

## Do Independent Asset Managers (IAMs) have a future in Switzerland?

"Are we a species faced with extinction?"

Since the beginning of the twenty-first century, the profession of IAM has been undergoing far-reaching and binding changes with respect to its legal and regulatory frameworks and its domestic and international economic environment. These changes are such that today, in 2016, we can really ask ourselves whether this profession has a future in Switzerland. We also ask ourselves whether there are nevertheless some reasons for hope.

The Anti-Money Laundering Act (AMLA) came into force on 1 April 2000. All financial intermediaries, including independent asset managers, are subject to this Act. It makes IAMs feel that they are suspected "a priori" and that they have to permanently prove their innocence and that of their clients. Morality and ethics in business relationships are no longer a sufficient reference. Another original feature of this law is that it turns IAMs into auxiliary supervisory officers of the State, in support of the judicial, police and tax authorities. What is more, IAMs perform this task free of charge for the State, and have to pay the latter to check that IAMs discharge their obligations properly.



Gaudéric Massot  
Independent asset manager  
and member of the ARIF  
Committee

As of October 2009, FINMA set framework rules (which correspond to the Code of Deontology for ARIF members) that allow IAMs to prove they are rigorous, honest and loyal to their clients. If this was not the case previously, how was it that their number increased each year by several dozen companies until they numbered several hundred throughout the country? How is it that quite a number of them were managing the wealth of several generations of clients?

These new obligations, which formerly resulted from common sense and the Code of Obligations, have compounded the IAMs' administrative constraints and rising operating costs.

Following the subprimes crisis, the OECD States racked up so much debt that they began to try and recover money from all quarters and by all means. They did not forget in their efforts a small, particularly rich country that is well managed, very socially stable, the most democratic one in the world, outward-looking and home to one third of the

world's private wealth. Faced with the pressures of these OECD countries and weakened by the misconduct of some of our largest banks, our politicians caved in without obtaining the slightest compensation, such as unrestricted provision of Swiss financial services in the European Union or the symmetrical nature of FATCA. Financial intermediaries are currently being required

to actively participate in the process of institutionalized denunciation that will take effect as from January 2017, while blithely trampling on respect for privacy. Following these successful international pressures, the end of banking secrecy for foreign residents, the famous Swiss "private banking", which was so envied outside of our borders, is being ravaged both in private banks and for IAMs. The clients are losing confidence in the security and independence of the Swiss financial system and are leaving to put their money elsewhere. The banks are liquidating entire departments and sacking droves of employees, but very discreetly so as to limit the damage to their image. Asset management companies are closing down one after another. The social and fiscal consequences are beginning to be felt above all in cities such as Geneva, where this business activity was an important factor that drove consumption and employment and generated commensurate tax revenues.

Where do we stand today, is the worst behind us and will we at last be able to start restructuring and adapting to definitive new operating rules? To think that the future of the profession will from now on be set in stone for decades to come is to forget the thirst for regulation, since one easy way to absorb unemployment is to hire even more civil servants to watch over a category of taxpayers who can, in addition, be asked to pay for the cost of this supervision. Soon the LEFIN (Financial Institutions Act) and the LSFIN (Financial Services Act) will increase the constraints faced by IAMs in terms of the structure of their companies and in the day-to-day exercise of their profession. These two laws are in the preparation stage and it would therefore be premature to comment on them.

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### IMPRESSUM

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# Training schedule 2016-2017

## 2016

<b>F</b>	22 septembre 2016	<b>B</b>	9h. - 17h.	Lausanne	Formation de base - LBA
<b>F</b>	6 octobre 2016	<b>CoD</b>	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
<b>F</b>	24 novembre 2016	<b>C</b>	18h. - 21h.	Genève	«LSFin/LEFin et autres thèmes d'actualité»
<b>E</b>	7 December 2016	<b>B</b>	9 am - 5 pm	Geneva	Basic training - MLA

## 2017

<b>F</b>	1 février 2017	<b>C</b>	14h. - 17h.	Genève	«Mise en oeuvre des modif. LBA» <b>(reprise)</b>
<b>D</b>	22. März 2017	<b>B</b>	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
<b>E</b>	6 April 2017	<b>CoD</b>	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
<b>E</b>	4 May 2017	<b>C</b>	2 pm - 5 pm	Lausanne	«FinSA/FinIA : the new financial laws»
<b>F</b>	18 mai 2017	<b>B</b>	9h. - 17h.	Genève	Formation de base - LBA
<b>F</b>	14 juin 2017	<b>C</b>	14h. - 17h.	Genève	«Criminalité organisée / Délit fiscal qualifié»
<b>F</b>	21 juin 2017	<b>C</b>	13h30 - 17h30	Genève	«Audits 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



### The amendments made to the Code of Deontology

ARIF has adapted its Code of Deontology (Directive 14) following the amendment of 10. June 2016 of the FINMA circular (Circ.-FINMA 2009/1) "Guidelines on asset management".

Asset management contracts no longer need to be concluded in writing: digital contracts are now also allowed.

The amendments made to the Code of Deontology took effect on August 1, 2016.

### LSFin / LEFin et autres thèmes d'actualité

#### **Stéphanie Hodara**

Associée, ALTENBURGER LTD legal + tax  
 Membre du Comité de l'ARIF

*LSFin/LEFin : quelles conséquences pour les gérants de fortune indépendants ?*

#### **Giulia Mariani**

FINMA, Surveillance du secteur parabancaire  
 Division Marchés

*Circulaire FINMA 2016/7 : Identification par vidéo et en ligne*

#### **Adrienne Salina**

Avocate – LL.M. in Banking & Finance  
 T&CO SA, AVOCATS

*Les obligations de diligence LBA des organes/mandataires de sociétés offshore, et les responsabilités y afférentes*

24 NOVEMBRE 2016, 18 H. - 21 H.  
 HÔTEL MÉTROPOLE GENÈVE, QUAI DU GÉNÉRAL-GUISAN 34

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

## Legal developments

### **Spontaneous exchange of information: Revision of Tax Administrative Assistance Ordinance** (Federal Council - 20.04.2016)

The revision defines the framework and the procedures required for the spontaneous exchange of information, including those that apply for the exchange of information on advance tax rulings. The consultation ended on 10 August 2016.

With regard to the spontaneous exchange of information in general, the revised ordinance makes provision for organisational measures that will enable close cooperation between the Confederation and the cantons, as well as uniform application throughout Switzerland. It also contains provisions on the procedure, deadline requirements and on the information that is to be disclosed to foreign tax authorities.

For the specific case of the exchange of information on advance tax rulings, the ordinance defines the categories of rulings that are concerned. These provisions are compatible with the OECD and G20 project to combat base erosion and profit shifting (BEPS project). The results of this project were published in October 2015. The spontaneous exchange of information on advance tax rulings is an international standard that all G20 and OECD member states are politically committed to.

The new provisions of the ordinance are based on the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the Convention) and the revised Tax Administrative Assistance Act (TAAA), which governs the implementation of the Convention. The Convention and the revised TAAA were adopted by Parliament on 18 December 2015, and their entry into force is scheduled for 1 January 2017.

The spontaneous exchange of information will be limited to the states that have signed the Convention. Based on the current timetable, the revised ordinance will come into force on 1 January 2017. According to that planning, Switzerland would, in accordance with the existing legal basis, start spontaneously exchanging information from 1 January 2018 onwards and for tax periods starting from then. In order to limit the administrative burden as much as possible, advance tax rulings issued before 1 January 2010 are excluded from the spontaneous exchange of information, in keeping with the OECD recommendations.

### **Federal Council wishes to allow for innovative forms of financial services** (Federal Council - 20.04.2016)

The Federal Council instructed the Federal Department of Finance (FDF) to examine the need for regulatory action in the innovative financial technology (fintech) area.

Against this backdrop, an independent authorisation category, targeted exemptions from banking legislation and fixed-term simplifications for fintech companies are to be examined in particular. This could facilitate the activity of providers in the areas of virtual currencies, payment systems, digital asset management applications and crowdfunding platforms.

At the same time, the Federal Council reiterated that the existing statutory provisions for the authorisation-exempt processing of financial transactions apply also for fintech firms' services. In short, the sector's services can be divided up into the following main areas: crowdfunding, payment transactions, blockchain technology, virtual currencies, comparison and information portals, investment advice and asset management.

## Latest ARIF statements

### **New circular on "direct transmission"**

Direct transmission of non-public information to foreign authorities and services by supervised institutions  
(ARIF - 26.08.2016)

The draft on which consultation has been opened contains an ambiguity in that it defines the circle of supervised institutions to which it will apply solely by referring to article 3 of the Financial Market Supervision Act (FINMASA).

But certain supervised institutions within the meaning of this provision are outside the effective scope of the Circular, in particular self-regulatory organisms (SROs) such as ours, since the latter, although subject to FINMA authorization and supervision, may not under any circumstances "depend on foreign financial market supervisory authorities" nor be required to transmit information connected with a "transaction" or concerning "clients" within the meaning of article 42c FINMASA.

Provided that the legal basis is given, it would therefore be desirable to define separately which items of information the SROs - whose capacity as a body to which a public task within the meaning of art. 35 Federal Constitution is delegated has been acknowledged by the case law (cf. Supreme Court decision 2C\_887/2010, of 28 April 2011) - might be required to transmit to foreign authorities by direct transmission (for example, concerning the fact that a financial intermediary is affiliated to them, or whether or not it has been subject to disciplinary sanctions).

Regarding supervised institutions to which the circular is intended to apply, our main remark is that it dispels only partially the uncertainty of these supervised institutions about the information they may transmit without breaching article 271 Penal Code. Such uncertainty is not possible in a matter punishable by criminal law.

In addition, account should be taken of the third-party liability borne by these supervised institutions with regard to protecting their clients.

We think therefore that it would be more appropriate to draw up a complete, authoritative list of the items of information that can be transmitted directly, while all others must be the subject of prior referral to FINMA, or be sent only by the latter. This list could, moreover, be reviewed and supplemented periodically depending on practical experience.

Failing this, by way of precaution, a number of trivial transmissions will not be made by the supervised institutions, with the result that the legislator's aim will not be achieved, and FINMA's workload will be increased.

### **Partial revision of the circular on "Financial intermediary's activities within the meaning of the MLA"** (ARIF - 30.08.2016)

As a member of the Forum of SROs, ARIF has supported the position expressed by the umbrella organism in its comment dated 5th September 2016.

## General Meeting 2016

The 18th Annual General Meeting of ARIF will be held on Thursday 3th of November 2016, from 6.00 pm, at the Warwick Hotel Geneva.

### Introducing the new employees



**Androniki Tschlia**

Holding a hotel management diploma and having great experience of receiving people, Mrs. Androniki Tschlia is perfectly at ease in her role of secretary-receptionist. She also handles the management and follow-up of applications for affiliation and gives members, candidates for admission and all the other visitors the same hospitable welcome. She is fluent in French, English and Greek.



**Elena Rodriguez**

Mrs. Elena Rodriguez, who benefits from diversified experience of financial circles, has just strengthened our team as a supervision manager. Her task is to ensure the administrative follow-up and day-to-day management of the members' files. In addition, she provides the necessary support for the work of ARIF's Supervisory Committee. She is perfectly multilingual (Fr/En/It/Sp/Port).

ARIF now has a post office box :



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## Independent Asset Managers (continued from page 3)

One thing is certain, it will cost IAMs more in terms of time, money and energy.

It has to be acknowledged that IAMs are themselves partially to blame for what is happening to them. Their deep-seated spirit of independence has never led them to actively mobilize themselves to defend their interests. While a small minority have created interest groups or lobbies, until now they have not been representative enough to be really taken into consideration by the authorities. Some of them have probably given up participating - even financially - in a professional defence organization by relying solely on the participation of the others. Furthermore, in those who have mobilized themselves, this same spirit of independence has tended to encourage them to defend the individual interests of the different organizations established, rather than to get these organizations to unite to defend their common interests.

So the question arises of the future of this profession in Switzerland: Are IAMs a species faced with extinction?

Many of us have already gone out of business and will continue to do so, one after another. Only a small number of old and new IAMs will survive thanks to their capacity of resilience. What are these factors of resilience?

The first and most obvious is to group together in order to make economies of scale and to share the administrative and regulatory charges, when they cannot be outsourced.

Another factor is the creative imagination of IAMs, who will have to develop innovative and effective financial products that they will then be able to sell to as broad a clientele as possible. This clientele will become all the more important if the LEFIN and LSFIN make us compatible with the MIFID requirements, because it will then be possible to allow the whole of the European market to benefit from these Swiss products and to promote a "Swiss quality" label at the European level.

A last factor that would appear to be useful in both the Swiss market and the European private clients market would be to unite around an umbrella organization to promote the IAM profession by emphasizing its strengths and specific features. In this way the profession would be able to communicate better on our real assets such as independence, absence of conflict of interest, tailored investment, performance, multi-currency management, experience of all kinds of investment at the global level, availability, long-lasting client relationships, assistance with financial negotiation with custodian banks, risk control, etc.

Thus, in order to remain slightly optimistic, let us try to look at the part of the glass that is filling up rather than that which is emptying. In this way we will move towards a Swiss financial centre that is faultless in every respect and therefore even stronger because it is backed by a centuries-old tradition. Similarly, with the means the digital age provides us with, it will become all the easier to export our expertise and services. The legal or administrative barriers that the other countries - in particular European countries - have put up for us should disappear with the LEFIN and LSFIN. We have to mobilize ourselves so that these desires become a reality through the resolute action of our political authorities.

"Asset managers of good will, unite!"