

# ARIF Example of An Asset Management Contract

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1. Applicable rules regarding the drafting of an asset management contract.
2. The asset management contract shall be in writing.
3. ARIF Contract Example is not a “Regulatory Specimen”.
4. Presentation and comments regarding ARIF’s Contract Example, article by article.
5. ARIF Contract Example must be adapted and customized by the independent asset manager.

# 1. Applicable rules

- **FINMA Circular 2009/1**

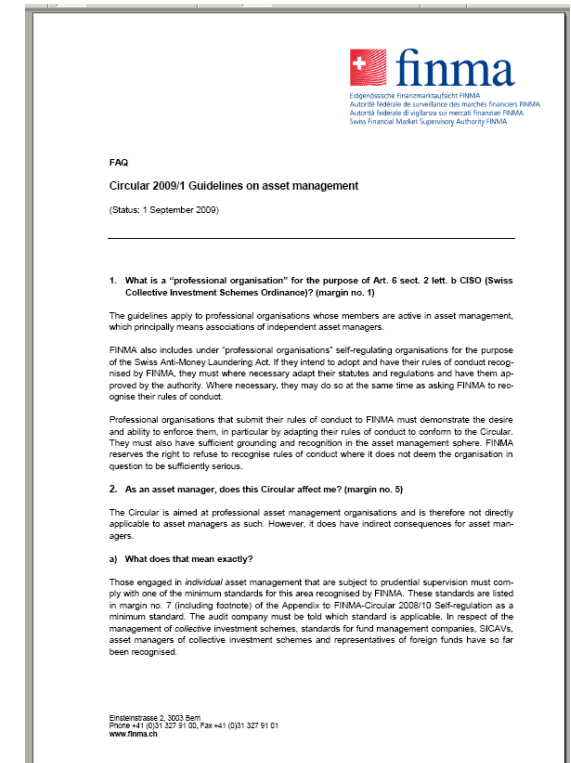
Defines minimum requirements notably with regard to the form and the content of the asset management contract.

- **ARIF Code of Deontology (Directive 14)**

Provides for various provisions determining the content of the asset management contract.

- **Schedule B of ARIF Code of Deontology**

Assesses the minimum items to be included in an asset management contract.



## 2. A written contract

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- The written form is mandatory

A written contract for controlled and discretionary asset management is mandatory.

- Particular case of investment advisory services

A written contract is not necessary if only advisory services are provided.

### 3. ARIF Contract Example is not a “Regulatory Specimen”

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- ARIF drafted a Discretionary Asset Management Contract Example.
- ARIF Contract Example does not define the minimum and binding content of a compliant asset management contract.
- ARIF Contract Example shall be adapted by the asset manager.

### *Accurate designation of the parties*

- Purpose:
  - Designation of the client:
    - Person or entity entitled to give instructions.
    - Person or entity for whom the management is made.
  - Designation of the manager:
    - Person or entity to whom the mandate and power of attorney to manage is given.

### *Concerned banking connections*

- **Purpose:** Designation of the bank(s) and the account(s) where assets to be managed are located.
- **Remarks:**
  - Delimitation of the assets that are under the responsibility of the asset manager.
  - Asset managers do not accept from their clients any deposits as per the Swiss Banking Act, unless they are granted a banking license (Article 9 Code Deontology).
  - They do not manage any settlement accounts for their clients, unless they are granted an authorization as a securities dealer.

## 4. Article 3 (1/2)

### *Mandate and power to manage the assets*

- **Purpose:** To define the scope of the mandate and the duty of diligence of the manager.
- **Scope of the mandate:** Mandate and power of attorney granted to accomplish any acts and investments which the asset manager will consider useful for the asset management within the limits specified in the contract and in the Code of Deontology.
  - A copy of the Code of Deontology must be delivered to the client at the time of the signature of the asset management contract.
- **Duty of diligence:** Execution of the discretionary mandate with all diligence within the scope of the investment objectives determined by the client.

## 4. Article 3 (2/2)

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### *Mandate and power to manage the assets*

- No guarantee of any determined performance.
- Some limitations of the manager's discretion :
  - Right to overdraw the clients' accounts.
  - Right to pledge.
  - Right to dispose of the assets in his favor.

### *Client's capacity to take over and understand the risks*

- **Purpose:** To demonstrate that the Client is informed and understands the risks related to the services provided by the asset manager.
- There does not exist any asset management without any risk of loss.
- The client can certify he is experienced and well informed in financial matters.
- **Specific duty to inform for particularly risky transactions.**

The information can be given in a standardized form (Example: ASB brochure “Special risk in Securities Trading”).

### *Reference currency*

- **Purpose:** Designation of the currency that will be used for estimating the manager's performance and for its reporting to the client.
- **Remark:**
  - This provision does not prohibit the manager to invest in other currencies.

### *Investment objectives and particular instructions*

- **Purpose:** To record in writing the client's investment objectives and restrictions and his specific instructions (see "Management Profile").
- **Remarks:**
  - The client's instructions which are not covered by the asset management contract must be recorded in a written or electronic form.

### *Investment objectives and particular instructions*

- **Management profiles:** to be set up taking into account the client's global financial situation and his capacity to assume risks.
- ARIF proposes four different Management Profiles:
  - **Conservative:** to preserve the value of the managed assets.
  - **Return:** to preserve the value of the managed assets and generate a regular return.
  - **Dynamic:** to realize substantial capital gains by incurring the risk of loosing the entirety of the managed assets.
  - **Balanced** a mixture of Conservative, Return and Dynamic profiles.

### Investment Instruments /Schedule A

- **Discretionary management:** Investments instruments are limited to those listed in ARIF Schedule A “Investment instruments in case of discretionary asset management”.
  - The investment instruments listed in Schedule A are considered as usual investment instruments in the case of discretionary asset management. They may be used even if the written asset management contract does not provide so explicitly.
- The use of other type of financial instrument requires a specific written agreement from the client.

### *Investment objectives and particular instructions*

- **Remarks**

- The client must choose a Management Profile and give any specific instructions in writing.
- The client may change his instructions or his Management Profile and admits in writing that those changes may have an impact on the management performance. The contract must be amended accordingly.
- In principle, the manager's discretionary management is carried out on the whole managed assets. The client may decide to limit the discretionary asset management to a certain amount of the managed assets and give specific written instructions for the remaining part.
- The manager shall ensure that the investments carried out for his clients permanently correspond to the investments objectives and restrictions.
- The manager must ensure adequate risk diversification and must regularly review the investment strategy.

### *Exercise of voting rights and other obligations*

- The right to vote on behalf of the client can be granted to the manager.
- The client is responsible to take all measures to protect his rights relating to the managed assets: Exercise of option rights, payments in case of margin calls, etc...
- The client is responsible to take all measures to comply with Swiss or foreign legal requirements concerning the managed assets: Compliance with declaration requirements according to the Stock Exchange Act, tax disclosures, etc...
- Limitation of the asset manager's liability.

### *Authorization for the investment of direct orders and/or directed orders*

An authorization can be given to the asset manager:

- to transmit orders to securities dealers other than the client's custodian bank ("Direct Orders") and
- to instruct the custodian bank to transmit orders to a specific securities dealer ("Directed Orders").

### *Delegation of tasks to third parties*

•**Purpose:** Authorization given to the asset manager to delegate to third parties tasks inherent to the asset manager's activity.

•**Remarks:**

- The outsourced services are under the manager's responsibility.
- The manager must choose, instruct and control the third party supplier carefully.
- A written contract must be signed with the supplier clearly defining the delegated tasks.
- The supplier must observe the duty of confidentiality.

### *Limitation of liability*

- **Purpose:** To limit the liability of the asset manager.
- Manager's liability in his management activities can be limited to serious fault.
- Limitation of the manager's liability for acts of third parties (not. banks).
- Limitation of the manager's liability for tax consequences of the asset management.
- **Remarks:**
  - Commercial issues.
  - The clause may be challenged by the client.

### *Obligation of confidentiality*

- **Purpose:** to confirm to the client the manager's duty of confidentiality (Art 8 Code of Deontology).
- The manager guarantees to keep confidential the existence and terms of the asset management contract and any financial, commercial or private information regarding the client or the managed assets, for a unlimited period of time.
- **Remarks:**
  - Limitations of this duty.
  - Guarantees to be given for third party suppliers.

## 4. Article 5

### *Report and rendering of accounts by the Asset Manager*

- **Purpose:** To define the type of reporting and its frequency
- Written report addressed to the client at least once a year to show:
  - The management transactions carried out.
  - The state of the managed assets.
  - The actual performance and its comparison with reference indexes.
- **Remarks:**
  - In addition, the client may request a report at any time and free of charge.
  - The client may also request copies of the account statements and of the portfolio estimates produced by the bank.
  - The manager may reserve his right to make the client sign a document certifying that he acknowledged receipt of the state of the managed assets.
  - Type of reporting: personalized or based on the bank statements.

### *Communications between asset manager and client*

- **Purpose:** To define the communication methods between the manager and the client.
- **Principle:** Any communication between manager and client will be considered as valid if done in writing to their respective address.
- **The alternative “retained mail”:** The client may instruct the manager to keep, at the client’s disposal, any documents related to the asset management (statements, correspondence, report,...).
- **Mode of transmission of the instructions by the client:** By telephone, fax, electronic mail. The manager may require a written confirmation.

## 4. Article 6 (2/2)

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### *Communication between asset manager and client*

- Implied approval by the client and his duty of diligence
- The managers' acts resulting from the documents addressed to the client **are considered as approved by the client** if he did not challenge them within a two months time limit.

## 4. Article 7 (1/3)

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### *Asset Manager's remuneration*

- **Purpose:** To define and explain the manager's global remuneration for his activities.
- **Calculation methods:**
  - Management fees based on the managed assets' value (maximum 1.5%).
  - Performance fees based on the net increase in value of the managed assets (maximum 20%).
  - Combined fees (maximum 1% management fees and 10% performance fees).
  - Specific remuneration for costly investment strategies with a prior notice to the client.
- **Payment dates**
- **Permission given to the asset manager to withdraw his fees directly from the client's account.**

### *Asset Manager's remuneration*

### Compensation received from third parties

- Authorization given to the manager to benefit from compensation received from the bank or from third parties (commissions, retrocession, ...) in addition to his fees.
- Description of the calculation parameters of the compensation received from third parties, if possible for each product category (fact sheet).
- Disclosure of the conflict of interest's risks.

## 4. Article 7 (3/3) Example of fact sheet

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Fonds de placement	Commission de souscription versée au Gérant	Rétrocessions versées par le fond au Gérant sur la base de la Commission de gestion reçue par le fond
<b>Fonds à valeurs mobilières :</b>	entre	entre
Fonds du marché monétaire Fonds du marché obligataire Fonds du marché actionnaire Fonds mixte	0% 0 et 1% 0 et 2 % 0 et 2 %	0 et 0.45%
Fonds immobiliers	0 et 2%	0 et 0.50%
Autres fonds	0 et 3 %	0 et 0.50 %
<b>Produits structurés</b>	Commission de souscription versée au Gérant	Rétrocessions versées sur la base de la masse sous gestion
Toute la gamme des structurés	entre	entre
	0 et 0.75%	0 et 0.5%

### *Contract's termination*

- **Purpose**: to define how the asset management contract can be terminated and the consequences of its termination
- **Principle** : Termination at any time without notice.
  - Risks: potential liability in case of termination at improper time.
- No automatic termination in case of the client's death or his legal incapacity.
- Manager's fees remain due.

### *Applicable law*

- **Recommendation:** To choose Swiss law as the law governing the contract.
- **Remarks:**
  - If the contract does not provide for an applicable law, the law of the residence of the Manager shall in general apply to the management contract.

### *Place of jurisdiction*

- **Recommendation:** It is recommended to agree upon jurisdiction in Switzerland, generally at the manager's domicile.
- **Remarks:** three methods of conflicts resolutions:
  - Arbitration (as ARIF's Contract Example)
  - State tribunals
  - Mediation followed by arbitration or state tribunals

## 5. ARIF Contract Example must be customized

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1. ARIF Contract Example can not be used as is.
2. Importance of the customization.
  - Adapt the manager's practices to the Code of deontology.
3. Challenge in finding the right balance between the straightforward and short business practices and complete and demanding legal documents.
4. Deadline to adapt the asset management contracts.
  - Availability of the Clients.
  - Difficulties to explain the necessity of a new contract.

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