



SELF-REGULATION RULES
OF THE ASSOCIATION ROMANDE DES INTERMÉDIAIRES FINANCIERS (ARIF)

A. GENERALITIES

Purpose of the Rules

- 1 The Self-Regulation Rules, enacted by the *Association romande des intermédiaires financiers (ARIF)* in accordance with its Articles of Association, shall have the purpose of defining the implementation of the due diligence duties to which its members are subject as financial intermediaries.

Scope of application

- 2 Members of ARIF who are financial intermediaries within the meaning of Art. 2 subs. 3 of the Federal Act on Combating Money Laundering and Terrorism Financing in the Financial Sector (MLA) and those being governed by the Code of Deontology enacted by ARIF, concerning the exercise of the profession of an independent asset manager, shall be subject to the present Rules.

Contents

- 3 The Rules set out in particular:
 - the conditions of affiliation for members;
 - the activities of ARIF;
 - the duties of members;
 - the Directives of ARIF, intended to specify, apply and complete the MLA's duties of due diligence;
 - the Directives of ARIF, establishing its Code of Deontology concerning the exercise of the profession of an independent asset manager by its members;
 - the modalities of sanctions, including exclusion, inflicted on members in accordance with the Articles of Association of ARIF.

Guidelines

- 4 Members shall exercise their profession independently and under their own responsibility. They shall organise themselves and take the necessary steps to observe the provisions of the MLA, the penal norms in the field of combating money laundering and terrorism financing, as well as the Articles of Association, Rules and Directives of ARIF applicable to them, and the decisions resulting therefrom.

B. CONDITIONS OF AFFILIATION

In general

- 5 A financial intermediary applying for affiliation to ARIF shall, from this time and for as long as it keeps its membership:
- enjoy a good reputation in its activity as a financial intermediary;
 - and offer every guarantee of compliance with the duties stipulated by the MLA and the Articles of Association, Rules and Directives of ARIF, for itself and for each one of its management bodies, employees and auxiliaries involved, in fact or in law, in its business subject to these norms.

Prior review

- 6 ARIF can commission one or more Special Auditors (*“Chargés d'enquête”*) to carry out a review of the activities and internal organisation of the financial intermediary who submits its application for affiliation, before deciding thereon.

Information and documents to be provided

- 7 ARIF shall establish by Directive the form for the application for affiliation and the list of documents which must be provided by the financial intermediary candidate for membership.

C. ACTIVITIES OF ARIF

Keeping of lists

- 8 ARIF shall draw up and transmit quarterly to FINMA the list of financial intermediaries affiliated, having resigned, excluded or to whom the affiliation has been refused; this list shall specify those subject to the Code of Deontology of ARIF concerning the exercise of the profession of an independent asset manager.
- 9 ARIF shall draw up and transmit quarterly to FINMA the list of changes of which it has been notified by its affiliated members, concerning:
- their company name, address and company object;
 - the identity of their management bodies, employees and auxiliaries involved, in fact or in law, in their business subject to the MLA.

Audit and investigations

- 10 ARIF shall verify that its members comply with the duties of financial intermediaries as defined by the MLA and the Articles of Association, Rules and Directives of ARIF.
- 11 For this purpose, it shall impose and regulate by Directive the modalities of a periodic audit of its members, carried out by one of the Auditors accredited by it.

- 12 Whenever it considers it necessary, ARIF can also commission one or more Special Auditors to carry out selective verifications or general audits at members.

Reporting to FINMA

- 13 At least once a year, ARIF shall submit a report on its activities to FINMA and give it the minutes of its general meetings.
- 14 ARIF shall notify FINMA of the files of disciplinary proceedings and applied sanctions.

Reporting

- 15 If ARIF is aware or has the reasonable suspicion that one of the offences mentioned in Art. 260^{ter}, fig. 1, 260^{quinquies}, subs. 1, or 305^{bis} of the Penal Code has been committed, or that the assets are the proceeds of a felony or serve the financing of terrorism, or that a criminal organization exercises a power of disposal over these assets, it shall immediately file a report to the Federal Money Laundering Reporting Office, unless the member in question has already done so in the appropriate way.

Training and information

- 16 ARIF shall establish by Directive a basic and continued training programme in MLA matters, as well as a programme for the presentation of the Code of Deontology concerning the exercise of the profession of an independent asset manager, organise seminars for this purpose, define the group of persons who must take part therein and ensure their attendance.
- 17 ARIF shall advise members, at their request, on the internal organisation of their businesses in the field of combating money laundering and terrorism financing, and on the actions to be taken when they are confronted with indicia of money laundering or terrorism financing, as well as with regard to the application of the Code of Deontology concerning the exercise of the profession of an independent asset manager.
- 18 ARIF shall communicate its Articles of Association, Rules and Directives to its members, send them the publications of the authorities relating to the MLA, and keep them informed about normative or practical developments in MLA matters or resulting from the Code of Deontology concerning the exercise of the profession of an independent asset manager.

Accreditation of Auditors and Special Auditors

- 19 ARIF shall ensure that the Auditors accredited by it and the Special Auditors commissioned by it:
- have the required professional knowledge;
 - offer every guarantee of an impeccable activity and enjoy a good reputation;

- are independent of the governing and management bodies or of the shareholders of the financial intermediaries which they must audit;
- undertake to cooperate with ARIF and to transmit to it all useful information about the execution and results of their audits;
- are – with regard to the Auditors – licensed by the Audit Oversight Authority, and members of the “*Chambre Fiduciaire Suisse*” (Swiss Fiduciary Chamber) or of the “*Union Suisse des Fiduciaires*” (Swiss Fiduciary Association) or licensed by FINMA;
- are – with regard to the Auditors appointed to examine the compliance with the Code of Deontology concerning the exercise of the profession of an independent asset manager – moreover licensed by the Audit Oversight Authority as audit experts (Art. 4 of the Audit Oversight Act).

Directives of ARIF

- 20 ARIF shall enact the Directives provided for by the present Rules, which are deemed to be an integral part thereof.

D. DUTIES OF MEMBERS

Proper organisation

- 21 Members shall permanently maintain an organisation, directives and internal audits which guarantee compliance with the duties imposed by the MLA and the Articles of Association, Rules and Directives of ARIF.
- 22 In particular, they shall create the post of a manager for the combating of money laundering and terrorism financing (MLA Manager) in their company, and keep a register of all their business relationships subject to the MLA (MLA Register).

Notification of changes

- 23 Candidates and members of ARIF shall be committed to notify it immediately of any changes taking place in:
- their company name, address, company object and activity;
 - their legal or business links with other natural persons and/or legal entities, who exercise a dominant influence on their activity or with whom they form a group;
 - the identity and/or function of their management bodies, employees and auxiliaries involved, in fact or in law, in their business subject to the MLA;
 - the identity of their MLA Manager and their Auditor.
- 24 They shall also furnish, within a time limit of three months, the individual documents provided for in the matter of affiliation concerning every person newly designated.
- 25 If it notes that a member is late or fails in its duty to notify changes which concern it, ARIF can carry out such changes *ex officio*, at the expense of the member concerned, without prejudice to the pronouncement of any sanction against it.

Subjection to audits

- 26 Members shall submit to periodic audits by an Auditor, whom the members choose from among those accredited by ARIF and commission to verify their compliance with the provisions of the MLA and the Articles of Association, Rules and Directives of ARIF.
- 27 During these periodic audits, members shall certify in writing their conformity with the MLA and the Articles of Association, Rules and Directives of ARIF.
- 28 Furthermore, members shall submit at any time to the investigations by the Special Auditors commissioned by ARIF.

Duty to cooperate

- 29 Members and candidates for affiliation shall be committed to furnish spontaneously ARIF, its Special Auditors and their Auditor with any information and documents useful to audit the compliance with the MLA and the Articles of Association, Rules and Directives of ARIF.
- 30 Unless there is any order to the contrary from a competent authority, members shall inform ARIF of the existence and contents of the reports made to the Federal Money Laundering Reporting Office, as soon as the freeze period for the assets being the subject-matter of the business relationship concerned has expired.

Costs

- 31 Audits carried out by the Auditors, as well as those carried out by the Special Auditors commissioned by ARIF, shall be at the expense of every member or candidate concerned.

E. DIRECTIVES OF ARIF

Verification of the identity of the contracting party

- 32 ARIF shall enact a Directive intended to specify, put into application and complete the duty to verify the identity of the contracting party, mentioned in Art. 3 MLA, in which subs. 1, 2, 4 and 5 state what follows:

When establishing a business relationship, the financial intermediary must verify the identity of the contracting party upon the basis of a document of evidentiary value. Where the contracting party is a legal entity, the financial intermediary must take cognizance of the provisions regulating the power to bind the legal entity, and verify the identity of the persons who enter into the business relationship on behalf of the legal entity.

In the case of cash transactions with a contracting party whose identity has not yet been verified, the duty to verify the identity applies only if one or more transactions, that appear to be connected, involve a considerable value.

If in cases [under subsection 2 of the present Article] there is any suspicion of possible money laundering or terrorism financing, the identity of the contracting party must be verified even if the relevant amounts have not been reached.

The Swiss Financial Market Supervisory Authority (FINMA) and the self-regulatory organizations determine what constitutes a considerable value [within the meaning of subsection 2 of the present Article] in their respective fields and adjust such values as required.

Establishing the identity of the beneficial owner

- 33 ARIF shall enact a Directive intended to specify, put into application and complete the duty to establish the identity of the beneficial owner, mentioned in Art. 4 MLA, which states what follows:

The financial intermediary must obtain a written declaration from the contracting party indicating who the beneficial owner is, if:

- *the contracting party is not the beneficial owner or if there is any doubt about the matter;*
- *the contracting party is a domiciliary company;*
- *a cash transaction of considerable value in terms of Article 3 subsection 2 MLA is being carried out.*

In the case of collective accounts or collective deposits, it must require the contracting party to provide a complete list of the beneficial owners and to give notice of any change to the list without delay.

Repetition of the verification of identity of the contracting party or the establishing of identity of the beneficial owner

- 34 ARIF shall enact a Directive intended to specify, put into application and complete the duty to repeat the verification of identity of the contracting party or the establishing of identity of the beneficial owner, mentioned in Art. 5, subs. 1, MLA, which states what follows:

If doubt arises in the course of the business relationship as to the identity of the contracting party or of the beneficial owner, the verification of identity or establishing of identity in terms of Articles 3 and 4 must be repeated.

Special duty to clarify

- 35 ARIF shall enact a Directive intended to specify, put into application and complete the duty to clarify the economic background, mentioned in Art. 6 MLA, which states what follows:

The financial intermediary is required to identify the nature and purpose of the business relationship wanted by the contracting party. The extent of the information that must be collected is determined by the risk represented by the contracting party.

The financial intermediary must clarify the economic background and the purpose of a transaction or of a business relationship if:

- a. *it appears unusual, unless its legality is clear;*
- b. *there are indicia that assets are the proceeds of a felony or are subject to the power of disposal of a criminal organization (Art. 260^{ter}, fig. 1, of the Penal Code) or serve the financing of terrorism (Art. 260^{quinquies}, subs. 1, of the Penal Code).*

Duty to keep and retain records

- 36 ARIF shall enact a Directive intended to specify, put into application and complete the duty to keep and retain records, mentioned in Art. 7 MLA, which states what follows:

The financial intermediary must keep records of the transactions carried out and of the clarifications required under the MLA in such a manner that other specially qualified persons are able to make a reliable assessment of the transactions and business relationships and of the compliance with the provisions of the MLA.

It must retain the records in such a manner as to be able to respond within a reasonable time to any information and seizure requests made by the prosecuting authorities.

After the termination of the business relationship or after the completion of the transaction, it must retain the records for a minimum of ten years.

Assets of low value (Art. 7a MLA)

- 37 (This article's drafting is suspended in the expectation of the amendments to the FINMA Money Laundering Ordinance 3)

Organisational measures

- 38 ARIF shall enact a Directive intended to specify, put into application and complete the organisational, training and auditing duties of financial intermediaries in the field of combating money laundering, mentioned in Art. 8 MLA, which states what follows:

Financial intermediaries must take the measures that are required to prevent money laundering and terrorism financing in their field of business. They must in particular ensure that their staff receive adequate training and that checks are carried out.

39 ARIF shall in particular enact:

- a Directive relating to the MLA organisation and internal control;
- a Directive relating to the MLA Register;
- a Directive relating to the procedure of establishing a business relationship;
- a Directive relating to the delegation of duties of due diligence;
- a Directive relating to MLA training;
- a Directive relating to MLA audits.

Duty to report, to freeze and to observe secrecy

40 ARIF shall enact a Directive intended to specify, put into application and complete the duty to report cases and reasonable suspicions of money laundering, to freeze the assets concerned and to maintain secrecy in this respect, mentioned in Art. 9, 10 and 10a MLA, which state what follows:

Article 9

A financial intermediary must immediately file a report with the Money Laundering Reporting Office ("the Reporting Office") as defined in Article 23 MLA if it:

- a. *knows or has reasonable grounds to suspect that assets involved in the business relationship:*
 1. *are connected to an offence in terms of Article 260^{ter}, figure 1, or 305^{bis} of the Penal Code,*
 2. *are the proceeds of a felony,*
 3. *are subject to the power of disposal of a criminal organization, or*
 4. *serve the financing of terrorism (Art. 260^{quinquies}, subs. 1, of the Penal Code);*
- b. *breaks off negotiations aimed at establishing a business relationship because of a reasonable suspicion ground as defined in letter a.*

The name of the financial intermediary must appear in any report in accordance with subsection 1. The identity of the financial intermediary's staff who are in charge of the case may be made anonymous in the report, provided it is guaranteed that the Reporting Office and the competent prosecuting authority are able to contact them without delay.

Attorneys at law and notaries are not subject to the duty to report insofar as they are bound in their activities by professional secrecy in terms of Article 321 of the Penal Code.

Article 10

A financial intermediary must immediately freeze the assets entrusted to it that are connected with the report filed under Article 9 MLA.

It must continue to freeze the assets until it receives an order from the competent prosecuting authority, but at the most for five working days from the time at which the report has been filed with the Reporting Office.

Article 10a

For as long as assets are frozen by decision of the financial intermediary, that intermediary is prohibited from informing the persons affected or third parties of the report under Article 9 MLA.

If the financial intermediary itself is unable to freeze any assets, it may inform the financial intermediary that is able to do so and which is subject to the MLA.

It may also inform another financial intermediary subject to the MLA that a report has been submitted under Article 9 MLA, provided this is required in order to comply with the duties under the MLA and provided both financial intermediaries:

- a. supply joint services for one customer in connection with the management of that customer's assets upon the basis of a contractual agreement to cooperate; or*
- b. are part of the same corporate group.*

The financial intermediary who has been informed upon the basis of subsection 2 or 3 is subject to the prohibition of information in subsection 1.

Code of Deontology concerning the exercise of the profession of an independent asset manager

- 41 ARIF shall enact a Directive setting out a Code of Deontology concerning the exercise of the profession of an independent asset manager, as well as a Directive relating to audits on the compliance with the Code of Deontology.

F. DISCIPLINARY MEASURES

Injunctions

- 42 If a member breaches the provisions of the MLA or the Articles of Association, Rules and Directives of ARIF, this latter shall enjoin it to take measures within an appropriate time limit, in principle of three months at the most, to avoid the continuation or repetition of the ascertained offences.

Sanctions

- 43 ARIF can also impose against the defaulting member the sanctions provided for by its Articles of Association, including exclusion. A sanction shall always be pronounced against the defaulting member in the case of serious offence or recidivism. If it is established that a member has deliberately breached the duty to report within the meaning of Art. 9 MLA, exclusion shall be the rule.
- 44 ARIF can designate one or more Special Auditors to carry out verifications and determine the measures or sanctions to be taken, and to report thereon.
- 45 If responsibility for the offence can be attributed to particular natural persons, management bodies or employees of the member, without its organization as a whole being implicated, the exclusion may apply only to these persons alone, with the result that they may no longer be active for it in the field of financial intermediation.
- 46 The disciplinary sanctions imposed shall be immediately notified to FINMA.

G. FINANCIAL OBLIGATIONS

- 47 Any person requesting or causing ARIF to provide a service or a ruling shall be committed to pay a fee, for which ARIF establishes the tariff.
- 48 The time limit to pay for the services invoiced by ARIF and other sums owed by its members shall be 30 days as from the invoice's receipt.
- 49 Any disputes arising between ARIF and any of its members regarding its financial obligations shall be subject to the exclusive jurisdiction of the Arbitral Tribunal instituted under the Articles of Association.

H. ENTRY INTO FORCE

- 50 The present Rules, which have been adopted by the Committee of ARIF, shall come into force as soon as they have been granted the assent of FINMA and of the General Meeting of ARIF with regard to the statutory provisions necessary for their enactment, however on July 1st, 2009, at the earliest. They shall modify and replace the Self-Regulation Rules of ARIF, adopted on July 1st, 2004, as well as their subsequent amendments.

Geneva, June 11th, 2009