

A kaleidoscopic world

The world is changing!

Obsolescence is built in not only to our dishwashers and computers, but also to our laws!

Our first telephone (in black bakelite, for the oldest among us) lasted 40 years. The next model, which was fitted with keys instead of a rotating dial, managed to last 15 years, before being replaced by landline phones with which one could nevertheless move around, then by the first mobile phones, the generations of which succeed one another at a dizzying pace.

Today the Financial Services Act (FFSA) and the Financial Institutions Act (FinIA) will (again) substantially change the environment and practices of financial services providers, in particular of independent asset managers.

This is not the place to analyse these laws – which are not yet definitive, and of which ARIF has duly expressed its criticisms – in detail. Intended both to bring Swiss law closer to European law (which has not been achieved ipse facto, in view of certain wordings to which we have not been able to prevent ourselves giving a certain “Swiss finish”), and to meet the accusations of rashness or even amateurism that were regularly levelled at a number of our colleagues in financial intermediation, we will confine ourselves here to saying that we will see these projects come into force with a degree of scepticism since it is true that, as in other areas, too much regulation certainly kills the effectiveness of regulation.



Guy Châtelain
Chairman of
the Training
and Information
Committee

While it is necessary to treat different situations differently, too rigid a client segmentation will not necessarily be easy to put in place and maintain over time. While the client certainly has to be well informed about the investments that are made on his/her behalf or that are proposed to him/her, in-depth verification of his/her investment knowledge and experience using the narrower criteria of suitability and appropriateness will not fail to remain of a haphazard nature, particularly if insufficient portfolio diversification is also deemed open to criticism, if not likely to cause the manager to lose his “independent” status. And what should we think of fiscal monitoring of our clients (including from the angle of the applicable foreign laws, including each time a new transaction is conducted)?

Service providers will be registered, hold an official permit (of which there will be a whole hierarchy) and be subject to significantly more incisive supervision - by FINMA itself for so-called “qualified” managers or by an “ectoplasmic” supervisory body (about which we still know very little, except that it might take the form of a public limited company, but then who will be its shareholders, directors, etc?) for the others. They will also be responsible for the conduct of other providers that they might call on, and will have to draw up appropriate documentation on their activities, documentation to which the client will have to have free access. In the event of a dispute, it will be incumbent upon the financial services provider to prove that it has provided full information, overturning the presumption according to which the client would not have conducted the transaction without an adequate explanation. Finally, service providers are invited to establish an arbitration tribunal (or several) to which their clients will be able to refer disputes, and to finance a fund to cover the costs of the proceedings that will be brought against them. Isn't that a beautiful arrangement?

All of which means that we no longer have enough space to address here the various new anti-money laundering or FINMASA* developments that are looming on the horizon.

As they say about most changes: this is progress!

(* Financial Market Supervision Act)



Les Rencontres
de l'ARIF

sous forme de **Déjeuner-débat**

“ Activités transfrontalières avec l'Italie :
principes de base à observer ”

Orateur invité : Michel Pasteur
Consultant indépendant, ancien Responsable de la
formation compliance chez Pictet & Cie

10 novembre 2014

12h¹⁵-14h⁰⁰

Métropole Genève

Places limitées

Tarif TTC :

chf 54.- (membres)

chf 76.- (non-membres)

Inscription sur :

www.arif.ch

Les bonnes idées peuvent parfois
vous prendre en déjeuner

Statement issued by ARIF on 1 September 2014 on the revision of the Financial Market Auditing Ordinance (FMAO-FINMA) and the Auditor Oversight Ordinance (AOO).

See all the ARIF statements on its website :
www.arif.ch/en/prises_de_position.htm

IMPRESSUM

Newsletter: 2 issues a year, distributed by electronic mail, hard copy if required.

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Training schedule 2014-2015

2014					
F	17 septembre 2014	B	9h. - 17h.	Lausanne	Formation de base - LBA
F	8 octobre 2014	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	20 novembre 2014	C	18h. - 21h.	Genève	«KYC / Cross-border avec l'Amérique latine»
E	11 December 2014	B	9 am - 5 pm	Geneva	Basic training - MLA
2015					
F	4 février 2015	C	14h. - 17h.	Lausanne	«Evolution législative récente : LBA, LSFIn et LEFin»
D	18. März 2015	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
D	19. März 2015	C	9 Uhr - 12 Uhr	Zürich	Weiterausbildung (Thema zu definieren) ◆
E	23 April 2015	C	2 pm - 5 pm	Geneva	«Recent legislative developments : MLA, FFSA and FinIA» (instead of «MLA and Trusts»)
E	7 May 2015	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
F	21 mai 2015	C	14h. - 17h.	Genève	«Instruction pénale des affaires de blanchiment»
F	4 juin 2015	B	9h. - 17h.	Genève	Formation de base - LBA
F	25 juin 2015	C	14h. - 17h.	Genève	«Révisions LBA et CoD»

F in French
D in German
E in English
I in Italian

B MLA basic training
C MLA advanced training
CoD CoD basic training
 ◆ Theme to be defined

French national ID card Extension of validity



On 1st January 2014, the validity of the secure French national ID card (laminated) issued to adults (people over 18) will increase from 10 to 15 years.

This extension of validity will also apply to ID cards issued to adults between 1st January 2004 and 31st December 2013.


These ID cards will remain valid even though the validity has run out; it will automatically be extended for an additional five years.

Any card issued to an under age person remains valid for 10 years only.

Please click on the following links for further information :

<http://www.service-public.fr/actualites/003118.html>

<http://www.interieur.gouv.fr/A-votre-service>



Association Romande des
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KYC / Cross-border avec l'Amérique latine

M. Michel Pasteur
 Consultant indépendant
 Ancien responsable de la formation compliance chez
 Pictet & Cie

Dr. Alessandro Bizzozero
 Associé de BRP Bizzozero & Partners S.A.
 Chargé de cours à l'Université de Genève

20 NOVEMBRE 2014, (HORAIRE SPÉCIAL) 18H. - 21H.
 HÔTEL MÉTROPOLE, QUAI GÉNÉRAL GUISSAN 34, GENÈVE

Programme et inscription sur **www.arif.ch**

Legal developments

Federal Council launches consultation on Federal Financial Services Act (FFSA) and Financial Institutions Act (FinIA)

(Federal Council / 27.06.2014)

The draft submitted for consultation consists of a Federal Financial Services Act (FFSA) and a Financial Institutions Act (FinIA). The consultation will run until 17 October 2014.

Aside from creating uniform competitive conditions for financial intermediaries, the FFSA serves particularly to improve client protection. It governs the relationship between financial intermediaries and their clients for all financial products. It includes provisions on matters such as the production of financial services subject to the obligation to publish a prospectus, the obligation to provide clients with an easily comprehensible basic information sheet, distribution and the corresponding code of conduct at points of sale, and legal enforcement.

The focal points of the code of conduct provisions are the obligations to provide information and conduct research. Clients need sufficient information on the financial services and financial instruments offered if they are to make investment decisions. When financial service providers advise clients or manage their assets, they have to take account of their clients' knowledge, experience, financial circumstances and investment objectives. From a substantive point of view, the rules are based on the EU's MiFID regulations.

With the FinIA, supervision of all financial service providers who operate an asset management business in any form whatsoever is to be governed in a uniform piece of legislation. In principle, the rules for financial institutions that already require a licence under existing law will be taken over from the applicable pieces of legislation without any material changes being made, but they will be harmonised in a differentiated manner according to their activity. The managers of individual client assets as well as those who manage the assets of Swiss occupational benefits schemes will also require a licence in the future.

Qualified asset managers (managers of collective investment scheme assets and those who manage the assets of Swiss occupational benefits schemes) are to be supervised by FINMA. Regarding the supervision of other asset managers, two variants are put up for discussion in the consultation: supervision by FINMA or by a supervisory organisation - or by several supervisory organisations under certain conditions. Existing asset managers can benefit from a grandfathering clause and are subject to no prudential supervision if they have sufficient experience gained from their many years of working as asset managers and confine themselves to serving existing clients.

ARIF will shortly be commenting, as it usually does, on this double draft law and will publish its comments on its web site.

FATCA agreement

(State Secretariat for International Financial Matters)

The agreement between Switzerland and the United States on cooperation to simplify the implementation of FATCA entered into force on 2 June 2014. The Federal Council brought the corresponding implementing act into force on 30 June 2014.

With the enactment of the Foreign Account Tax Compliance Act (FATCA), the United States wishes to ensure that all accounts held abroad by US taxpayers can actually be taxed. FATCA is a unilateral set of US regulations that applies worldwide for all countries. It requires foreign financial institutions to disclose information on US accounts to the Internal Revenue Service or levy a high tax.

The administrative and financial burden associated with the implementation of FATCA is considerable for foreign financial institutions. This burden will be reduced by the FATCA agreement, as it makes provision for reductions in the administrative burden for Swiss financial institutions.

FATCA implementation in Switzerland is based on Model 2, which means Swiss financial institutions will disclose account details directly to the US tax authority with the consent of the US clients concerned. The United States will have to request data on recalcitrant clients through normal administrative assistance channels.

The Federal Council approved the draft mandate for negotiations with the United States on switching to Model 1 on 21 May 2014. The mandate provides for the automatic exchange of information. The competent parliamentary committees and the cantons will now be consulted on this mandate and it will subsequently be definitively adopted by the Federal Council. It is still unknown at the present time when there will be a corresponding agreement.

Publication in the Official Journal of the European Union of MiFID II and MiFIR

(European Commission / 12.06.2014)

Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments (amending directive 2002/92/EC and directive 2011/61/EU, known as MiFID II) was published in the Official Journal of the European Union on 12 June 2014. Thus the Member States will have to adopt and publish, by no later than 3 July 2016, the legislative, regulatory and administrative provisions necessary to transpose the directive into national law and will enforce it as from 3 January 2017.

Furthermore, (EU) Regulation n° 600/2014 of the European Parliament and the Council of 15 May 2014 on markets in financial instruments (amending EU regulation n° 648/2012, known as MiFIR) has also been published in the Official Journal of the European Union and will be applicable directly in the Member States as from 3 January 2017.

The full texts of MiFID II and MiFIR are available on the ARIF's website : www.arif.ch/en/Legislation.htm

GM notice 2014

The 16th Annual General Meeting of ARIF will be held on Thursday, 6th of November 2014, from 5:30 pm, at the Swissôtel Métropole Geneva. The Meeting will be followed by a presentation of **Mr Patrick Lamon, Chief public Prosecutor from The Office of the Attorney General**, about the topic «Trends in money laundering» (in French).

Easing of the formalities for personal files

With the agreement of FINMA, ARIF is easing the requirements concerning documents to be remitted (personal files) as part of the obligation to notify the new persons subject to the MLA, among the members, or those persons newly involved in the auditing activities of members, as regards the auditing firms approved by ARIF.

The changes made concern, first, the extension of validity of extracts of criminal records from 3 to 6 months and, second, the remittal of ordinary, non-countersigned copies of diplomas and certificates of employment.

ARIF is doing its utmost to facilitate the administrative procedures of its members and to ease the existing procedures as much as possible.

Opting-out in the context of an asset management contract

The duty of information incumbent on asset managers subject to the Code of Deontology requires them to draw their clients' attention to this possibility of opting out and to its consequences. In order to make this formality easier for your clients, we are proposing an example of a contractual clause intended for this purpose. Use of this example is not compulsory and you can use another, substantially similar text provided that it is clear and explicit enough.

[Example of a qualified investor's contractual clause](#)

Special collaboration with Thomson-Reuters/World-Check

Thomson-Reuters/World-Check has established an important database, which it may well be advantageous to consult when, as a financial intermediary, identification of a new contracting party or a new beneficial owner, or even a subsequent check on an existing client, prove insufficiently conclusive with the available resources.

A considerable number of ARIF members already rely on World-Check's services by taking advantage of the particularly favourable rates negotiated by ARIF for its members. It is perhaps an opportunity to benefit from an additional source of information, which might otherwise have seemed too expensive to access. If you are interested in this offer, you are completely free to contact World-Check directly, mentioning your membership of our SRO.

We, for our part, are pleased to be able to help to optimize your professional environment in financial intermediation.

Mr. Jean-Louis Jacquinod: new investigation officer

The ARIF Committee has appointed Mr. Jean-Louis Jacquinod as the new investigation officer. Having very extensive knowledge in the field of finance and the different responsibilities exercised with banks and other international finance companies, Mr. Jean-Louis Jacquinod will be making all his auditing and compliance expertise available to our SRO. The ARIF Committee and secretariat are delighted with this new collaboration.



ARIF assessment letter from FINMA

Applying the new concept of supervision, every year FINMA gives self-regulatory organizations (SROs) its general assessment based on the findings made in the context of the day-to-day supervision conducted during the year. FINMA's aim is thus to communicate formally to the SROs their classification in terms of risks and weaknesses observed, as well as their positioning in the face of future challenges and risks.

In its 2013 assessment letter, FINMA noted "no shortcoming in ARIF's implementation of effective supervision of its members" and emphasized "the excellent cooperation and responsiveness" displayed by our SRO.

In view of the stability of the number of members and the organization in place, ARIF was awarded a rating of "basic intensity supervision" (as opposed to "enhanced intensity supervision"). This positive rating allows us to expect a degree of stabilization of the costs of the supervision carried out on our SRO. ARIF is thus pleased to announce to its members a reduction in the percentage of the supervision fee (SRO fee) charged on the amount of its membership fees for the year 2014-2015 from 14% to 12%.

