



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

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### 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 (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 of its management bodies, employees and auxiliaries involved, de facto or in law, in its business subject to these norms as well as for each of its controlling owners who exercise a predominant position.
- 6 The following in particular are liable to call into question the guarantee of impeccable activity that is required of the financial intermediary:
- acceptance of assets which he knows, or must presume, originate from a felony or a serious tax offence, even if the felony or the offence was committed abroad;
  - maintenance of business relationships with companies or persons which/who he knows, or must presume, finance terrorism or constitute a criminal organisation, are members of or support such an organisation; with banks which do not have a physical presence in the State under whose jurisdiction they are organised (shell banks), unless they are part of a financial group that is subject to adequate consolidated supervision.
- 7 Serious or repeated breaches of the provisions of these Rules or the resultant Directives may also call into question the guarantee of impeccable activity that is required of the financial intermediary.

### Prior review

- 8 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. ARIF can also render acceptance of a candidate subject to specific conditions on account of the particular risks of its activity.

### Information and documents to be provided

- 9 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

- 10 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.

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 and all other data required by FINMA.

### Audit and investigations

- 11 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.
- 12 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 auditing firms accredited by it.
- 13 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

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

### Reporting

- 16 If ARIF is aware or has the reasonable suspicion that one of the offences mentioned in Art. 260<sup>ter</sup>, fig. 1, 260<sup>quinquies</sup>, subs. 1, or 305<sup>bis</sup> of the Penal Code has been committed, or that the assets are the proceeds of a felony or a serious tax offence 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

- 17 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.
- 18 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.

- 19 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.

#### Directives of ARIF

- 20 ARIF shall enact the Directives provided for by the present Rules, which are deemed to be an integral part thereof. When enforcing its Rules and Directives, ARIF can take account of the special characteristics of the activities of financial intermediaries by granting less restrictive conditions or by ordering tighter measures, in particular depending on the risk of money laundering of the activity or on the size of the company. Subject to FINMA's prior consent, it can also take account of the development of new technologies that offer equivalent security regarding the implementation of due diligence duties.

#### D. DUTIES OF MEMBERS

##### Proper organisation

- 21 Members shall permanently maintain in Switzerland 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, keep a register of all their business relationships subject to the MLA (MLA Register) and have a transactions monitoring system.

##### 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, de facto or in law, in their business subject to the MLA;
  - the identity of their MLA Manager, their auditing firm and its lead auditors.

- 24 They shall also furnish immediately 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.

#### MLA audit and checks

- 26 Members shall submit to a periodic MLA audit conducted by an auditing firm, whom the members choose from among those accredited by ARIF and appoint 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 appointed by ARIF.

#### Duty to cooperate

- 29 Members and candidates for affiliation shall be committed to furnish spontaneously ARIF, its Special Auditors and their auditing firm, 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.

#### Costs

- 31 Audits carried out by the auditing firms, 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.*

In this Directive, ARIF shall specify, put into application and complete the duty of verifying the identity of the controlling owner or owners of the contracting party.

Establishing the identity of the beneficial owner of the assets which are the subject of the business relationship

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

*The financial intermediary is required to identify the beneficial owner with the diligence required by the circumstances. If the contracting party is a listed company or a subsidiary majority-owned by such a company, the financial intermediary may waive said identification.*

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

- a) *the contracting party is not the beneficial owner or if there is any doubt about the matter;*
- b) *the contracting party is a domiciliary company or a legal entity engaged in an operational activity;*
- c) *a cash transaction of considerable value within the meaning of Art. 3 subsection 2, is carried out.*

*The financial intermediary must require that a contracting party who holds collective accounts or collective securities accounts provides a complete list of the beneficial owners and notifies the financial intermediary without delay of any change in this list.*

Repetition of the verification of identity of the contracting party or the establishing of identity of the controlling owner and 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 controlling owner and 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:

- 1 *The financial intermediary is required to identify the purpose and aim of the business relationship desired by the contracting party. The scope of the information to be collected, the hierarchical level having competency to decide whether to initiate or continue a business relationship as well as the frequency of the checks depend on the risk that the contracting party represents.*
- 2 *The financial intermediary must clarify the background and the purpose of a transaction or a business relationship when:*
  - a. *the transaction or the business relationship appears unusual, unless their legality is clear;*
  - b. *there are indicia to suggest that assets are the proceeds of a felony or a serious tax offence within the meaning of Art. 305 bis, section 1 bis, Penal Code (PC), that assets are subject to the power of disposal of a criminal organisation (Art. 260 ter, section 1, PC) or that they are used to finance terrorism (Art. 260 quinquies, subsection 1, PC);*
  - c. *the transaction or the business relationship involves an increased risk;*
  - d. *the data concerning a contracting party, a beneficial owner or an authorized signatory of a business relationship or a transaction correspond, or are very similar, to the data that have been forwarded to the financial intermediary by FINMA, by a self-regulatory organisation, or by the Federal Gaming Board.*
- 3 *Business relationships with politically exposed persons abroad, and with the persons related to them, are deemed to involve an increased risk in all cases.*
- 4 *Business relationships with politically exposed persons in Switzerland or with politically exposed persons in international organisations, and with the persons related to them within the meaning of article 2a subsection 2, are deemed to involve an increased risk in connection with one or more other risk criteria.*

## 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 ARIF makes provision in its Directives for the exemptions from the due diligence duties permitted for assets of low value.

## 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 risk-based approach, and to increased risks;
- 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 as-



sets concerned and to maintain secrecy in this respect, mentioned in Art. 9, 9a, 10 and 10a MLA, which state what follows:

#### *Article 9*

*Subsection 1 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<sup>ter</sup>, figure 1, or 305<sup>bis</sup> of the Penal Code,*
  - 2. are the proceeds of a felony or a serious tax offence within the meaning of Art. 305bis section 1b, PC,*
  - 3. are subject to the power of disposal of a criminal organization, or*
  - 4. serve the financing of terrorism (Art. 260<sup>quinquies</sup>, 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.*
- c. knows or presumes, based on the clarifications made under Art. 6 subsection 2 letter d, that the data concerning a person or an organisation and forwarded by FINMA, by the Federal Gaming Board or by a self-regulatory organisation correspond to data concerning a contracting party, a beneficial owner or an authorised signatory of a business relationship or a transaction.*

*1ter The name of the financial intermediary must appear in the reports filed 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.*

#### *Art. 9a*

*During the analysis carried out by the Reporting Office according to Art. 23, subsection 2, the financial intermediary executes the clients’ orders concerning the assets notified under Art. 9, subsection 1 letter a, of the present law or under Art. 305 ter, subsection 2 PC.*

Art. 10

1 *The financial intermediary freezes the assets that are entrusted to him and that have a link with the information notified under Art. 9, subsection 1 letter a of the present law or under Art. 305 ter, subsection 2 PC as soon as the Reporting Office notifies him that it has passed on this information to a prosecuting authority.*

1 bis *The financial intermediary immediately freezes the assets that are entrusted to him and that have a link with the information notified under Art. 9, subsection 1 letter c.*

2 *He keeps the assets frozen until he receives a decision from the competent prosecuting authority, but for a maximum of five working days from the time at which the Reporting Office has notified him that it has passed on the information to a prosecuting authority in the case of subsection 1, or from the time at which he informed the Reporting Office in the case of subsection 1 bis.*

Art. 10a

1 *The financial intermediary is prohibited from informing either the persons concerned or any third party that he has reported information under Art. 9 of the present law or under Art. 305 ter, subsection 2 PC. The self-regulatory organisation to which the financial intermediary is affiliated is not deemed to be a third party. The same applies to FINMA and the Federal Gaming Board as far as the financial intermediaries that they supervise are concerned.*

2 *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.*

3 *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.*

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

5 *A financial intermediary is not subject to the prohibition of information when it is a matter of safeguarding his own interests in the context of civil, criminal or administrative proceedings.*

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.

Certification of auditing firms, lead auditors and special auditors

- 42 ARIF issues a Directive relating to certification of the auditing firms and lead auditors that it certifies, as well as to the special auditors that it appoints.

Other Directives

- 43 ARIF issues any other Directives that it considers necessary or expedient for organising the activities and defining or specifying the duties of its members in the area of financial intermediation, in particular without limitation with regard to trusts, Anstalten, foundations and similar entities, new payment methods and cryptographic currencies.

## F. DISCIPLINARY MEASURES

Injunctions

- 44 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

- 45 ARIF can also impose on the defaulting member the sanctions provided for by its Articles of Association. A sanction, which may go so far as exclusion, shall always be pronounced in the case of a 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; the same shall apply if a member refuses to meet its financial obligations towards ARIF.
- 46 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.
- 47 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.
- 48 The Committee may issue sanctions, including that of exclusion, with or without giving reasons.

In the latter case, a statement of reasons is notified in writing to a member who so requests within a time-limit of ten days of receipt of the unreasoned decision, and the member proceeds within the same time-limit to make an advance payment of the foreseeable expenses indicated in said decision.

If the statement of grounds is not requested or the advance payment of expenses is not made within this time-limit, the member is deemed to have definitively consented to the decision.

- 49 The notified decision reminds the addressee of the wording of article 75 Civil Code, viz. that *“Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof”*.
- 50 Having recourse to a civil judge does not suspend the enforceable status of the decision. In the event of subsequent notification of the reasons, the time-limit set by article 75 Civil Code runs from the time at which the reasoned decision is notified.
- 51 The sanction decisions, and their grounds, are always notified to FINMA.

#### G. FINANCIAL OBLIGATIONS

- 52 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.
- 53 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.

#### H. ENTRY INTO FORCE

- 54 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 January 1<sup>st</sup>, 2016, at the earliest. They shall modify and replace the Self-Regulation Rules of ARIF, adopted on June 11<sup>th</sup>, 2009, as well as their subsequent amendments.

Geneva, November 25<sup>th</sup>, 2015