case of transmission of funds or securities to foreign recipients, the identity of the contracting party must be verified irrespective of the amount of the cash transaction.

## Information required

- 5 The financial intermediary shall request the following information from the contracting party, in so far as it is available:
  - for natural persons: name, first name, date of birth, complete address of permanent residence and nationality;
  - for legal entities and partnerships: corporate name, date of incorporation, complete address of registered office and, if different, address of business establishment involved in the business relationship.

## Documents required from natural persons

- 6 The identity of natural persons shall be verified upon the basis of an official document. Approved identity documents are:
  - any official document issued by a Swiss authority and provided with a photograph;
  - a foreign identity card or a foreign passport or any other travel document officially recognized for entry into Switzerland.
- 7 If the contracting party is unable to present one of the above-mentioned documents, his identity may, exceptionally, be verified upon the basis of other probating documents. A written explanation shall then be added to the file of the business relationship.

#### Documents required from legal entities and partnerships

- 8 The identity of legal entities and partnerships, which are entered in an official Register of the State in which they are legally organised, shall be verified upon the basis of an up-to-date extract from this Register.
- 9 The identity of legal entities and partnerships which are not entered in an official Register shall be verified upon the basis of other probating documents, e.g. articles of association, deed or contract of foundation, official authorisation to exercise an activity, attestation issued by the firm's bodies.
- 10 The financial intermediary shall moreover verify and keep records on the identity of the natural persons establishing the business relationship on the contracting party's behalf as well as of the circle and the powers of the persons entitled to bind him.

#### Trusts

- 11 The financial intermediary external to the trust who establishes a business relationship in connection with the trust's assets shall consider the trustee as his contracting party. For the purposes of compliance with his duties as a financial intermediary who is subject to the MLA, the trustee may consider – if the situation permits it – the person from whom he holds the property of assets of the trust as contracting party.

#### Companies listed on a stock exchange

- 12 The financial intermediary may renounce verifying the identity of a legal entity or partnership if it is listed on an official stock exchange in Switzerland or abroad.

#### Form and processing of documents

- 13 The financial intermediary shall obtain the presentation of originals or certified true copies of the documents used for the verification. The certification of the conformity of the copy of a document with the original shall be issued by an official authority, a notary, the Swiss Post or a Swiss or foreign financial intermediary who is subject to a supervision equivalent to that of the MLA.
- 14 The documents presented shall be valid or, if their validity is not defined, be dated within the past twelve months, unless they are documents which are not subject to renewal.
- 15 In the case of legal entities and partnerships: If the official Register subject to the supervision of a state authority, in which they are entered, is accessible by computer and continuously updated, the financial intermediary may also verify the identity by means of acceding himself to this official Register, and downloading and printing himself the extract from this Register.

- 16 The financial intermediary shall keep in the file of the business relationship photocopies of the documents presented to him or prints of those downloaded by him; these documents shall be dated and countersigned by him on the day of their receipt or download.

#### Failure of verification

- 17 If the contracting party eludes the verification of his identity, the financial intermediary shall refuse to establish a business relationship or, if necessary, immediately break it off.

#### Mention of the person ordering

- 18 In the case of transfers of more than CHF 1'500.-- to abroad, the financial intermediary shall indicate to the recipients the name, account number and domicile, or the name and an identification number, of the ordering contracting party. The financial intermediary may renounce this information for legitimate reasons, which he must clarify and document.

## DIRECTIVE 3

RELATING TO THE IDENTIFICATION OF THE BENEFICIAL OWNER

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## Principle

- 1 If the financial intermediary is not certain that the contracting party is the beneficial owner of the assets which are the subject of the business relationship, or if he knows that they are different persons, the financial intermediary shall request from the contracting party a written declaration attesting to the identity of the beneficial owner.

## Cash transactions

- 2 The financial intermediary who carries out a cash transaction outside any lasting business relationship shall always be bound to request the written declaration of the contracting party attesting to the identity of the beneficial owner if one or more apparently connected transactions exceed CHF 25'000.--.
- 3 For foreign exchange transactions this threshold shall be set at CHF 5'000.--.
- 4 Should there be any indicia of money laundering or terrorism financing, as well as in the case of transmission of funds or securities to foreign recipients, the financial intermediary must always request from the contracting party a written declaration indicating the identity of the beneficial owner.

## Exempted contracting parties

- 5 The financial intermediary shall be exempted from requiring information about the beneficial owner of the assets which are the subject of his business relationships, from his contracting parties if they legally exercise in Switzerland the activity of financial intermediaries within the meaning of Art. 2, subs. 2, MLA and Art. 2, subs. 4, MLA, or legally exercise abroad the activities mentioned in Art. 2, subs. 2, MLA, and are subject to regulations and supervision equivalent to those of the MLA.

## Beneficial owner

- 6 Shall be considered to be beneficial owner any natural person or legal entity, any organised fund or partnership which has the capacity of benefiting from or disposing of, for its own profit, the assets which are the subject of the business relationship.
- 7 A domiciliary company, defined as any legal entity, any organised fund or any partnership whose management bodies are active, activity is exercised or assets are held, principally in trust for the account of a third party beneficial owner, may never be designated as beneficial owner.

## Information required

- 8 The financial intermediary shall require the following information from the contracting party about the beneficial owner, in so far as it is available:
- for natural persons: name, first name, date of birth, complete address of permanent residence and nationality;
  - for legal entities and partnerships: corporate name, date of incorporation, complete address of registered office and, if different, address of business establishment involved in the business relationship.

## Trusts, *Anstalten* and foundations

- 9 In the case of trusts, *Anstalten* and foundations, the financial intermediary shall require from the trustee or the council of the *Anstalt* or the foundation a copy of the constitution deeds and of the provisions which allow to modify or revoke them, as well as the information mentioned in the preceding article concerning possible third parties having the capacity of modifying or revoking such deeds or provisions, or of designating the beneficiaries thereof, or acting as a front for them.
- 10 By beneficiary is understood any person who, in whatever capacity, by reason of the constitution deeds and the provisions which allow to modify or revoke them, benefits from the possibility or expectation of benefiting from or disposing of, for his benefit, the assets which are the subject of the business relationship.
- 11 The financial intermediary shall obtain in particular the information mentioned in Art. 8 hereinbefore, concerning the founders, the protectors and each of the beneficiaries. However, if the number of beneficiaries is equal to or greater than twenty, the financial intermediary shall be bound to identify only those whose possibilities or expectations of benefiting or disposing bear on more than 5% of the assets which are the subject of the business relationship.
- 12 If the circle of beneficiaries is not defined, or if their designation is left to the discretion of the trustee or the council of the *Anstalt* or the foundation or third parties, the identification shall take place as soon as they have been defined or designated.

## Collective investments

- 13 In the case of contracting parties who hold collective investments or are constituted into holding companies for the account of at least twenty beneficial owners, the financial intermediary shall be bound to identify only those who hold more than 5% of the collective investment or the holding company.

## Form of declaration

- 14 The written attestation of the identity of the beneficial owner must be dated and signed by the contracting party. If the latter is not a natural person, the attestation must be signed by

its authorised bodies. If the contracting party is represented by an attorney, a power of attorney must be produced, signed by the contracting party or his authorised bodies.

- 15 The original of the attestation, and a photocopy of the possible power of attorney of its signatory, shall be kept in the file of the business relationship.

#### Failure of verification

- 16 If the contracting party eludes the duty to provide a written declaration attesting to the identity of the beneficial owner, or if a doubt persists, despite an attempt to clarify, as to the identity of the beneficial owner, the financial intermediary shall refuse to establish the business relationship or, if necessary, immediately break it off.

## DIRECTIVE 4

RELATING TO THE RENEWAL OF VERIFICATIONS

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- 1 The verification of the identity of the contracting party or the identification of the beneficial owner must be renewed by the financial intermediary when a doubt arises in the course of the business relationship concerning:
  - the accuracy of the information relating to the identity of the contracting party;
  - the fact that the contracting party is itself the beneficial owner;
  - the accuracy of the declaration made by the contracting party in respect of the beneficial owner.
  
- 2 The financial intermediary must immediately put an end to the business relationship if he sees that he has been deceived in respect of the identity of the contracting party or the beneficial owner, or if the contracting party refuses these verifications or their renewal.

## DIRECTIVE 5

RELATING TO CLARIFICATION AND INCREASED VIGILANCE

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## Internal directive

- 1 The financial intermediary shall be bound to establish an internal directive relating to the detection of business relationships and transactions which require clarification of their economic background and increased vigilance in terms of money laundering.
- 2 Are in particular subject to such measures business relationships and transactions which:
  - present indicia of crime, money laundering, terrorism financing or belonging to a criminal organisation;
  - or are related to particularly exposed persons;
  - or involve cash, or immediately negotiable liquid assets of more than CHF 100'000.--;
  - or involve the transfer of funds or valuables to recipients abroad, if one or more apparently connected transactions amount to or exceed the sum of CHF 5'000.--;
  - or appear unusual compared to transactions usually carried out in the context of the business relationship, or in the context of comparable business relationships.

## List of indicia

- 3 A list of indicia and criteria which make it possible to detect such business relationships and transactions shall be drawn up by the financial intermediary upon the basis of his experience and continuously adapted to take into account changes in circumstances, the particularities of the firm and new methods of money laundering and terrorism financing. Its use may not lead to routine behaviours.
- 4 The financial intermediary can also make use of:
  - the list of increased risks contained in the Ordinance of FINMA November 6<sup>th</sup>, 2008, on the Prevention of Money Laundering and Terrorism Financing in Other Financial Sectors;
  - the reports of the Money Laundering Reporting Office (MROS) and the Financial Action Task Force on Money Laundering (FATF).

## Vigilance measures

- 5 The internal directives must be distributed to board members, members of the management having a general power of attorney and all other persons who participate in the business relationships subject to the MLA. The knowledge of the persons concerned must be updated regularly.
- 6 In order to be able to determine if a transaction or a business relationship requires clarification or increased vigilance, it is essential that the financial intermediary's staff members

have a good knowledge of the clients and their activities from the start of the business relationship, and carefully monitor the transactions carried out throughout it.

#### Contents of clarification

- 7 Clarification must make it possible to judge the legality of the economic background and the purpose of the business relationship or the transaction.
- 8 In particular, it shall be based on:
  - information relating to the client gathered since the beginning of the business relationship;
  - requests to the client for additional information;
  - visits to the client's place of business, and the premises involved in the transaction;
  - consultation of data available to the public;
  - research of information from third parties.
- 9 It shall be intended to establish:
  - the place of origin and economic background of the assets delivered;
  - the use made of the assets withdrawn;
  - the financial situation, origin of the wealth and professional or commercial activity of the contracting party and the beneficial owner;
  - the nature and importance of links with other natural persons and/or legal entities, who exercise a dominant influence on the activity of the contracting party and the beneficial owner;
  - in the case of the transfer of funds or assets: the identity of the recipient of the transfer.

#### Failure of clarification

- 10 If clarification does not make it possible to completely judge the legality of the economic background and the purpose of the business relationship or the transaction, whereas, however, the conditions required for a report in accordance with Art. 9, subs. 1, MLA are not met, the financial intermediary shall remain free to continue the business relationship while maintaining increased vigilance thereon.

#### Increased vigilance

- 11 Increased vigilance shall be exercised through closer monitoring and more frequent controls of the business relationship, for a renewable determined period of time, by the MLA Officer and every member of the financial intermediary's staff participating in the business relationship.

## Procedure

- 12 If a member of the financial intermediary's staff has doubts about money laundering, terrorism financing or the truthfulness of the information obtained concerning the identity of the contracting party or the identification of the beneficial owner, he must immediately inform the MLA Officer thereon.
- 13 The MLA Officer shall decide whether it is necessary to carry out clarification or to exercise increased vigilance.
- 14 In case of clarification, his reasons, modalities, results and conclusions, particularly as to the existence of a founded suspicion or as to the appropriateness of entering into or continuing the business relationship, shall be the subject of a written report from the MLA Officer to the management, a dated and signed copy of which shall be placed in the file concerning the business relationship.
- 15 If it is necessary to subject the business relationship to increased vigilance, its processing shall be the subject of distinctive signs which will allow its systematic location by the staff concerned, and an adequate note shall be recorded in the MLA Register. During the MLA audit the MLA Officer shall spontaneously inform the Auditor on the cases which are the subject of clarifications and those which are subject to increased vigilance and transmit to him copies of the reports drawn up in the course of the financial year.

DIRECTIVE 6  
RELATING TO DOCUMENT RETENTION

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Documents relating to business relationships

- 1 For each business relationship subject to the MLA, the financial intermediary must keep during the entire period of the contractual relationship, and thereafter for ten years from its termination, all the documents established in relation with its MLA diligence duties, and in particular:
  - the form completed when entering into the business relationship;
  - the documents used to verify the identity of the contracting party;
  - the documents relating to the identification of the beneficial owners;
  - the extract of the MLA Register;
  - the reports drawn up concerning clarifications;
  - the reports to the Money Laundering Reporting Office;
  - the decisions regarding criminal matters or the MLA notified by the Authorities in respect of business relationships.

Documents relating to transactions

- 2 The financial intermediary must also keep documents relating to transactions in which it has participated within the framework of a business relationship subject to the MLA, for 10 years from their completion. When several transactions form a whole, the period of 10 years shall run from completion of the last one.
- 3 The documents must make it possible to retrace as far as possible the development of the transaction, its participants, as well as the origin and destination of the assets involved.

Method of retention

- 4 The documents must be kept in Switzerland, in their original form or on a reliable computer device, and be organised and kept available in a safe place that is rapidly accessible, so that they can be easily consulted by the Authorities responsible for criminal prosecution and MLA supervision, as well as by ARIF's special auditors and the financial intermediary's MLA Auditor.

## DIRECTIVE 7

RELATING TO ORGANISATION AND INTERNAL CONTROL

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A. INTERNAL DIRECTIVES

- 1 As from the time of his affiliation, the financial intermediary must have internal directives regulating the implementation (who does what, how, when and where) of the provisions relating to the combat against the laundering of money of criminal origin and the financing of terrorism within the firm.
- 2 In particular, these directives shall determine the behaviour to be observed by:
  - a) the MLA Officer, concerning among others:
    - the tasks assigned to him;
    - his permanent training;
    - the powers conferred to him;
  - b) the individuals in contact with clients, concerning among others:
    - the procedure for establishing a business relationship;
    - the permanent monitoring of business relationships;
    - the steps to be taken in case of doubts and founded suspicions;
    - the relations with the MLA Officer;
  - c) the Management, concerning among others:
    - the tasks assigned to it in MLA matters;
    - the appropriate measures in the case of MLA offences within the firm;
    - its relations with the MLA Officer;
    - the possible powers delegated to the one or the other member of the Management in MLA matters.

B. MLA OFFICER'S PROFILE

- 3 The financial intermediary shall appoint an MLA Officer from among his staff and, in so far as the internal organisation permits, his deputy. Both of them shall usually be present at the office of the main business establishment of the financial intermediary in Switzerland.
- 4 The MLA Officer shall have the powers which are necessary to act effectively for the purposes of putting in place the combat against money laundering and terrorism financing within the firm. In particular, he shall be a member of the Management or directly subordinated to it, and have the right to fully examine the activities of the firm subject to the MLA.

5 The MLA Officer must have a good level of education in MLA matters, and maintain it by regular attendance of the training programmes given or approved by ARIF, and by constant research and study of new practices and regulations with respect to the combat against money laundering and terrorism financing.

6 The MLA Officer must be able to call on the services of specialists outside the firm when he is faced with complex situations beyond his level of competence.

C. MLA OFFICER'S DUTIES

7 The MLA Officer shall be the ordinary contact in MLA matters, for the firm's staff and its MLA Auditor, as well as for ARIF and the MLA supervisory or criminal prosecution authorities. He shall ensure that he is easily and rapidly contactable during working hours and days, and replaced if he is temporarily unavailable.

8 The MLA Officer shall have the task of establishing and permanently updating the firm's internal directives in MLA matters, and informing and advising the staff on this subject.

9 The MLA Officer shall ensure that the MLA, the Articles of Association, Rules and Directives of ARIF, and the firm's internal directives in MLA matters are complied with within the firm.

10 The MLA Officer shall in particular ensure that the procedures for establishing a business relationship and keeping the MLA Register are complied with. He shall carry out periodic checks, at least once a year, of the contents of the basic files of the business relationships, especially as far as knowledge of the client is concerned.

11 The MLA Officer shall ensure that appropriate measures are executed in case of doubt and founded suspicions of money laundering or terrorism financing, particularly as far as the notification of the Money Laundering Reporting Office and the freezing of assets are concerned.

12 The MLA Officer shall ensure the keeping and archiving of the files of business relationships subject to the MLA.

13 The MLA Officer shall establish the planning and ensure compliance with the training obligations by the firm's staff members and managers. In particular he shall ensure that all the persons concerned be regularly informed about indicia of money laundering and terrorism financing, and shall check their knowledge on this subject.

14 The MLA Officer shall propose to the Management the internal investigations to be effected in MLA matters, carry out with diligence those entrusted to him, and report to the Management any breach of the MLA rules by staff members.

15 If certain functions of the MLA Officer (e.g. training manager, contact with the Authorities and ARIF, Special Internal Auditor) are assigned to distinct persons, the MLA Officer shall coordinate their actions.

D. MANAGEMENT'S DUTIES

- 16 The Management shall retain the supreme control and responsibility for combating against money laundering and terrorism financing within the firm.
- 17 In particular the Management shall be bound to carefully select, instruct and supervise the MLA Officer, and to give him the necessary means to perform his duty.
- 18 The Management shall take the necessary decisions in the case of founded suspicions of money laundering or terrorism financing.
- 19 The Management shall order investigating measures and appropriate steps in the case of non-compliance with the rules concerning the combat against money laundering and terrorism financing by members of the firm's staff.

## DIRECTIVE 8

RELATING TO THE MLA REGISTER

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- 1 The financial intermediary must keep an MLA Register which contains the complete list of all his business relationships subject to the MLA.
- 2 For each business relationship the MLA Register must contain a written or electronic record including at least the following data concerning the identity of the contracting party and the beneficial owner:
  - for natural persons: name, first name, date of birth, complete address of permanent residence and nationality;
  - for legal entities and partnerships: corporate name, date of incorporation, complete address of registered office and, if different, complete address of business establishment involved in the business relationship.

This record must be updated regularly (at least annually) and by keeping the history of the modifications made.

- 3 The MLA Register shall include a section updated by the MLA Officer, which contains the following data:
  - the state of the verifications of the identity of the contracting party and the identification of the beneficial owner;
  - the clarifications carried out concerning specific transactions, with indication of the dates, conclusions, recommendations and deadlines for regularising matters;
  - any possible judicial or administrative proceedings which have concerned the business relationship in MLA matters (reports to the authorities, requests for information or freeze by the Authorities etc.);
  - the business relationships requiring increased vigilance;
  - the periodic checks that the register is kept correctly, carried out by the MLA Officer at least annually.
- 4 If it is required by confidentiality, the MLA Register may be split into two documents or files allowing an immediate reconciliation of the data to the authorized persons.

## DIRECTIVE 9

RELATING TO THE PROCEDURE FOR ENTERING INTO A BUSINESS RELATIONSHIP

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## A. PROCEDURE FOR ACCEPTANCE OR REFUSAL OF A BUSINESS RELATIONSHIP

- 1 The procedure for acceptance or refusal of a business relationship must be implemented for each business relationship which is subject to the MLA.
- 2 Regarding new business relationships, the procedure must be completed before any transaction is carried out.
- 3 Regarding business relationships established before April 1<sup>st</sup>, 2000, this procedure must be completed, and the formal verifications carried out, as rapidly as possible by actively applying the utmost diligence; the performance of new transactions in the context of business relationships established before April 1<sup>st</sup>, 2000, shall in any case be authorised only if the financial intermediary has material knowledge of the identity of the contracting party and is certain of the identity of the beneficial owner of the assets which are the subject of the business relationship.
- 4 The notion of “client” within the meaning of the present Directive means the contracting party and the beneficial owner.

First level: the person in direct contact with the client

- 5 Preparation of the file for entering into a business relationship shall be the responsibility of the person in direct contact with the client (first level of control), who must make sure that all the documents and information required by the MLA and Rules and Directives of ARIF, as well as the financial intermediary’s internal directives, are gathered.
- 6 The person in direct contact with the client must in particular:
  - identify the contracting party and obtain the required identity documents concerning him;
  - when he is not certain that the beneficial owner is the contracting party, as well as when he knows that they are different persons, obtain a written declaration from the contracting party as to the identity of the beneficial owner;
  - obtain an in-depth description of the activity of the contracting party and the beneficial owner and of the origin of the assets which are the subject of the business relationship;
  - identify the nature and purpose of the business relationship wanted by the contracting party;
  - search for possible links (professional, family, group etc.) between the client and other business relationships of the financial intermediary;
  - complete the form for entering into a business relationship;

- attach to the file any exchange of correspondence with the client (letters, faxes, e-mails, special instructions etc.) as well as reports of visits and records of telephone calls;
  - attach to the file any organisation charts, brochures, balance sheets, management reports, press cuttings, and all information or documents suitable for clarifying the economic background of the business relationship and of the assets which are the subject thereof;
  - detect business relationships and transactions which require clarification or increased vigilance, or show indicia of money laundering.
- 7 As from the first contact, the financial intermediary shall endeavour to acquire a good knowledge of his client. As far as possible, each client must be met by at least two staff members of the financial intermediary.
- 8 If a lasting business relationship or a cash transaction exceeding CHF 25'000.-- is involved, or if clarification or increased vigilance are required, or if there are indicia of money laundering or terrorism financing, the file opened when entering into the business relationship, duly completed, shall be forwarded to the MLA Officer.

Second level: the MLA Officer

- 9 The MLA Officer shall examine the form for entering into the business relationship and the documents gathered by the person in direct contact with the client, upon the basis of which he shall issue a recommendation to the Management to accept or refuse the business relationship, with an indication of the reasons. If required, he shall request confirmation of the information received and carry out a clarification, particularly in case of business relationships requiring increased vigilance. He shall in particular verify that the extent of the information collected is adequate in accordance with the risk of the business relationship.

Third level: the Management

- 10 The acceptance or refusal to enter into a business relationship shall be the responsibility of the financial intermediary's Management. This latter can delegate this competence in writing to staff members having the capacity to exercise it.

**B. FORM FOR ENTERING INTO A BUSINESS RELATIONSHIP**

- 11 The form for entering into a business relationship shall comprise information which the person in direct contact with the client must collect prior to acceptance of a business relationship by the Management. This information shall subsequently be completed and updated throughout the entire business relationship.
- 12 This information work must be carried out by seeking information as far as possible at its source and should not content itself with reproducing the result of research carried out by other financial intermediaries.

13 The following headings call for special comments:

- financial situation (assets, revenue): as far as possible, it is proper to determine the size of the client's assets and revenues upon the basis of his declarations and other elements known to the financial intermediary, in order to detect any possible discrepancy between the resources of a person and the financial flows recorded in the context of the business relationship;
- tracing of funds: this consists in describing from which bank, town, country the transfer of funds is made and in what form (cash payment, cheques, bank transfer, set off etc.);
- economic origin of the funds: it is proper to indicate the economic activity which made it possible to generate them. It is insufficient to take the information from the Commercial Register or to give a vague and general description of the economic origin (such as "*assets*", "*inheritance*" or "*savings*"). The declarations of the client concerning the economic background of his activities must be documented as far as possible and prove to be plausible, independently of the diligence work done by other financial intermediaries.

14 In the annex to the present Directive, ARIF proposes a model of a form for entering into a business relationship, which the financial intermediary will adapt as faithfully as possible to the particularities of his activity.

## DIRECTIVE 10

RELATING TO THE DELEGATION OF THE DUTIES OF DILIGENCE

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## Delegation between financial intermediaries

- 1 When several financial intermediaries, who are subject in Switzerland to the MLA, or subject abroad to regulation and supervision equivalent to that of the MLA, intervene within the scope of the same business relationship, or are part of a group of firms placed under a common management, they can charge one of them to carry out the verification of the identity of the contracting parties, the identification of the beneficial owners, the renewal of these formalities, as well as the clarification of business relationships and transactions.
- 2 The financial intermediary to whom one or more of these tasks have been delegated, must forward to each of the others involved in the business relationship a copy certified true by himself of the documents which have been used for the verifications, identifications and clarifications.

## Delegation of duties of diligence to auxiliaries

- 3 The financial intermediary may delegate durably, and for an indefinite number of cases, the verification of the identity of the contracting parties, the identification of the beneficial owners, the renewal of these formalities and the clarification of business relationships and transactions, to one or more auxiliaries in Switzerland or abroad, provided the following conditions are met:
  - the person so delegated must possess the competences sufficient for this activity and provide every guarantee of irreproachable conduct;
  - the person so delegated is not authorised to sub-delegate his mandate;
  - in the field of funds' and assets' transfer, the person so delegated accomplishes this task for one sole financial intermediary only;
  - the person so delegated must undertake to the financial intermediary, by a written agreement subject to Swiss law and the jurisdiction of the Swiss courts, to comply with all the duties in respect of the combat against money laundering and terrorism financing and of the protection of data incumbent on the financial intermediary member of ARIF, and to submit to the controls applicable to him;
  - a copy of the delegation agreement, duly signed by the parties, must immediately be provided to ARIF;
  - the financial intermediary must define in writing the duties of the person so delegated, adequately instruct him about them and make sure that he has had a training equivalent to that required from a financial intermediary member of ARIF;

- the person so delegated and his activity at the service of the financial intermediary must be included within the ambit of this latter's internal controls and MLA audit;
  - the original documents, or their copies certified true by the person so delegated, having served for the verification of the identity of the contracting parties of the financial intermediary or for the identification of their beneficial owner or resulting from the clarification of business relationship or transactions, must be deposited at the financial intermediary in Switzerland as quickly as possible.
- 4 If an auxiliary of the financial intermediary takes commercially part in the subjected business relationships, namely by executing them on behalf and for the account of the financial intermediary, such auxiliary and its staff shall be entirely and directly subject to ARIF's directives, in particular as far as the supply of a complete file, the internal organisation, the training obligations and the extent of the audit are concerned.
- 5 The person taking part in subjected business relationships on his own behalf or for his own account and thereby exercising an activity as an autonomous financial intermediary may not be considered as an auxiliary within the meaning of the present Directive and shall independently become affiliated to a self-regulating organisation accredited by FINMA or obtain from it the authorisation to exercise.

#### Responsibility

- 6 The financial intermediary shall remain responsible, towards the Swiss authorities and ARIF, for the activity of the persons so delegated in the same way as for his own activity.

DIRECTIVE 11  
RELATING TO TRAINING

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A. Generalities

Persons subject to the training obligation

- 1 Financial intermediaries shall be bound to cause all persons, for whom a complete personal file must be provided in accordance with Directive 1, to attend the training courses referred to in the present Directive.
- 2 On reasoned request and at its complete discretion, ARIF may exempt from the training obligation those persons who can prove having advanced knowledge in MLA matters.

On reasoned request, ARIF may furthermore also exempt from the training obligation the members of partnerships or of limited liability companies and members of boards of directors or of foundation boards or of association committees if these persons' management powers have been entirely and lawfully delegated by organisational rules, a copy of which must be delivered to ARIF.

- 3 If it ascertains serious training deficiencies among the staff of a financial intermediary, ARIF may request the reiteration of basic or continued training by all or part of the staff subject to the training obligation.

Certificate

- 4 ARIF shall deliver a certificate of attendance to the persons who have followed the training courses of ARIF.

Members not subjected

- 5 Members not subjected (MNS) are exempted from the training obligation. When subject again to the MLA, they must accomplish the training provided for by the present Directive starting from the business year in the course of which the new subjection has become effective.

B. MLA training

Knowledge of MLA matters

- 6 Persons subject to the training obligation must have a knowledge of the following edicts:
  - the provisions of the Swiss Criminal Code relating to the combat against money laundering and terrorism financing;
  - the MLA;

- the Articles of Association, Rules and Directives of ARIF;
  - the Ordinances, circulars and information letters of FINMA.
- 7 They must acquire a good knowledge of the duties of financial intermediaries as provided for in these edicts and in particular of those concerning:
- the verification of the identity of the contracting party;
  - the identification of the beneficial owner;
  - the indicia of money laundering;
  - the clarification of business relationships and transactions;
  - the retention of documents;
  - the reporting of founded suspicions and freezing of assets.

#### MLA training courses

- 8 Each year, ARIF shall organise both basic and continued training courses. The programme of the basic training courses shall cover in a general way the duties of financial intermediaries in MLA matters. Continued training courses shall be specific to a particular financial intermediary activity (asset management, foreign exchange etc.) or to a particular subject.

#### Frequency of attendance

- 9 The persons referred to in Art. 1 of the present Directive must attend one full day of basic training within six months following affiliation to ARIF and, for new management bodies, employees or subordinated auxiliaries, within six months of their being hired.
- 10 During each reference period following the period of their basic training the persons subject to training must attend half a day of continued training. The reference period for attendance of continued training courses shall run from July 1<sup>st</sup> of each odd year to June 30<sup>th</sup> of the following odd year.

#### Checks

- 11 At least once a year, the MLA Manager shall carry out, within the firm, periodic checks of the level of knowledge of the persons subject to training. A selective evaluation of the knowledge of participants may be carried out by ARIF on the occasion of the training courses. Compliance with the training obligations shall be the subject of a check during the MLA audit.

#### Internal training

- 12 Members who have more than 20 staff members subject to training may organise continued training courses for them, whereas basic training must be accomplished at the seminars organised by ARIF.

- 13 In order for these courses to be recognised by ARIF, their contents must be endorsed by it. Such endorsement shall be given on the following conditions:
- the seminar must be announced to ARIF at least 60 days in advance, with an indication of the number of participants, the names and qualifications of the speakers and the subjects of their presentations;
  - at ARIF's request the contents of the presentations will be adapted;
  - a member of ARIF's committee or a Special Auditor of ARIF attends the course to attest to the satisfactory quality of its contents and the presence of the participants.
- 14 A fee shall be charged by ARIF for such endorsement and for such participation.

#### Equivalence

- 15 After receipt of the participation certificate, ARIF may, under the title of continued MLA training provided for by the present Directive, recognise MLA training courses given by other self-regulating organisations or official academic institutions.

No equivalence shall be granted for basic training courses; only those given by ARIF shall be recognised.

#### C. Training relating to the Code of Deontology concerning the exercise of the profession of an independent asset manager

##### Training courses

- 16 ARIF shall organize seminars for the presentation of the rules of the Code of Deontology applicable to ARIF members subject thereto.

##### Persons subject to the training obligation and time limit for participation

- 17 The persons concerned by Art. 1 of the present Directive, who exercise their activity at the service of an ARIF member subject to the Code of Deontology shall be bound to attend one full day of presentation of the Code of Deontology within twelve months following adherence to the Code of Deontology and, for new management bodies, employees or subordinated auxiliaries, within twelve months of their being hired.

DIRECTIVE 12  
RELATING TO THE AUDIT

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MLA Auditors

- 1 As from his affiliation, each financial intermediary shall commission, at his own expense, an Auditor accredited by ARIF and provide without delay for his replacement if necessary, in particular in the event of a lasting interruption of his mandate or a withdrawal of his accreditation by ARIF.
- 2 In the performance of their tasks, Auditors shall conform to the instructions appearing in the Guide for accredited Auditors established and updated by ARIF before each audit period.

Subject of the audit

- 3 The subject of the audit shall be to check the fulfilment of the financial intermediary's obligations with regard to the Rules and Directives of ARIF applicable to him and the permanence of the conditions of affiliation to ARIF.

Sample

- 4 The audit must include the in-depth examination, by the Auditor, of a sufficient sample of business relationships subjected or likely to be subjected. In principle the sample shall cover 10% of all business relationships subjected, as well as a number of business relationships deemed not subjected and left to the Auditor's discretion.
- 5 In MLA matters, the Auditor may content himself with a smaller sample when it appears sufficient to him to formulate an assessment and when at least one of the following conditions is met, which the Auditor must accurately state in his audit report:
  - the risks of money laundering are minor, due to the type of activity or the internal organization of the financial intermediary;
  - the operations subjected are of a large number, similar in nature and form, and in general involve amounts of less than CHF 25'000.--.

Documents of the audit

- 6 The audit shall result in the Auditor delivering to ARIF, within the time limits fixed by the latter, the following original documents:
  - a. the Declaration of Compliance with the requirements of the MLA and the Articles of Association, Rules and Directives of ARIF, issued by the financial intermediary in accordance with the model established by ARIF, duly completed, dated and

signed by the member, delivered to his Auditor so that he can take note thereof and forward it to ARIF, and including in particular the following information:

- the period covered by the Declaration;
- the number of business relationships subject to the MLA at the end of the period;
- the number of business relationships subject to the Code of Deontology at the end of the period;

and the attestation that:

1. in MLA matters:

- the organisation and internal controls;
- the training and information;
- the diligence when entering into and monitoring business relationships;
- the verification of the identity of all contracting parties;
- the identification of the beneficial owners;
- the renewal of verifications and identifications if necessary;
- the establishing and retaining of documents required in MLA matters;
- the keeping of the MLA Register;
- the fulfilment of the obligations to report, to freeze the assets and to maintain secrecy;

2. in the asset management activity of the members subject to the Code of Deontology:

- the existence, form and content of the asset management contract;
- the organizational measures intended to prevent conflicts of interests to the client's prejudice;
- the modalities of remuneration for the persons in charge of the asset management;
- the prevention of transactions lacking any economic interest for the client or exploiting the knowledge of client orders in contradiction to market integrity;
- the organization's adequacy to the volume and type of clients, business and products;
- the compliance with the client's investment objectives;
- the absence of any unlawful deposits;
- the adequate spreading of risks;
- the delegation of tasks within the asset management's scope;
- the information of the client concerning the asset manager's firm, the products and the performance;
- the reporting, both periodic and at the client's request;
- the nature, modalities and elements of the asset manager's remuneration;

- the information concerning the performances received from third parties and their attribution;

3. in general:

- the communication of changes in the management bodies and the staff;
- the accomplishment of other statutory, regulatory and in particular financial obligations, in relation to ARIF;

have satisfied all the requirements of the MLA and the Articles of Association, Rules and Directives of ARIF or, failing that, the precise indication of the known defaults of the financial intermediary;

- b. the report of the Auditor, conforming to the model established by ARIF, duly completed and signed by the Auditor, including in particular the following information:

- the period covered by the report;
- the number and percentage of business relationships subject to the MLA which have been checked;

and the attestation that:

- the Auditor possesses the professional qualifications required;
- the Auditor is independent of the management and the administration or the shareholders of the financial intermediary audited;
- the Auditor undertakes to cooperate with ARIF and forward to it all useful information about the execution and result of his audit;
- the Auditor has carried out his audit in accordance with the Swiss standards of his profession, by spot checking upon the basis of a representative sample;
- the Declaration of Compliance made by the financial intermediary corresponds to the ascertainments made by the Auditor or, failing that, the precise indication of the failures to meet the requirements of the MLA and the Articles of Association, Rules and Directives of ARIF, ascertained by the Auditor;

- c. the extract of ARIF's database sent by it to every member at the end of each audit period and containing the data concerning the member, which must be duly verified, completed and signed by the member and delivered together with the Declaration of Compliance to the Auditor, so that he can take note thereof and forward it to ARIF;

- d. the list of the financial intermediary's management bodies and employees who have completed a training recognised by ARIF during the audit period, which must be completed, signed, and accompanied by the required attestations of at-

tendance, then delivered to the Auditor together with the Declaration of Compliance, so that he can take note thereof and forward it to ARIF.

#### Audit periodicity

- 7 The audit shall be carried out for the first time at the end of the audit period during which the financial intermediary has become a member of ARIF, provided there are at least two months to run until the end of such period, otherwise the first audit takes place at the end of the following period.
- 8 In MLA matters, the first audit shall take into account the full period of possible activity subjected, subsequent to April 1<sup>st</sup>, 2000, which preceded the admission. It is reminded that in the event the financial intermediary's activity subject to the MLA was started illegally, it must imperatively cease before his membership application can be examined.
- 9 The audit shall subsequently be carried out at the end of each audit period, which runs from July 1<sup>st</sup> of each year to June 30<sup>th</sup> of the following year, and take into account the entire activity exercised since the preceding audit.

After the third consecutive annual audit of a member's activity subject to the MLA, ARIF may authorize him – without however being committed to do so – to deliver in the future an audit report of an Auditor accredited by ARIF only at the end of every second audit period. The biennial report must concern the entirety of both passed audit periods.

The member however shall remain bound to send back each year to ARIF, through his Auditor, within the prescribed time limits, the annual, duly completed extract of the data concerning him, which are included in ARIF's database.

The authorization for a biennial audit may take place only at the member's duly reasoned, written request and only as from the audit period which follows the period during which ARIF accepted the request for biennialisation.

In order for the requests to be examined before the end of an audit period, they must be addressed to the ARIF Secretariat at the latest three months before the end of this period.

The authorization for the passage to a biennial audit shall be subject to the following minimal conditions:

- that both MLA audits preceding the request as well as the investigations or visits effected by ARIF at the member during the last two audit periods did not reveal any substantial, systematic or repeated delays or failures;
- that the money laundering risks in connection with the member's activity are considered by ARIF as minor, namely in view of the kind of activity, the clients' structure, the transactions' extent and volume and with regard to the member's concrete organisation in the prevention of money laundering.

ARIF may, at its complete discretion, subject the authorization to additional conditions specific to the member's situation.

The restoring of a future annual audit rhythm may be imposed by ARIF at any time if the conditions for the authorization of a biennial rhythm are not met anymore, and in the cases where ARIF, at its complete discretion and without indicating any grounds, considers it as necessary.

#### Members not subjected

- 10 Members affiliated to ARIF in view of exercising an activity of financial intermediary, who have not carried out any activity subject to the MLA during a complete audit period or since their affiliation, shall be exempted from furnishing a Declaration of Compliance and an audit report, provided that at the end of the audit period considered they submit a formal declaration that they are not subjected, and the attestation of an Auditor concerning the continued absence of activity subject to the MLA, in conformity with the models established by ARIF.

Members benefiting from this exemption must immediately communicate to ARIF, in writing, any change in their activity subjecting them to the MLA.

## DIRECTIVE 13

RELATING TO THE OBLIGATIONS TO REPORT, FREEZE THE ASSETS  
AND MAINTAIN SECRECY

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## Reporting procedure

- 1 If from the outset or following a clarification, there is a founded suspicion of money laundering of the assets involved within the meaning of Art. 9 MLA, the MLA Officer shall immediately inform the Management.
- 2 The MLA Officer shall complete without delay the reporting form intended for the Money Laundering Reporting Office, enclose his report and the possible documents making the report explicit, and ask the Management to forward them by fax or fast courier to the Reporting Office.
- 3 The form shall mention the name of the financial intermediary, the contact person – in principle the MLA Officer or a member of the Management – whom the Authorities can address themselves to concerning the reporting. This person must be rapidly reachable, including outside working days and hours, throughout the whole freezing period provided for by Art. 10 MLA. The names of the employees in charge of the file can be made anonymous, insofar as the Authorities have the possibility to get rapidly in contact with them.

## Freezing of assets

- 4 The MLA Officer shall remind the Management of the obligation to proceed immediately to freeze the assets which are the subject of the business relationship, in compliance with Art. 10 MLA. The freeze must be maintained for a period of five working days starting from the day following the day when the report had been sent.

## Secrecy

- 5 The MLA Manager shall also remind the Management, as well as all staff members likely to be in contact with the business relationship, of the obligation of secrecy towards the contracting party and any third parties, as to the existence of the founded suspicion, their reporting and the freezing resulting therefrom, throughout the period of the freeze, unless special authorisation is given by the competent authority.
- 6 If a freeze of the assets which are the subject of the business relationship is impossible without the cooperation of third parties, their help can be requested on the condition that they are financial intermediaries subject to the MLA duties, and that there is no known risk of a breach of the obligation of secrecy on their part.
- 7 The financial intermediary may also inform another financial intermediary subject to the MLA that a report has been submitted under Art. 9 MLA provided this is required in order

to comply with the obligations resulting from the MLA and provided both financial intermediaries meet one of the following conditions:

- a. provide joint services for one client in connection with the management of that client's assets upon the basis of a contractual agreement to cooperate; or
  - b. are part of the same corporate group.
- 8 When he informs so a third party financial intermediary, the ARIF member shall explicitly draw his attention to the fact that the one and the other are subject to the obligation of secrecy imposed by Art. 10a MLA.
- 9 The MLA Officer shall ensure the application of the measures ordered by the competent Authorities, for the period prescribed.
- 10 A copy of the reports made by the financial intermediary shall be addressed to ARIF at the expiry of the freeze period, unless the competent Authority has ordered the maintaining of secrecy.

#### Fate of the business relationship

- 11 The financial intermediary must refrain as far as possible from breaking off a business relationship which has been the subject of a report within the meaning of Art. 9 MLA, until expiry of the freeze period of the assets involved. Beyond such expiry, the financial intermediary shall be free to decide whether he intends to continue the business relationship.

#### Fate of the assets

- 12 If no decision to freeze the assets is taken within the time limit set out in Art. 10 MLA, following a reporting, as well as when the financial intermediary refuses or breaks off a business relationship for reasons associated with the MLA, he shall allow the withdrawal of the assets which are the subject of the business relationship only by the contracting party, and as far as possible only in a form which will allow traces to be followed.

## OPENING OF RELATIONSHIP FORM

Date : .....

File reference : .....

Filled in by : .....

Type : .....

### IDENTIFICATION OF THE CONTRACTING PARTY

Name, First name(s), Company name: .....

Profession/company object : .....

Employer : .....

Date of birth/date of founding : .....

Permanent address: .....

.....

Head office/ address of the business involved : .....

.....

Nationality / Country of the Head office .....

Identity document number : .....

(take a photocopy)

\*Prof. phone n° : ..... \*Private phone n° : ..... \*Mobil n° : .....

\*Prof. fax n° : ..... \*Private fax n° : ..... \*E-mail : .....

(\*if possible, at least one rapid means of communication)

THE FINANCIAL INTERMEDIARY (mark where appropriate) :

IS CERTAIN THAT THE CONTRACTUAL PARTNER IS THE BENEFICIAL OWNER OF THE ASSETS SUBJECT TO THE BUSINESS RELATIONSHIP

IS NOT CERTAIN THAT THE CONTRACTUAL PARTNER IS THE BENEFICIAL OWNER OF THE ASSETS SUBJECT TO THE BUSINESS RELATIONSHIP (in this case, the contracting party must identify in writing the beneficial owner of the assets)

IDENTIFICATION OF THE BENEFICIAL OWNER

Name and first name(s) or company name of the contracting party:

.....

The contracting party hereby declares (mark with a cross where appropriate)

to be the only beneficial owner of the assets being involved in his business relationship with [Name of the financial intermediary]

that the following person(s) is/are the beneficial owner(s) of the assets implicated in his business relationship with [Name of the financial Intermediary]

(Name(s) and first name(s) or complete Company Name(s)

.....  
.....  
.....  
.....  
.....  
.....

The contracting party undertakes to communicate spontaneously and without delay any modification concerning the beneficial owner(s). The contracting party has been made aware that to intentionally complete this form in an erroneous manner constitutes creating a false document falling under Article 251 of the Swiss Penal Code.

Place and date : .....

Signature of the contracting party :

.....

# KNOW YOUR CUSTOMER

Notice : this form must be completed for each beneficial owner, regardless of his or her status as contracting party.

IDENTITY : (to fill in if it differs from the contracting party)

Name, first name, company name:.....

Profession/company object:.....

Employer : .....

Date of birth/Date of founding : .....

Permanent address:.....

.....

Head office/address of the business involved : .....

.....

Nationality/Country of the Head office: .....

\*Prof. phone n° : ..... \*Private phone n° : ..... \*Mobil n° : .....

\*Prof. fax n°: ..... \*Private fax n°: ..... \*E-mail : .....

(\*if possible, at least one rapid means of communication)

INTRODUCTION :

Introduced by.....

Place, date, reasons for the business relationship .....

.....

.....

CONNECTIONS WITH OTHER CLIENTS :

.....

.....

PERSONAL DETAILS :

Marital status :

.....

Names, first names and birth date of spouse : .....

.....

Names, first names and birth dates of parents : .....

.....

Names, first names and birth dates of children : .....

.....  
.....

Dominant shareholders :.....

.....  
.....

Subsidiaries :.....

.....  
.....

FINANCIAL SITUATION :

Fortune: .....

.....  
.....

Income:.....

.....  
.....

Purpose of the business relationship :

.....  
.....

.....  
.....

TRACING OF THE ASSETS :

.....  
.....

.....  
.....

ECONOMIC ORIGIN OF THE ASSETS:

.....  
.....

.....  
.....

REASONS FOR INCREASED VIGILANCE :

.....  
.....

.....  
.....

SUPPORTING DOCUMENTS :

.....  
.....

## IDENTIFICATION OF OTHER PERSONS

(for example external manager, protector, etc.)

Name, first names/company name : .....

Profession/company object: .....

Employer : .....

Date of birth/date of founding : .....

Permanent address: .....

.....

Head office/address of the business involved : .....

.....

Nationality/country of the Head office..... :

.....

\*Prof. phone n° : ..... \*Private phone n° : ..... \*Mobil n° : .....

\*Prof. fax n°: ..... \*Private fax n°: ..... \*E-mail : .....

(\*if possible, at least one rapid means of communication)