



ASSOCIATION DES COMPAGNIES
D'ASSURANCES ET DE RÉASSURANCES
DU GRAND-DUCHÉ DE LUXEMBOURG

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International financial sanctions

I. BACKGROUND

The legislation relating to international financial sanctions (Law of 27 October 2010; Bill No. 7395) is part of the fight against terrorist financing and covers all sectors and therefore also insurance and reinsurance activity without making a distinction between life and non-life insurance. Similarly, all operators concerned, including life and non-life insurance and reinsurance companies, must comply with the international financial sanctions established by European Regulations (directly applicable in national law). These Regulations (listed and published on the Ministry of Finance's website) are not related to the financing of terrorism, but are taken for political reasons and generally include a financial sanctions component and an economic sanctions component.

It is therefore essential that operators check whether their customers/suppliers/providers/intermediaries are not included in these sanction lists. However, the legislation does not specify the concrete measures that the concerned professionals must implement in order to comply with them.

II. ACA'S RECOMMENDATIONS ON MINIMUM MEASURES TO BE IMPLEMENTED BY ITS MEMBERS IN THE CONTEXT OF INTERNATIONAL FINANCIAL SANCTIONS

With regard to insurance, it is important not to confuse AML legislation, which applies only to life insurance (and the credit/guarantee branch), with legislation/regulations relating to international financial sanctions. The AML legislation, unlike the legislation/regulation on international financial sanctions, provides for well identified, defined and detailed preventive measures.

As the non-life insurance/reinsurance business is not covered by AML legislation, the obligations incumbent on non-life insurers/reinsurers under the different regimes on international financial sanctions must necessarily be different in nature and scope.

The following recommendations don't concern life insurers neither credit/guarantee insurers given that they already apply them under the AML legislation.

III. MINIMUM LINES OF CONDUCT

As a result, within the framework of the legislation on international financial sanctions, ACA recommends to non-life insurers and non-life reinsurers the following minimum guidelines:

- The non-life insurer / reinsurer must set up an appropriate supervisory system taking into account its exposure to international financial sanctions.

To determine its exposure to international financial sanctions, the non-life insurer / reinsurer performs a risk analysis considering at least the following factors:

- the nature of its products and services
- its customers, counterparties and intermediaries
- the jurisdictions in which it operates
- the size and proportion of its operations potentially exposed to international financial sanctions.

Based on the criteria listed above, and according to its exposure to international financial sanctions, the non-life insurer / reinsurer determines the scope and content of its control system.

The non-life insurer / reinsurer is required to document the result of its risk analysis and to review it regularly to ensure that its control system remains appropriate.

- As part of its control system, the non-life insurer / reinsurer must in particular have a dedicated "name screening" software, to ensure, under the conditions detailed below, the absence of persons or objects found on one of the concerned official lists.

He must also develop written procedures aimed at describing the controls to be carried out and the follow-up of alerts regarding name filtering.

It is advisable to appoint a person responsible for risk management and compliance with regard to international financial sanctions.

- The lists of international financial sanctions referred to by the applicable legislation are the lists relating to financial sanctions emanating from the United Nations and the European Union, as well as a possible national list drawn up by the Luxembourg Ministry of Finance.

Regarding the national lists of other countries, it is up to each non-life insurer / reinsurer to assess according to its commercial policy and the geographic scope of its professional activity whether or not they will be "screened".

Lists to be screened should be updated to reflect the latest status. With this in mind, it seems advisable to subscribe to the newsletter of the Ministry of Finance which lists the modifications to the existing lists as well as the new lists issued.

- As part of its risk-based control system, the non-life insurer / reinsurer must control that the parties involved in each transaction are not included in the international sanctions lists.

Under non-life insurance contracts, the policyholder and the recipient of the compensation (e.g. third party) must always be checked. The policyholder must be screened when signing the contract and the recipients of compensation must be screened before payment is made.

In the context of non-life reinsurance contracts, the reinsurance contract holder must always be checked when subscribing to the reinsurance contract and before any compensation is paid.

Depending on its activities and its exposure to international financial sanctions, the non-life insurer / reinsurer may decide to undertake verifications with regard to the following persons and objects:

- policyholders individually identified in the contract, as well as health and accident insurance affiliates
- identified objects that are covered by the insurance or reinsurance contract(s) (e.g.. ships, planes)
- service providers (e.g. lawyer, expert, garage, inspection office, etc.)
- intermediaries
- policyholders and recipients of underlying compensation under non-life reinsurance contracts

The entire existing portfolio, including service providers and intermediaries, is screened regularly. The non-life insurer / reinsurer determines the frequency with which the portfolios are "screened" according to its exposure to international financial sanctions.

- The controls apply to natural and legal persons.

For natural persons, and as far as possible, it is advisable to collect the following elements of identification: surname, first name, address, and date of birth. There is no requirement to verify the identity by means of documentary evidence (e.g. copy of the identity card).

For legal persons, and as far as possible, it is advisable to collect the following elements of identification: name and registered office. There is no requirement to screen the economic beneficiaries of the legal person.

In the event that additional data is collected, the principles of proportionality and data minimization should be taken into account for data protection purposes.

- The name screening must be set up and calibrated with sufficient care.

An operator facing cases of a namesake to a name contained in the targeted lists, must suspend all account movements, seek additional information without delay before making any decision and keep a written record of the results of this research.

If it appears from the collected information that it is clearly a “false positive”, there is no need to contact the Ministry of Finance and the suspension of any transactions may be lifted.

In case of doubt, the operator must contact the Ministry of Finance and inform the CAA. He must suspend all account movements, as well as freeze any assets until final clarification.

As soon as the operator realizes that a person involved in a transaction is listed, he must immediately suspend all financial operations with this person, as well as freeze any assets, pending the decision of the Ministry of Finance. He must immediately inform the Ministry of Finance of the freeze and send it any relevant information. He must also inform the C.

Regarding a relevant “positive hit”, a suspicious transaction declaration must be made to the CRF (Financial Intelligence Unit) in the event that this relevant hit appears on a program of international financial sanctions related to money laundering or terrorism financing.

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