

## DESTINATION SO

ARIF participated intensively in the consultation process on the FinSA/FinIA bills, and has been preparing for two years for the implementation of this legislation. It has presented some drafts to its counterparts to bring the efforts together, has set up a task force and is in touch with several key partners.

Once the legal text has been definitively adopted, ARIF will adapt its articles of association and organization to meet the requirements of the law. It will endeavour to participate as much as possible in the process of developing the implementing ordinances and will file an application for approval as a Supervisory Organisation (SO), either alone or in partnership with one or more other organizations interested in cooperating with it. Several entities - not only SROs - have expressed an interest in joining forces with ARIF to provide several of the services which are provided for by the bill.

ARIF will extend the scope of its supervision and provide new services, particularly in training. If the final text of the law so permits, it will also provide services for registration of client relationship managers and for mediation.

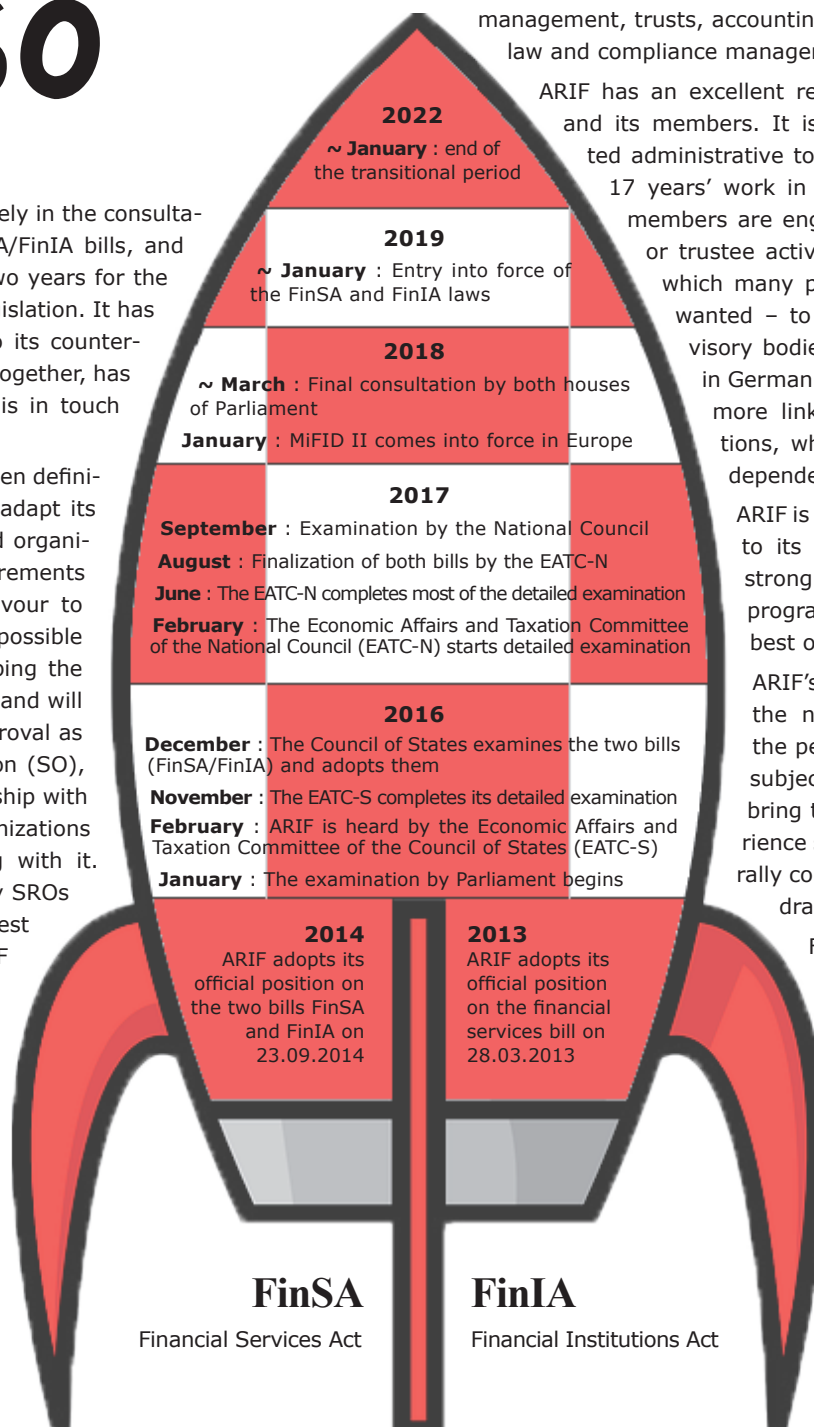
Some new people will be integrated into its structure to supplement the range of its competencies, and to ensure a separation between administration and management. Its Committee currently comprises 18 specialists in the areas of finance, wealth management, trusts, accounting, administrative and criminal law and compliance management.

ARIF has an excellent reputation with the authorities and its members. It is endowed with a sophisticated administrative tool developed in the course of 17 years' work in AML supervision. Most of its members are engaged in wealth management or trustee activity. It offers an alternative - which many players in the financial centre wanted - to the other projects of supervisory bodies, which are generally based in German-speaking Switzerland and are more linked to professional organizations, whereas ARIF is completely independent.

ARIF is very sound and flexible thanks to its militia-type structure. It has strong financial reserves. Its training programmes are recognized as the best of their kind in Switzerland.

ARIF's objective is to at least double the number of its members over the period during which the players subject to FinSA/FinIA will have to bring themselves into line, as experience shows that the last rush generally comes when the final deadline is drawing near.

FinSA/FinIA are an opportunity for ARIF to broaden the scope of its supervision and to increase the efficiency of the administrative tool it has put in place. ARIF has always foreseen these developments, which it has anticipated by having already made a number of amendments to its articles of association. Today it is seeing the practical result of its efforts.



### IMPRESSUM

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

**Publisher:** Association Romande des Intermédiaires Financiers (ARIF), 8 rue de Rive, 1204 Geneva.

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# Training schedule 2017-2019

| 2017 - 2018 |                   |            |                |          |  |
|-------------|-------------------|------------|----------------|----------|--|
| <b>E</b>    | 28 September 2017 | <b>C</b>   | 2 pm - 5 pm    | Geneva   | «Automatic exchange of information and tax compliance» |
| <b>F</b>    | 3 octobre 2017    | <b>CoD</b> | 13h30 - 17h30  | Genève   | Formation de base - CODE DE DEONTOLOGIE                |
| <b>F</b>    | 30 novembre 2017  | <b>C</b>   | 14h. - 17h.    | Genève   | «Financement du terrorisme»                            |
| <b>F</b>    | 14 décembre 2017  | <b>B</b>   | 9h. - 17h.     | Genève   | Formation de base - LBA                                |
| <b>F</b>    | 23 janvier 2018   | <b>C</b>   | 14h. - 17h.    | Lausanne | « Marché de l'art »                                    |
| <b>E</b>    | 8 February 2018   | <b>CoD</b> | 1:30 - 5:30pm  | Geneva   | Basic training - CODE OF DEONTOLOGY                    |
| <b>E</b>    | 6 March 2018      | <b>B</b>   | 9 am - 5 pm    | Geneva   | Basic training - MLA                                   |
| <b>I</b>    | 25 aprile 2018    | <b>C</b>   | 14 alle 17 ore | Lugano   | «LSF/LIFIN»  |
| <b>D</b>    | 26. April 2018    | <b>B</b>   | 9 Uhr - 17 Uhr | Zürich   | Grundausbildung - GwG                                  |
| <b>D</b>    | 27. April 2018    | <b>C</b>   | 9 Uhr - 12 Uhr | Zürich   | «FIDLEG/FINIG»   |
| <b>F</b>    | 8 mai 2018        | <b>C</b>   | 14h. - 17h.    | Genève   | «LSFin/LEFin»  |
| <b>F</b>    | 16 mai 2018       | <b>B</b>   | 9h. - 17h.     | Genève   | Formation de base - LBA                                |
| <b>E</b>    | 31 May 2018       | <b>C</b>   | 2 pm - 5 pm    | Geneva   | «FinSA/FinIA»  |
| <b>F</b>    | 21 juin 2018      | <b>C</b>   | 13h30 - 17h30  | Lausanne | «Audits LBA et CoD»                                    |

| 2018 - 2019 |                |            |                |          |   |
|-------------|----------------|------------|----------------|----------|---|
| <b>E</b>    | September 2018 | <b>B</b>   | 9 am - 5 pm    | Geneva   | Basic training - MLA  |
| <b>F</b>    | octobre 2018   | <b>CoD</b> | 13h30 - 17h30  | Genève   | Formation de base - CODE DE DEONTOLOGIE   |
| <b>F</b>    | novembre 2018  | <b>C</b>   | 18h. - 21h.    | Genève   | Formation continue LBA   |
| <b>F</b>    | décembre 2018  | <b>B</b>   | 9h. - 17h.     | Genève   | Formation de base - LBA   |
| <b>F</b>    | février 2019   | <b>C</b>   | 14h. - 17h.    | Genève   | Formation continue LBA   |
| <b>E</b>    | March 2019     | <b>B</b>   | 9 am - 5 pm    | Geneva   | Basic training - MLA  |
| <b>D</b>    | März 2019      | <b>B</b>   | 9 Uhr - 17 Uhr | Zürich   | Grundausbildung - GwG   |
| <b>E</b>    | April 2019     | <b>CoD</b> | 1:30 - 5:30pm  | Geneva   | Basic training - CODE OF DEONTOLOGY   |
| <b>E</b>    | May 2019       | <b>C</b>   | 2 pm - 5 pm    | Lausanne | MLA continuous training  |
| <b>F</b>    | mai 2019       | <b>B</b>   | 9h. - 17h.     | Lausanne | Formation de base - LBA   |
| <b>F</b>    | juin 2019      | <b>C</b>   | 14h. - 17h.    | Genève   | Formation continue LBA   |
| <b>F</b>    | juin 2019      | <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  
 New theme

For reasons of organization and current affairs, the dates and topics of the training courses scheduled for 2018-2019 will be defined at a later date.

# Legal developments

## Federal Council defines thrust of follow-up work on FATF mutual evaluation report on Switzerland (Federal Council - 28.06.2017)

The Financial Action Task Force (FATF) published the fourth mutual evaluation report on Switzerland on 7 December 2016. It acknowledged the generally good quality of the Swiss system for combating money laundering and terrorist financing. At the same time, the FATF identified weaknesses in certain areas with regard to legislation and its effectiveness, and issued corresponding recommendations. Consequently, Switzerland is currently in a follow-up process and has to present its first follow-up report to the FATF in February 2018. The shortcomings found in the area of legislation are to be eliminated within three years. In addition, Switzerland will be subject to a follow-up review with respect to improving effectiveness after five years.

The FDF analysed the FATF recommendations within the framework of the interdepartmental coordinating group on combating money laundering and the financing of terrorism (CGMF). On that basis, the Federal Council instructed the FDF to prepare a consultation draft by the end of the year. This should serve to implement some of the most important recommendations. In particular, the Federal Council is proposing due diligence duties in accordance with the Anti-Money Laundering Act for specific non-financial intermediary activities, as well as measures in the area of associations to increase transparency. Amendments are also planned in connection with precious metal and precious stone traders, the purchase of old precious metals and the reporting system.

Further measures should be implemented particularly within the scope of the legislative project of the Federal Department of Justice and Police (FDJP) to prevent terrorism and organised crime. The consultation on this proposal commenced on 21 June 2017. Moreover, certain recommendations in the FATF mutual evaluation report overlap with Global Forum recommendations in the phase 2 peer review report on Switzerland. The Federal Council will address the implementation of these recommendations in a separate proposal after the summer break. It will also be necessary to amend the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA), the Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence (CDB) and the regulations of self-regulatory organisations in order to eliminate the significant weaknesses identified. In concrete terms, the verification of beneficial owners and the regular updating of client information are concerned.

The Federal Council additionally took note of the CGMF report on the risks in the area of non-profit organisations. The report proposes measures to enhance the transparency of foundations and associations with a heightened risk regarding terrorist financing.

## Federal Council puts new fintech rules into force (Federal Council - 05.07.2017)

During its meeting on 5 July 2017, the Federal Council adopted an amendment of the Banking Ordinance. It entered into force on 1st August 2017. The revision should ensure that barriers to market entry for fintech firms are reduced and that the competitiveness of the Swiss financial centre is enhanced.

The amendment to the Banking Ordinance (BankO) aims to regulate fintech firms which provide services outside normal banking business according to their risk potential. The following simplifications are implemented:

- First, the exception provided for in the Banking Ordinance for the acceptance of funds for settlement purposes apply explicitly for settlements within 60 days – in accordance with the practice up to now, a period of seven days applied.
- Furthermore, an innovation area is created: the acceptance of public funds up to CHF 1 million will no longer be classified as operating on a commercial basis in the future and will be exempt from authorisation. This change should allow firms to try out a business model before they are finally required to obtain authorisation in the case of public funds of over CHF 1 million. It should also be clearly stated to depositors that their deposits are not protected by deposit protection.

The regulatory simplifications apply not only for fintech firms, but also for established financial service providers. Banks should also be able to use the innovation area. This will ensure that the competition amongst the financial market participants is not distorted. Furthermore, the amendments have no influence on the applicability of the Anti-Money Laundering Act.

Yet another amendment which concerns the Banking Act (BankA) was already addressed by Parliament in the context of the deliberations on the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA). In December 2016, the Council of States advocated that a new authorisation category is to be created in the BankA for companies that accept public funds of up to a maximum of CHF 100 million but do not invest funds or pay interest on funds. For the new authorisation category, there should be simplified authorisation and operating requirements relative to the current banking licence in the areas of accounting, auditing and deposit protection. The debate is to take place this autumn in the National Council.

The Federal Council will continue to closely follow further developments in the areas of digitalisation and fintech, and examine further regulatory measures. The corresponding work, i.e. on clarifying the legal qualification of virtual currencies, has been taken over and is to be swiftly pursued.

### Case law

Ruling dated 16 June 2017 (4A\_508/2016)

Retrocessions: the right to return lapses after ten years

The principal's right to return of retrocessions which were paid to the agent by third parties is subject to a statutory limitation period of ten years. The statutory limitation period begins to run for each claim for return of a retrocession on the day on which the agent received the amount retroceded.

# General Meeting 2017

The 19th Ordinary General Meeting of ARIF will be held on Thursday, 9th November 2017 at 5:00 p.m. at the hotel Warwick, Geneva. The Meeting will be followed by a statement from **State Councillor Mr. Pierre Maudet**, President of the Department of Security and Economic Affairs of the Republic and Canton of Geneva.

## Activities related to real estate and property management

In the course of its supervisory activity and during visits to its members, ARIF has found that a number of activities that could be carried out in connection with an activity in the real-estate sector were likely to be concerned by issues related to the MLA.

Being aware that it is not always obvious whether an activity is subject to the MLA, ARIF has drafted a note that examines the situation of the various activities that may conceivably be affected. The aim of this analysis is to draw attention to and propose solutions to a number of frequently-observed problems or regularly-asked questions, be it in the area of property management, administration of real estate companies, real-estate development and real-estate trading or brokerage.

The document is available in French from the ARIF secretariat and will be commented on at ARIF's next lunch-debate on 18 October 2017 from 12.00 noon to 2.00 p.m. at the Hôtel Métropole, Geneva ([registration compulsory](#)).

## Warnings list

ARIF publishes on its website a “[black list](#)” concerning companies that claim to be supervised by us and post false statements on their web pages claiming that they belong to our organization.

Despite the customary threats sent to the companies concerned, it is very difficult to lodge a complaint or to take action against the companies hosting incriminated sites so as to request the necessary changes. That is why ARIF has decided to publish on-line - in order to protect investors - the names of the companies giving false indications.

## Proper business conduct

Top management members of supervised institutions are required by financial market legislation to demonstrate proper business conduct in order to safeguard public trust in institutions supervised by FINMA as well as Switzerland's reputation as a financial centre. Proper business conduct covers all personal and professional attributes required by an individual to adequately perform their governance and management duties.

The Swiss Financial Market Supervisory Authority FINMA amended its Ordinance on Data Processing. In the Ordinance FINMA defines how it collects information to assess an individual's compliance with proper business conduct requirements (data collection to monitor proper business conduct). The revised version of the Ordinance entered into force on 15 September 2017.

