

## 1999-2019 : 20 years already !



Norberto Birchler  
General manager

ARIF was founded on 15 March 1999 in Geneva and on 24 December of the same year received its accreditation from the Anti-Money Laundering Supervisory Authority (MLA-CA), which at that time was in charge of supervision before FINMA was established in 2009.

10 years later ARIF was becoming active in specific supervision of wealth managers through its Code of Deontology. As we wrote in these columns in March 2009, *"considerable progress has been made in enabling ARIF to rise to the challenges of the next few years, starting with the integration on 1 January 2009 of the new Swiss Financial Market Supervisory Authority (FINMA) and the implementation of amendments to the MLA which came into force on 1 February 2009, or self-regulation of wealth managers with the very recent adoption of a Code of Deontology (CoD) that was submitted to FINMA."*

And now, another decade later, ARIF is preparing to take up a new regulatory challenge. Based on its experience with IWMS, but also with trustees and commercial testers, it will apply for accreditation as a supervisory body in the course of January 2020.

Over the next few months we will have an opportunity to come back to this project and the paradigm shifts this will entail for our members who are concerned. ARIF will continue to keep you informed and support you throughout the process.

What conclusions can be drawn from the past decade ?

ARIF implemented the Code of Conduct for its wealth managers and continued to supervise its members, applying the fair and rigorous processes that have made its reputation and given FINMA full satisfaction.

The constant dedication of the Secretariat enabled ARIF to achieve all its objectives year-after-year and thus to fulfil the mission assigned to SROs by the legislator.

The twentieth year of ARIF's existence was marked by actions benefiting our members in order to best prepare for the future: a strategic partnership on professional/risk training established with the Institute for Studies in Finance & Banking (ISFB), special presentations relating to current legislative developments (FinSA/FinIA among others), and, of course, the establishment of OSIF, the entity that will supervise the financial institutions subject to the MLA.

Benefiting from its know-how acquired over two decades of practical supervision, including one decade specifically spent supervising the General Rules for IWMS, a Committee made up of qualified persons and a dedicated and efficient Secretariat, ARIF will continue to defend the interests and ensure the integrity of its current and future members. But always by ensuring compliance with due-diligence obligations and a guarantee of faultless business activity, both for members who will remain subject only to the MLA and for those who will be subject to the FinSA/FinIA from January 2020 onwards.

**Thank you for your trust in ARIF !**

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Les Rencontres  
de l'ARIF

sous forme de **Déjeuner-débat**

“ Bilan d'étape sur l'échange automatique de renseignements (EAR) ”

Orateur invité : Sergio Uldry  
Associé, Geissbühler Weber & Uldry

16 avril 2019  
12h<sup>00</sup> - 14h<sup>00</sup>

Métropole Genève  
Places limitées

Tarif TTC :  
CHF 71.- (membres)  
CHF 91.- (non-membres)

Inscription sur :  
www.arif.ch

Les bonnes idées peuvent parfois  
vous prendre en déjeunant

# Training schedule 2019-2020

2019					
<b>E</b>	20 March 2019	<b>CoD</b>	9 am - 5 pm	Geneva	Basic training - MLA
<b>D</b>	28. März 2019	<b>C</b>	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
<b>E</b>	4 April 2019	<b>B</b>	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
<b>E</b>	8 May 2019	<b>C</b>	2 pm - 5 pm	Lausanne	«Legislative developments in progress»
<b>F</b>	15 mai 2019	<b>B</b>	9h. - 17h.	Lausanne	Formation de base - LBA
<b>F</b>	13 juin 2019	<b>C</b>	14h. - 17h.	Genève	«Responsible LBA et organisation interne LBA»
<b>F</b>	19 juin 2019	<b>C</b>	13h30 - 17h30	Genève	«Audits LBA et CoD»
<b>E</b>	11 September 2019	<b>B</b>	9 am - 5 pm	Lausanne	Basic training - MLA
<b>F</b>	11 octobre 2019	<b>CoD</b>	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
<b>F</b>	21 novembre 2019	<b>C</b>	14h. - 17h.	Genève	«LBA 2020 et nouvelles ordonnances OSFin/OEFin»
<b>E</b>	28 November 2019	<b>C</b>	2 pm - 5 pm	Geneva	«MLA 2020 and new ordinances FinSO/FinIO»
<b>F</b>	12 décembre 2019	<b>B</b>	9h. - 17h.	Genève	Formation de base - LBA

2020					
<b>F</b>	23 janvier 2020	<b>C</b>	14h. - 17h.	Lausanne	Formation continue LBA <span style="float: right;">◆</span>
<b>E</b>	27 February 2020	<b>CoD</b>	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
<b>E</b>	4 March 2020	<b>B</b>	9 am - 5 pm	Geneva	Basic training - MLA
<b>I</b>	1 aprile 2020	<b>C</b>	14 alle 17 ore	Lugano	«LRD 2020 e nuove ordinanze OSerFi/OIsFi»
<b>D</b>	2. April 2020	<b>B</b>	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
<b>D</b>	3. April 2020	<b>C</b>	9 Uhr - 12 Uhr	Zürich	«GwG 2020 und neue Verordnungen FIDLEV/FINIV»
<b>F</b>	6 mai 2020	<b>B</b>	9h. - 17h.	Genève	Formation de base - LBA
<b>F</b>	19 mai 2020	<b>C</b>	14h. - 17h.	Genève	Formation continue LBA <span style="float: right;">◆</span>
<b>E</b>	3 June 2020	<b>C</b>	2 pm - 5 pm	Geneva	MLA continuous training <span style="float: right;">◆</span>
<b>F</b>	16 juin 2020	<b>C</b>	13h30 - 17h30	Lausanne	«Audits LBA et CoD»

<b>F</b>	in French	<b>B</b>	MLA basic training
<b>D</b>	in German	<b>C</b>	MLA advanced training
<b>E</b>	in English	<b>CoD</b>	CoD basic training
<b>I</b>	in Italian	◆	Theme to be defined

The CWMA (Certified Wealth Management Advisor) quality label is the professional standard adopted by Swiss banks since 2016 for their wealth management advisors. ARIF has anticipated the training obligations that the new Financial Services and Financial Institutions Acts (FinSA/FinIA) will place on independent wealth managers IWMs from 2020 onwards by giving these financial intermediaries the option of embarking now on a training/certification programme.



# Legal developments

**ARIF's position on the draft amendments to the MLA and draft provisions of other laws**  
(ARIF - 21.09.2018)

## Excerpt :

Article 305ter para. 2 of the Swiss Criminal Code (CC)

In our capacity as a Self-Regulatory Organism (SRO) with 20 years' experience in the fight against money-laundering, we strongly oppose the proposal to repeal Article 305ter para. 2 CC.

The case-law interpretation of the concept of reasonable suspicion in Article 9 MLA is, as the term indicates, only applicable to case law, that is, with an authority relating to the cases dealt with, and not general and embedded in the legal text. Another interpretation might be given by the Swiss Supreme Court, in its various compositions, in other cases that will be referred to it.

Apart from the case of a clear loophole in the legal text, which does not exist in this particular case, it is not incumbent upon the judiciary to change the law, particularly in a criminal matter where the principle of legality strictly applies.

Moreover, the interpretation of certain Supreme Court judgments given by the Department in its Report is very dubious, in that the Supreme Court has not defined the lower limit of the obligation to report.

The judgments of the Federal Administrative Court - the lower appeal authority - cited in the Report, SK.2014.14 and SK.2017.74, contain only obiter dicta with reference to an older piece of Supreme Court case law, 4A\_313/2008, which had to examine a civil case from the angle of the minimum legitimacy to report and the resulting civil liability, and not from that of the minimum obligation to do so and the resulting criminal liability, which the Supreme Court has never done to date.

We think it is extremely necessary to keep Article 305ter para. 2 in the legislation in order to resolve doubtful cases or conflicts of conscience with which a financial intermediary may be faced; the notion of reasonable suspicion remains very obscure for lay people who are not lawyers, even if they are financial intermediaries.

Moreover, the report is contradictory: on the one hand, it advocates extending the obligation to report to any suspicion or dubious situation and at the same time it postulates that the removal of article 305ter para. 2 of the Criminal Code will encourage a greater number of relevant notifications made to the MROS.

However, it is well-known that this office has difficulty in processing all the notifications made to it, so that it sometimes takes longer than one year to process them.

It therefore seems extremely necessary to keep two notification regimes, one devoted to suspicion based on serious and probably-relevant elements, and the other intended for ordinary cases of uneasiness, unclarified doubts or ordinary suspicions, unless they completely clog up processing by the MROS of the cases submitted to it.

See all the ARIF statements on its website :

[www.arif.ch/prises\\_de\\_position.htm](http://www.arif.ch/prises_de_position.htm)

**FATF has updated its statements**  
(FINMA - 27.02.2019)

The Financial Action Task Force (FATF) updated its statements on high-risk and non-cooperative jurisdictions at its plenary meeting held in February 2019 :

- Public Statement - 22 February 2019
- Improving Global AML/CFT Compliance: On-going Process

The FATF is an international body whose purpose is to develop and promote measures to combat money laundering, terrorist and proliferation financing. Switzerland also is a FATF member. Based on the results provided by the FATF's International Co-operation Review Group (ICRG), high-risk and non-cooperative jurisdictions may be publicly identified in one of two documents published by FATF on three occasions throughout the year.

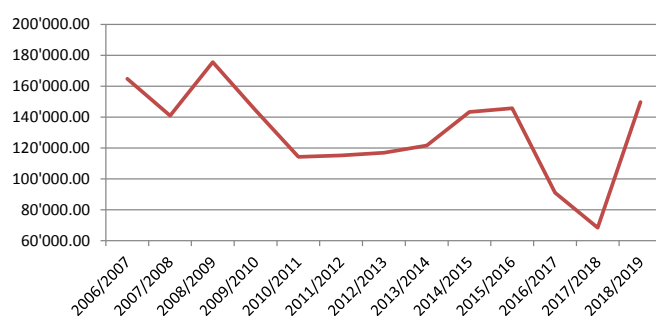
FINMA calls on all financial intermediaries to take the FATF information into account in their risk management strategies. It also requests recognised self-regulatory organisations to inform their members.

**FinTech licence**  
(FINMA - 10.12.2018)

To promote innovation, parliament has created a new licensing category - known as the FinTech licence - in Article 1b of the Banking Act. From January 2019, institutions with this licence can accept public deposits of up to CHF 100 million, provided that they do not invest or pay interest on them. But like all other financial intermediaries, they are subject to the Anti-Money Laundering Act. FINMA has set out the corresponding due diligence requirements in the FINMA Anti-Money Laundering Ordinance and conducted a consultation on this topic. The revised provisions came into force on 1 January 2019.

As a rule, all financial institutions are subject to similar due diligence requirements relating to combating money laundering. However, as the changes to the Banking Act will particularly affect smaller institutions, FINMA is introducing some organisational relaxations for such low-risk institutions with low gross revenues.

As the SRO levy charged by FINMA increased by more than 100% between 2017 and 2018, ARIF has had to take the decision to raise the levy collection rate from 10% to 15%, that is, to the level that had prevailed until 2012. It is pointed out that ARIF had always reduced this rate with the reduction of the amount of the levy. (diagram: trend in FINMA's SRO levy)



## Ordinary GM on 7 November 2019

The 21st Annual General Meeting of ARIF will be held on Thursday 7th of November 2019, from 5.00 pm, at the Metropole Hotel, Quai Général Guisan 34, in Geneva.

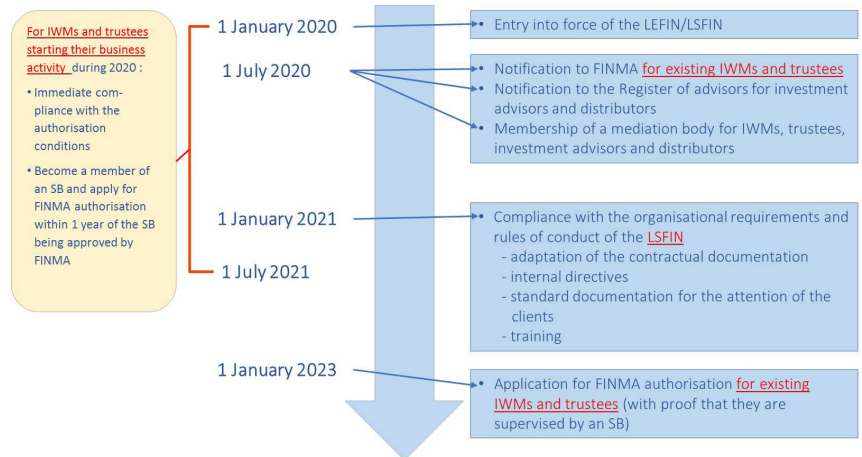
### FinSA/FinIA transitional time-limits

The draft FinIO Ordinance states that Independent Wealth Managers (IWMs) and trustees will initially have to obtain confirmation that they are supervised by a supervisory body (SB). They will be entitled to obtain it if their internal regulations and their organisation ensure compliance with the requirements of supervisory law, viz. in particular the anti-money laundering obligations and the provisions of the FinSA that are applicable to them.

In this respect, FINMA is expected to enact ordinances, or even to issue authorisation application models explaining the information and documents to be submitted by IWMs and trustees. With regard to transitional time-limits, existing IWMs and trustees have 6 months to report to FINMA and 3 years to file an application for authorisation. However, IWMs must not forget that they will have to comply with the rules laid down by the FinSA, viz. in particular its rules of conduct and organisation, by 1 January 2021 and should already begin to organise themselves accordingly.

As for trustees, the explanatory report has made a welcome clarification since it states that they are not subject to the obligations of the FinSA, unless "their activity includes [...] wealth management".

#### Transitional time-limits and procedures to be completed



Stéphanie Hodara El Bez, draft FinIO and draft FinSO: What will the impacts be for IWMs and trustees?

### Introducing the new members of the ARIF Committee



**Géraldine Badel Poitras** is a partner at the law firm Gillioz Dorsaz & Associés, which specialises in business law and financial intermediary regulation. Géraldine gained her lawyer's license at the Geneva Bar in 1996. She passed the Canadian stockbroker qualifying examination and has been an expert member TEP of the Society of Trust and Estate Practitioners (STEP) since 2013.

Géraldine Badel Poitras has more than 20 years' experience, 17 of which as an in-house counsel, with international financial groups for which she worked in Switzerland and Canada.

Formerly head of a legal department, Géraldine Badel Poitras currently assists her financial intermediary clients and banking clients with the implementation of their compliance activity, drafting their internal guidelines, in-house training and ensuring compliance of contractual documents. Géraldine Badel Poitras heads teams in the area of remedial action in regulatory matters and she represents her clients in proceedings before the FINMA or in court proceedings in financial cases. She advises her clients in traditional and new technology-related investment projects.

On the strength of this experience, she joined ARIF as an investigating officer, and then its Committee, on 15 November 2018.



**Daniel Martineau** held managerial positions with leading trust companies in Canada before taking up roles in offshore trust companies in Nassau, Jersey and Geneva, at Coutts International Private Bank.

Daniel Martineau is currently Executive Chairman of Summit Trust International SA, a member of the Sanlam Group, a leading financial services group based in South Africa.

A graduate of the University of Western Ontario in London (Canada), he subsequently gained a Master degree in Business Administration at the University of Miami.

Daniel Martineau is a member of the Financial Planning Institute of Canada and the Society of Trust and Estate Practitioners (STEP). Daniel is a founder of the Swiss Association of Trust Companies (SATC) and a member of the editorial committee of Wealthbriefing.

He is a frequent speaker at conferences in the trusts sector and joined ARIF as an investigating officer in 2018, before becoming a member of the Committee on 13 February 2019.

#### IMPRESSUM

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