



Commissariat aux Assurances Regulation N° 13/01 of 23 December 2013 on the fight against money laundering and terrorist financing, as amended

(Consolidated Regulation as of 15 March 2019)

Chronological summary

Commissariat aux Assurances Regulation N° 13/01 of 23 December 2013 on the fight against money laundering and terrorist financing¹, as amended by:

1. Commissariat aux Assurances Regulation N° 19/04 of 26 February 2019 amending Commissariat aux Assurances Regulation N° 13/01 of 23 December 2013 on the fight against money laundering and terrorist financing².

Decides:

Chapter 1 Definitions and abbreviations

Art.1 (1) For the purposes of this regulation, the following definitions shall apply:

- a) "beneficiary" : any natural or legal person, any legal arrangement or any category of persons in favour of whom benefits arising from an insurance or capital redemption contract are stipulated. This person may be different from the person being the 'beneficial owner' within the meaning of Article 1, point (7), of the Law.
- b) "asset" : any kind of tangible or intangible, movable or immovable, tangible or intangible assets, as well as any legal act or instrument evidencing ownership of or rights in such assets.
- c) "CAA": the Commissariat aux Assurances.
- d) "FUI": the Financial Intelligence Unit of the State Prosecutor's office to the Luxembourg district court.
- e) "Directive 2005/60/EC": Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- f) "management": the persons having a real influence on the overall management of the professional's business.

¹ Mémorial A – N° 224 of 24 December 2013

² Mémorial A – N° 151 of 14 March 2019

- g) "authorised management": the persons responsible for the management of the professional, authorised by the CAA and referred to as "senior management" in the Grand-ducal regulation.
- h) "FATF": the Financial Action Task Force.
- i) "AML/CFT": the fight against money laundering and combating the financing of terrorism.
- j) "Law": the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.
- k) "law of 27 October 2010": the Law of 27 October 2010 implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing.
- l) "laws of the insurance sector": the law of 6 December 1991 on the insurance sector, as amended, and the law of 27 July 1997 on the insurance contract, as amended, and their implementing regulations.
- m) "professional obligations": the obligations for professionals as regards AML/CFT.
- n) "staff": all natural persons who contribute to the activity of the professionals referred to in Chapter 2 on a dependent or independent basis.
- o) "professionals": the professionals referred to in Chapter 2 of this regulation.
- p) "Grand-ducal regulation": the Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the Law.

(2) As for the notions which are not otherwise defined in this article, the definitions given, where appropriate, in the Law or the Grand-ducal regulation or the laws of the insurance sector shall apply.

Chapter 2 Scope

Art.2 (1) The provisions of this regulation shall apply to the professionals referred to in Article 2 of the Law and subject to the supervision by the CAA.

(2) This regulation shall also apply to situations referred to in Article 2 (2) of the Law relating to the application of at least equivalent measures in foreign branches and subsidiaries.

(3) In matters of co-insurance, the obligations laid down by the Law are the sole responsibility of the leading insurance undertaking, provided that the latter's registered office, or, if its national law does not foresee a registered office, its central administration, is located in a Member State or a third country imposing obligations equivalent to those laid down by the Law or Directive 2005/60/EC.

Chapter 3 Risk-based approach

Section 1 Risk assessment

Art. 3 (1) In accordance with Article 3 (3) of the Law, the professionals shall identify and assess the money laundering and terrorist financing risks to which they are exposed. The nature and scope of this risk assessment shall be adapted to the nature and volume of their business.

(2) This risk assessment also includes the identification and assessment of money laundering or terrorist financing risks which may arise in relation to (i) the development of new products and new business practices, including new delivery mechanisms, and (ii) the use of new or developing technologies for both new and pre-existing products. This

risk assessment shall take place prior to the launch of new products, business practices or the use of new or developing technologies.

Art. 4 (1) For the purposes of Article 3 (3) of the Law, the professionals shall categorise all their customers according to the different risk levels with regard to money laundering and terrorist financing.

Besides the cases where the risk level shall be considered as high pursuant to the Law or the Grand-ducal regulation, this level shall be assessed according to a consistent combination of risk factors defined by each professional according to the activity exercised and inherent to the following risk categories:

- customers;
- countries or geographic areas;
- products, services, transactions or delivery channels and marketing arrangements.

(2) When assessing the risk level, the professionals shall take into account the risk variables relating to the above-mentioned risk categories. These variables, either singly or in combination, may increase or decrease the potential risk of money laundering or terrorist financing. Examples of such variables include:

- the purpose of a business relationship;
- the level of premiums paid or to be paid by a customer;
- the form of premium payment;
- the characteristics, including options, of the insurance contract;
- the nature of the assets underlying a unit-linked insurance contract;
- the use of interposed societal structures and arrangements within the framework of an operation or transaction;
- negative public information on the customer, particularly in terms of money laundering or terrorist financing.

(3) The assessment of the risk level may take into account the situations referred to in Article 3-1 of the Law. It shall not allow derogating from the application of enhanced due diligence measures in the cases laid down in the Law or the Grand-ducal regulation.

(4) The assessment of the risk level to be assigned to a customer shall take place before the customer is accepted by the professional. During the monitoring of the business relationship, the professional shall keep account of the development of the risks and adapt its assessment according to any significant change affecting them or any new risk.

(5) The professionals shall have appropriate arrangements to communicate the information on their risk assessment to the CAA, under the forms and conditions determined by the latter.

Section 2 Risk management and mitigation

Art. 5 (1) The professionals shall have policies, controls and procedures that enable them to effectively manage and mitigate their money laundering and terrorist financing risks. These policies, controls and procedures shall be approved by the authorised management and, with respect to the policies and controls of insurance and reinsurance undertakings, also by the board of directors.

(2) In accordance with Article 3 (3) of the Law, the professionals shall set the extent of the due diligence measures laid down in Article 3 (2) of the Law according to the risk level assigned to each customer pursuant to Section 1 of this chapter.

(3) The adaptation of the extent of due diligence measures to the risk level shall take place during the identification and identity verification period within the meaning of

Article 3 (2) (a) to (c) of the Law and shall continue afterwards in the framework of the ongoing monitoring within the meaning of Article 3 (2) (d) of the Law.

Art. 6 (1) For the purpose of applying Articles 3-1 and 3-3 of the Law and Articles 3 and 4 of this regulation, it is for each professional to assess if a Member State or a third country imposes obligations which are equivalent to those laid down in the Law or Directive 2005/60/EC according to the particular circumstances of the case. The reasons for concluding that a Member State or a third country imposes equivalent obligations shall be documented when the decision is taken and shall be based on relevant and up-to-date information. The obligations imposed by a Member State shall be considered equivalent, except where relevant information points to the fact that this assumption cannot be upheld. The conclusion that these obligations are equivalent shall be regularly reviewed, in particular when new relevant information about the country concerned is available.

(2) The conclusion that a Member State or a third country imposes obligations which are equivalent to those laid down in the Law or Directive 2005/60/EC does not relieve the professional from carrying out a risk assessment pursuant to this chapter when accepting the customer and from the obligation to apply enhanced due diligence measures in situations which present a high risk of money laundering or terrorist financing.

Chapter 4 Customer due diligence

Section 1 Acceptance of a new customer

Art. 7 The professionals shall decide on and put in place a customer acceptance policy which is adapted to the activities they carry out, so that the entry into business relationship with customers may be submitted to a prior risk assessment as provided in Chapter 3, Section 1 of this regulation.

Art. 8 (1) Without prejudice to the obligations laid down in Article 3-2 (4) of the Law and in Article 3 (4) of the Grand-ducal regulation, the acceptance of a new customer shall be submitted to a superior or to a specifically appointed professional body for written authorisation by providing for an adequate hierarchical decision-making level and, where appropriate, the intervention of the AML/CFT compliance officer in order to take the risk level into account.

(2) For smaller structures, and in the absence of a hierarchical separation, the AML/CFT compliance officer must record the level of risk and the customer's acceptance in the customer's file.

Art. 9 The professionals' customer acceptance policy shall include a specific examination for the acceptance of customers likely to represent a high risk of money laundering or terrorist financing.

Art. 10 (1) The customer acceptance policy shall require the documentation of all contact, no matter in which form, and shall notably envisage a customer questionnaire adapted to the nature of the contact and the business relationship.

(2) The customer acceptance policy shall also provide for procedures to be followed when there is a suspicion or indication of money laundering or terrorist financing in case contact with a possible customer fails. The reasons for a customer or professional to refuse to enter into a business relationship or to execute an operation shall be documented, even if the professional's refusal does not ensue from the observation of a money laundering or terrorist financing indication.

Section 2 Establishing a business relationship

Subsection 1 Time of establishing a business relationship

Art.11 The business relationship referred to in Article 1, point 13, of the Law shall be established in the insurance sector:

- For insurance companies at the time a decision is made on an insurance quote signed by the customer.
- For reinsurance undertakings at the time of the decision on the acceptance of reinsurance risks.
- For insurance or reinsurance intermediaries at the time when they perform, on behalf of the customer, pre-contractual acts in connection with the conclusion of an insurance contract.
- For insurance professionals ("PSAs") at the time a decision is made to enter into a service agreement.

Subsection 2 Entering into a business relationship before the completion of identity verification measures

Art.12 In accordance with Article 3 (4), subparagraph (3), of the Law, which derogates from Article 3 (4), subparagraphs (1) and (2), of the Law, professionals may verify the identity of the beneficiary when entering into a relationship, but must do so at the latest (1) at the time they proceed with payment of the benefit or (2) at the time when the beneficiary intends to exercise the rights conferred by the insurance contract with them.

Section 3 Measures for the identification and verification of the identity of customers

Art.13 For the purposes of this section, the term "customer" refers to the policyholders or subscribers of an insurance contract (natural or legal persons, trusts or similar arrangements).

For reinsurance transactions, the term "customer" refers to ceding or retroceding undertakings.

Subsection 1 Identification

Art. 14 For the purposes of the identification of customers pursuant to Article 3 (2) (a) of the Law, the professionals shall gather and register at least the following information:

1. as regards customers who are natural persons:
 - surname and first name;
 - place and date of birth;
 - nationality;
 - address;
 - where appropriate, official national identification number.
2. as regards customers which are legal persons or legal arrangements:
 - denomination;
 - legal form;
 - address of the registered office and, if different, a principal place of business;
 - where appropriate, official national identification number;
 - directors (dirigeants) (for the legal persons) and directors (administrateurs) or persons exercising similar positions (for the legal arrangements);
 - provisions governing the power to bind the legal person or arrangement;

- authorisation to enter into a relationship with the professional.

Art. 15 (1) At the time of the customer identification and for the purposes of the obligations to identify and verify the beneficial owner laid down in Section 5 of this chapter, the professionals shall determine if the customers act for their own account or, where appropriate, for the account of other persons pursuant to Article 1 (2) of the Grand-ducal regulation. The customers shall sign an explicit declaration in that respect and commit to communicate any subsequent changes without delay to the professional.

(2) Where the professional is certain that his customer is not acting for his own account, in particular by virtue of a declaration made by the latter, he shall be required to obtain from the customer the necessary information relating to the identity of the beneficial owner or owners.

(3) In the event that a person, whether natural or legal, third party to the contract pays the insurance premium, the professional who receives the premium payment must exercise due diligence to identify that person.

Subsection 2 Verification of the identity

Art. 16 (1) The verification of the identity, within the meaning of Article 3 (2) (a) of the Law, of customers who are natural persons shall be made at least with one valid official identification document issued by a public authority and which bears the customer's signature and picture as, for instance, the customer's passport or his ID.

(2) According to the risk assessment, the professionals shall take additional verification measures such as, the verification of the address indicated by the customer through the proof of address or by contacting the customer, among others, per registered letter with acknowledgement of receipt.

Art. 17 (1) In accordance with Article 3 (2) (a) of the Law and Article 1 (1) (b) of the Grand-ducal regulation, the verification of the identity of customers who are legal persons or other legal arrangements shall be made at least with the following documents of which a copy shall be kept:

- the last coordinated or up-to-date articles of incorporation (or an equivalent incorporation document);
- a recent and up-to-date extract from the companies register (registre des sociétés) (or equivalent supporting evidence).

(2) According to the risk assessment, the professionals shall take additional verification measures, such as:

- an examination of the last annual accounts and management report, where appropriate certified by a réviseur d'entreprises agréé (approved statutory auditor);
- the verification, after consulting the companies register or any other source of professional data, that the company was not or is not subject to a dissolution, deregistration, bankruptcy or liquidation;
- the verification of the information collected from independent and reliable sources such as,
- among others, public and private databases;
- a visit to the company, if possible, or contact with the company through, among others, registered letter with acknowledgement of receipt.

Section 4 Measures for the identification regarding the insured persons

Art. 18 (1) For the purposes of identifying insured persons in accordance with Article 3 (2) (a) of the Act, professionals must collect and record at least the following information:

- Surname and first name ;
- Place and date of birth;
- Nationality;
- Address.

(2) In addition to the identification measures, professionals shall check these identification data of insured persons against persons subject to financial prohibitions or restrictive measures in accordance with the provisions of Article 31 of this regulation.

Section 5 Measures for the identification and verification of the identity of customer proxies

Art. 19 (1) The identification and verification measures of the identity of customer proxies in accordance with Article 3 (2) (a) of the Law and Article 1 (1) of the Grand-ducal regulation are subject to the provisions of articles 14 to 17 of this chapter.

(2) Moreover, the professionals shall know the power of representation of the person acting on behalf of the customer and verify his identity through evidencing documents of which they shall keep copies.

(3) The following are particularly referred to in this article:

- legal representatives of customers who are unfit natural persons;
- natural or legal persons authorised to act on behalf of customers pursuant to a mandate;
- persons authorised to represent customers which are legal persons or legal arrangements in the relations with the professional.

Section 5 Measures for the identification and verification of the identity of beneficial owners

Art. 20 The identification of beneficial owners pursuant to Article 3 (2) (b) of the Law and Article 1 (2) of the Grand-ducal regulation concerns their surname, first name and nationality as well as their date and place of birth and their address.

Art. 21 (1) The verification of these data shall be made, notably, using information obtained from customers, public registers or any other independent and reliable source available. The professional shall take all reasonable measures in order to ensure that the real identity of the beneficial owner is known. The reasonable nature of these measures shall be defined, notably, according to the level of money laundering or terrorist financing risk that the professional considers to be linked to the customer profile or the nature of the business relationship or of the operation contemplated by the customer.

(2) Where, despite these measures, the professional has a doubt as to the real identity of the beneficial owner, and, where it cannot remove this doubt, the professional shall refuse to enter into a business relationship or carry out the transaction contemplated by the customer and, if there is a suspicion of money laundering or terrorist financing, the professional shall make a report within the meaning of Article 5 (1) of the Law and Article 8 (2) of the Grand-ducal regulation.

Art. 22 (1) The "beneficial owner of a legal person or a legal arrangement" within the meaning of Article 1 (7) of the Law and Article 1 (2) of the Grand-ducal regulation consists in one or several natural persons which in the end, directly or indirectly own or control in law or fact a legal person or a legal arrangement. This may be the case even if

the thresholds of the ownership or control as indicated in Article 1 (7), points (a) (i) and (b) (i) and (iii) of the Law are not met.

(2) Verification of the identity of the beneficial owner(s) of a legal person, legal structure or trust includes an understanding of the client's ownership and control structure.

Section 7 Due diligence measures relating to beneficiaries

Art.23 (1) Professionals must therefore, in case such beneficiary or beneficiaries are identified or designated:

- (a) for the beneficiary or beneficiaries who are natural or legal persons or legal arrangements identified by name - enter the name of the person;
- (b) for the beneficiary or beneficiaries who are designated by characteristics or by class or by other means - to obtain sufficient information about the beneficiary for the professional to be satisfied that he is paying the benefits to the person or persons meeting those characteristics or belonging to that class.

(2) The information collected under points (a) and/or (b) must be kept and updated in accordance with the provisions of the Law.

(3) In the two cases mentioned in points (1) (a) and (b) above, the identity of the beneficiary or beneficiaries must be verified no later than the time of the payout, in accordance with the conditions described in Articles 16 and 17 above.

(4) At the latest at the time of the payout, professionals shall check these identification data of beneficiaries in relation to persons subject to financial prohibitions or restrictive measures in accordance with the provisions of Article 31 of this regulation.

Section 8 Obtaining information on the purpose and intended nature of the business relationship

Art. 24 The professionals' obligation to know their customer includes the obligation to gather and register, at the time of the customer identification, information, and , if any, evidentiary documents, about the origin and source of the customer's assets that pass through the insurance product and the types of operation for which the customer requests a business relationship, as well as any adequate information allowing the determination of the customer's purpose of the business relationship in accordance with Article 3 (2) (c) of the Law. This information shall allow the professional to carry out an efficient ongoing customer due diligence as referred to in Section 9 of this chapter.

Section 9 Record-keeping obligation of documents and information

Art. 25 (1) The record-keeping obligation of documents and information pursuant to Article 3 (6) (a) of the Law and Article 1 (5) of the Grand-ducal regulation, covers all documents and information obtained under the customer due diligence measures as required in Article 3 (2), points (a) to (d) of the Law, including the results of any performed analysis.

(2) The obligation to keep certain documents and information relating to business relationships and transactions, as defined in Article 3 (6) (b) of the Law and Article 1 (5) of the Grand-ducal regulation, also includes the obligation to keep the written reports transmitted to the AML/CFT compliance officer in accordance with Article 1 (3), fifth subparagraph of the Grand-ducal regulation and in accordance with Article 36 (4) of this regulation, as well as the analyses of the transactions and facts included in these reports that the AML/CFT compliance officer drew up and the decisions taken accordingly and the results of any other performed analysis.

(3) The record-keeping of the documents pursuant to Article 3 (6) of the Law and Article 1 (5) of the Grand-ducal regulation may be carried out on any archiving medium, provided that the documents meet the conditions to be used as evidence in a judicial procedure or investigation or analysis of money laundering or terrorist financing by the AML/CFT competent authorities.

Section 10 Enhanced customer due diligence obligation

Subsection 1 Enhanced due diligence measures

Art. 26 Without prejudice to the cases where enhanced due diligence measures are specifically prescribed by the Law or the Grand-ducal regulation, examples of enhanced due diligence measures that could be applied for higher-risk business relationships include:

- obtaining additional information on the customer and updating more regularly the identification data of customer and beneficial owner;
- obtaining additional information on the intended nature of the business relationship;
- obtaining information on the reasons for intended or performed operations;
- obtaining the approval of the authorised management to commence or continue the business relationship;
- requiring the first payment to be carried out through an account in the customer's name with a professional subject to similar customer due diligence standards;
- verifying the additional information obtained with independent and reliable sources;
- receiving a visit from the customer or company or contacting the customer or company via registered letter with acknowledgement of receipt;
- conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of operations that need further examination.

Subsection 2 Remote entering into business relationships

Art. 27 The measures required pursuant to Article 3-2 (2) of the Law and Article 3 (2) of the Grand-ducal regulation shall include the implementation of strict procedures, mechanisms and processes in order to verify the identity and rights and powers of the customer or proxy to access professional services.

Subsection 3 Politically exposed persons

Art. 28 The procedures to determine whether a customer or his proxy or beneficial owner is a politically exposed person as defined in Article 1 (10), (11) and (12) of the Law and required in Article 3-2 (4) (a) of the Law may include, among others, seeking relevant information from the customer, referring to publicly available information or having access to electronic databases of politically exposed persons.

Subsection 5 Countries or territories which do not or insufficiently apply AML/CFT measures

Art. 29 (1) Pursuant to Article 3 (1) of the Grand-ducal regulation, the professionals shall give special attention and apply enhanced due diligence measures to business relationships and operations involving customers, proxies or beneficial owners living in countries or territories whose AML/CFT framework is considered as insufficient, in particular pursuant to the FATF statements, while taking into account at the same time the specific risks of these countries or territories with respect to AML/CFT.

(2) The professionals shall apply a specific procedure for the acceptance and monitoring of business relationships and operations, referred to above, which requires enhanced due diligence measures which are efficient and proportionate to the risks as, among others:

- systematic involvement of the AML/CFT compliance officer in the customer acceptance procedure and written authorisation of the authorised management;

- enhanced identification and verification of the identity including, in particular, the verification of the origin of the assets involved;
- enhanced monitoring of the business relationship and operations carried out.

(3) The professionals shall implement procedures and systems ensuring the application of the specific measures specified, where appropriate, by the CAA in accordance with Article 3 (1), third subparagraph of the Grand-ducal regulation.

Section 11 Ongoing due diligence

Subsection 1 Detection of complex and unusual operations

Art. 30 With respect to the professionals' ongoing due diligence laid down in Article 3 (2) (d) of the Law and Article 1 (3) of the Grand-ducal regulation, the professionals shall identify complex or unusual transactions as referred to in Article 3 (7) of the Law and Article 1 (3) of the Grand-ducal regulation by taking into account, notably:

- the importance of the incoming and outgoing assets and the volume of the amounts involved. The operations which involve small amounts but which are unusually frequent are also concerned;
- the differences compared to the nature, volume or frequency of the operations usually carried out by the customer in the framework of the business relationship concerned or the existence of differences compared to the nature, volume or frequency of the operations normally carried out in the framework of similar business relationships;
- the differences compared to the declarations made by the customer during the acceptance procedure and which concern the purpose and nature of the business relationship, in particular, as regards the origin and destination of the assets involved.

Subsection 2 Identification of persons, entities and groups subject to prohibitions or restrictive measures in financial matters

Art. 31 (1) Ongoing due diligence referred to in Article 3 (2) (d) of the Law also includes the obligation to put measure in place in order to identify:

- pursuant to Article 8 (2) of the Grand-ducal regulation and in accordance with the law of 27 October 2010, the persons, entities or groups involved in a transaction or business relationship subject to prohibitions or restrictive measures in financial matters in the context of the fight against terrorist financing, including, notably, those implemented in Luxembourg via EU regulations directly applicable in national law or through the adoption of ministerial regulations; and
- the persons, entities or groups involved in a transaction or business relationship subject to prohibitions or restrictive measures in financial matters, including, notably, those implemented in Luxembourg via EU regulations directly applicable in national law.

(2) Where persons, entities or groups referred to in this article are identified, and without prejudice to the obligations laid down in Article 5 of the Law and Article 8 of the Grand-ducal regulation, the professional shall apply the required restrictive measures and inform the competent authorities as soon as possible. A copy of this communication shall be sent to the CAA at the same time.

Subsection 3 Activities requiring particular attention

Art. 32 In the framework of ongoing due diligence, the following activities, among others, require particular attention pursuant to Article 3(7) of the Law, activities of customers whose acceptance was subject to a specific examination in accordance with the customer acceptance procedure referred to in Article 9 of this regulation.

Subsection 4 Keeping information up to date

Art. 33 (1) Ongoing due diligence includes the obligation to verify and, where appropriate, to update, within an appropriate timeframe to be set by the professional according to its risk assessment, the documents, data or information gathered while fulfilling the customer due diligence obligations, as specified in Chapter 4 of this regulation.

(2) The documents, data and information referred to above shall be verified and updated immediately when a situation occurs calling for these measures and, in particular, at appropriate times as laid down in Article 3 (5) of the Law and Article 1 (4) of the Grand-ducal regulation.

Section 10 Performance of due diligence by third parties

Subsection 1 Third-party

Art. 34 The intervention of a third-party within the meaning of Article 3-3 of the Law is subject to the following conditions:

- prior to the third party's intervention, the professional shall ensure that the former complies with the definition of third-party laid down in Article 3-3 (1) of the Law and Article 6 (3) of the Grand-ducal regulation. The document used to verify the quality of the third-party shall be kept in compliance with the provisions of Article 3 (6) (a) of the Law;
- first, the third-party commits in writing to fulfil the obligations specified in Article 6 (1) and (2) of the Grand-ducal regulation, notwithstanding any confidentiality of professional secrecy rule applicable to the third-party, where appropriate.

Subsection 2 Outsourcing

Art. 35 (1) The contract between the professional and the third party in the context of outsourcing or agency relationships as referred to in Article 3-3 (5) of the Law shall at least include:

- a detailed description of the due diligence measures and procedures to be implemented in accordance with the Law, the Grand-ducal regulation and this regulation and, in particular, of the information and documents to be requested and verified by the third-party representative;
- the conditions regarding the transmission of information to the professional, including, notably, to make available immediately, regardless of confidentiality or professional secrecy rules or any other obstacle, the information gathered while fulfilling the customer due diligence obligations and the transmission, upon request and without delay, of a copy of the original supporting evidence received in this respect.

(2) The internal procedures of the professional wishing to use third parties for outsourcing or agency relationships shall include detailed provisions on the procedures to apply when using a third-party representative, as well as the relevant criteria determining the choice of this third-party representative. The professionals shall carry out a regular control of compliance by the third-party representative with the commitments arising from the contract.

(3) The responsibility as regards compliance with the provisions of the Law, the Grand-ducal regulation and this regulation remains entirely with the professional using the third-party representative.

Chapter 5 Adequate internal management requirements

Section 1 AML/CFT policy

Art. 36 (1) The internal management procedures, policies and measures as referred to in Article 4(1) of the Law and Article 7 (1) of the Grand-ducal regulation shall take into account the specificities of the professional such as, among others, its activity, structure, size, organisation and resources.

(2) The professional's AML/CFT policy shall cover all the professional obligations and, where appropriate, include the following, among others:

- the customer acceptance policy as laid down in Chapter 4, Section 1 of this regulation;
- the detailed procedures as regards the identification, assessment, supervision, management and mitigation of money laundering or terrorist financing risks as laid down in Chapter 3 of this regulation. These procedures shall allow monitoring the development of the identified risks, reassessing them on a regular basis and identifying any significant change affecting them or any new risk;
- the specific risk management mechanisms relating to business relationships or operations not requiring the physical presence of the parties;
- the measures designed to prevent the misuse of the products or the execution of transactions that might favour anonymity pursuant to Article 3-2 (6) of the Law, in particular, as regards new technologies;
- the procedure for accepting and monitoring business relationships referred to in Chapter 4, Section 10 of this regulation;
- the procedures to be followed when using a third-party within the meaning of Article 3-3 of the Law;
- the procedures to be followed when using third-party participants for outsourcing as referred to in Article 35 of this regulation;
- the procedures to observe in order to monitor the development of business relationships as well as operations executed for customers, notably to detect suspicious operations;
- the procedures to be followed in case of suspicion or indication of money laundering or terrorist financing;
- the hiring procedures and a training and awareness-raising programme as laid down in Section 5 of this chapter;
- the accurate definition of the respective responsibilities of the various AML/CFT functions of the personnel.

(3) In order to comply with Article 2 (2) of the Law and Article 4 of the Grand-ducal regulation and subject to other applicable laws, the professionals shall coordinate their AML/CFT policy with their branches and subsidiaries abroad.

(4) The AML/CFT policy shall be subject to initial validation and regular control by the AML/CFT compliance officer in order to adapt this policy, where necessary, to the development of the activities, the customers and the AML/CFT standards and measures.

Section 2 Systems for the supervision of business relationships and operations

Art. 37 (1) Professionals shall have procedures and implement control mechanisms that allow them, when accepting customers or monitoring the business relationships, to identify, among others:

- the persons as referred to in Articles 28, 29 and 31 of this regulation;
- the assets coming from or going to persons, entities or groups as referred to in Article 31 of this regulation, or countries as referred to in Article 29 of this regulation;
- the complex or unusual operations as referred to in Article 30 of this regulation.

(2) This supervisory system shall include all the customers and their operations and shall apply to customers, proxies and beneficial owners as well as, beneficiaries of

insurance or reinsurance contracts. The system shall take into account the risks identified by the professional and which impact it according, in particular, to the characteristics of its activity and customers. The system shall be automated, except when the professional can prove that the volume and nature of the customers and the operations to be supervised do not require such automation.

(3) The identification researches carried out using this supervisory system shall be duly documented, including in cases where there are no positive results.

(4) The identified operations or persons, as well as the criteria which led to the identification, shall be subject to written reports. These reports shall be transmitted to the AML/CFT compliance officer for the required purposes, in particular, for compliance with Article 5 of the Law. Professionals shall specify in writing the procedure relating to the transmission of written reports to the AML/CFT compliance officer and the required transmission deadlines.

(5) The supervisory system shall allow the professional to take rapidly and, where appropriate automatically, the required measures where a suspicious activity or operation was identified. The AML/CFT compliance officer shall be solely competent to decide on the application and scope of these measures and their termination, where appropriate, in consultation with the management.

(6) The supervisory system shall be subject to initial validation and regular control by the AML/CFT compliance officer in order to adapt this system, where necessary, to the development of the activities, the customers and the AML/CFT standards and measures.

Section 3 AML/CFT compliance officer(s)

Art. 38 (1) Pursuant to Articles 4 (1) and 5 (1) of the Law and Article 7 (2) of the Grand-ducal regulation, the professionals shall appoint at least one AML/CFT compliance officer within the management or authorised management, in accordance with the professional's activities, size and organisation.

(2) The name of the AML/CFT compliance officer(s) appointed in accordance with the above paragraph 1 as well as any changes regarding this function shall be communicated to the CAA.

(3) The AML/CFT compliance officer(s) shall have the professional experience, knowledge of the Luxembourg legal and regulatory framework relating to AML/CFT, the hierarchy and powers within the entity (including the power to access on a timely basis the identification data of customers and other information and documentation required by the due diligence measures), as well as the availability necessary to the effective and autonomous exercise of his/their functions.

Art. 39 Without prejudice to their responsibility, the AML/CFT compliance officer(s) may delegate the exercise of his/their functions to one or more employees of the professional, provided that the latter fulfil the criteria of Article 38 (3) of this regulation.

Art. 40 (1) The AML/CFT compliance officer(s) generally ensure that the professional fulfils all its professional obligations as regards AML/CFT. He/they shall apply the AML/CFT policy of the professional and have the power to suggest, on his/their initiative, any necessary or useful measures, including the release of the required means to the authorised management.

(2) They control the compliance with the professional obligations applicable to foreign branches and subsidiaries of the professional. To this end, they analyse, among others, the summary of all the reports of the audit missions and, where appropriate, of the compliance function of these companies that the professional strives to obtain.

(3) They implement and ensure the realisation of the training and awareness-raising programme of the personnel as referred to in Article 44(2) of this regulation.

(4) The AML/CFT compliance officer(s) is/are the privileged contact persons for the AML/CFT competent authorities as regards AML/CFT issues. They are also in charge of the transmission of any information or statement to these authorities.

(5) The compliance with the AML/CFT policy shall be subject to regular controls and verifications, at a frequency determined according to the money laundering and terrorist financing risks to which the professional is exposed. The AML/CFT compliance officer shall report in writing on a regular basis and, if necessary, on an ad hoc basis to the authorised management and, where appropriate, to the board of directors (or specialised committees). These reports concern the follow-up of the recommendations, problems, shortcomings and irregularities identified in the past as well as the new problems, shortcomings and irregularities identified. Each report specifies the risks related thereto as well as their seriousness (measuring the impact) and proposes corrective measures, as well as in general the position of the persons concerned. These reports shall allow assessing the scale of the money laundering or terrorist financing suspicions which were identified and expressing a judgement on the adequacy of the AML/CFT policy and of the collaboration between the professional's departments as regards AML/CFT. In that respect, the AML/CFT compliance officer(s) shall take into account, in particular, the written reports transmitted pursuant to Article 1 (3), fifth subparagraph, of the Grand-ducal regulation and Article 37 (4) of this regulation.

(6) The AML/CFT compliance officer shall prepare, at least once a year, a summary report on his activities and his operation. This report shall be submitted to the board of directors and, where appropriate, the specialised committees for approval; it is submitted to the authorised management for information purposes.

Art. 41 The accumulation of the function of AML/CFT compliance officer and one or more other functions shall not impede the independence, objectivity and decision-making autonomy of the AML/CFT compliance officer. His workload shall be adapted so that the efficiency of the AML/CFT framework is not compromised.

Section 4 Internal audit control

Art. 42 (1) The control of the AML/CFT policy shall be an integral part of the mission of the professional's internal audit function, provided that the latter has such a function.

(2) The internal audit shall assess the management and control of the risks on an independent basis and report to the authorised management and board of directors (or specialised committees) by providing them, at least once a year, with a summary report on the compliance with the AML/CFT policy. He shall show due diligence by ensuring that his recommendations or corrective measures are acted upon.

Section 5 Recruitment, training and awareness-raising of the personnel

Art. 43 The professionals shall set up recruitment procedures for all the staff and particularly for the AML/CFT compliance officers in order to ensure that each staff member fulfils the criteria of adequate professional standing and experience according to the risk of money laundering and terrorist financing related to the duties and functions to be carried out. In particular, information as regards the possible judicial record of the persons concerned shall be obtained when hiring members of the management by requiring, among others, an extract of the police record or an equivalent document from the person concerned.

Art. 44 (1) Training and awareness-raising measures for the staff taken by the professional pursuant to Article 4 (2) of the Law and Article 7 (3) of the Grand-ducal regulation, shall be adapted to the participants' needs and shall be addressed, in particular, to staff members who are in direct contact with customers or whose duties expose them to the risk of being confronted with attempts of money laundering or terrorist financing or whose duties directly or indirectly consist in AML/CFT.

(2) Every professional shall have a training and awareness-raising programme for the whole personnel which observes highly qualitative criteria and whose content and calendar take into account the specific needs of the professional. This programme, as well as its realisation, shall be documented in writing. The programme shall take into account the development of money laundering and terrorist financing techniques and shall be adapted when relevant legal or regulatory requirements change.

The training and awareness-raising programme of the personnel shall include, among others:

- for all the newly hired staff, the participation to an internal or external basic training as soon as they are hired, making them aware of the professional's AML/CFT policy as well as of the relevant legal and regulatory requirements;
- for the entire staff, the regular participation to internal or external continuing education which is addressed, in particular, to the members of the personnel in direct contact with customers in order to help them identify unusual operations and recognise money laundering or terrorist financing attempts. This continuing education shall also concern the professional's internal procedures to be followed by the employees in case they identify money laundering or terrorist financing suspicions;
- regular informative meetings for staff in order to keep them up to date with the developments as regards the techniques, methods and trends with respect to money laundering and terrorist financing as well as the preventive rules and procedures to be followed in this matter;
- the appointment of one or more contact person(s) for staff who is/are competent and available to answer any questions which relate to money laundering or terrorist financing and which may concern, notably, all the aspects of the laws and obligations regarding AML/CFT, the internal procedures, the customer due diligence duties and the report of suspicious operations;
- the periodic distribution of an AML/CFT documentation which includes, in particular, examples of money laundering or terrorist financing transactions.

(3) Where the professionals adopt a training and awareness-raising programme developed abroad, they are required to adapt this programme to the rules applicable in Luxembourg.

Chapter 6 Cooperation requirements with the authorities

Art. 45 In accordance with Articles 4 (3) and 5 (1) of the Law and Article 8 (4) of the Grand-ducal regulation, the professionals shall be able to answer quickly and comprehensively all information requests from the AML/CFT competent authorities, and, in particular, those which tend to determine whether they are or were in business relationships or whether they do or did carry out operations in relation to specific persons including those referred to in Articles 29 and 31 of this regulation. This cooperation requirement does not end with the business relationship or the operation.

Art. 46 (1) The requirement to inform the FIU, as provided in Article 5 (1) (a) of the Law, also covers the cases in which the professional came into contact with a natural or legal person, or legal arrangement without entering into a business relationship or carrying out an operation, insofar as there are indications or suspicions of money laundering or terrorist financing.

(2) The professional shall equip itself with the means required with respect to procedures and organisation of the AML/CFT compliance officer function which allows the analysis of the reports transmitted to him and the determination of the necessity to communicate a fact or transaction to the FIU pursuant to Article 5 (1) (a) of the Law. The procedures shall include the conditions, deadlines and steps for the customer relationship manager to communicate reports to the AML/CFT compliance officer. The analysis and the resulting decision shall be recorded in writing and made available to the competent authorities.

(3) Without prejudice to the obligations laid down in Article 5 (3) of the Law, a business relationship which is subject to a report of suspicion with the FIU, shall be monitored with enhanced due diligence and, where appropriate, in line with the FIU instructions by the professional. In case of new indications, the professionals shall carry out a complementary suspicious transaction report according to the FIU form issued for this purpose.

Chapter 7 Audit by the réviseur d'entreprises agréé

Art. 47 (1) The audit of the insurance or reinsurance undertaking's annual accounts by the réviseur d'entreprises agréé shall also include the compliance with the legal and regulatory requirements and provisions regarding AML/CFT. In that respect, the réviseur d'entreprises agréé shall carry out sampling tests, the methodology and the results of which he shall describe in a "special report"³.

(2) The "special report"⁴ of the réviseur shall include, among others:

- the description of the AML/CFT policy set up by the undertaking in order to prevent money laundering and terrorist financing, the verification of compliance with the "provisions of Articles 301 and 302 of the law of 7 December 2015 on the insurance sector, as amended"⁵, the Grand-ducal regulation, the CAA regulations and circular letters relating to AML/CFT and the control of their sound application;
- the assessment of the undertaking's analysis of money laundering and terrorist financing risks to which it is exposed. The réviseur d'entreprises agréé shall verify if the implemented procedures, infrastructures and controls, as well as the scope of the AML/CFT measures are appropriate compared to the money laundering and terrorist financing risks to which the undertaking is exposed, particularly through its activities, the nature of its customers and the provided products and services;
- a declaration on the realisation of a regular audit of the undertaking's AML/CFT policy by the internal audit department and the AML/CFT compliance officer;
- the verification of the training and awareness-raising measures for the staff as regards money laundering and terrorist financing, and, in particular, with respect to the identification of money laundering and terrorist financing operations;
- the historical statistics concerning the detected suspicious operations which inform about the number of suspicious operations cases reported to the FIU by the professional, as well as the total amount of funds involved.

(3) The annual audit shall encompass the undertaking's branches and subsidiaries abroad. It shall cover, in particular, the branches' and subsidiaries' compliance with the applicable provisions as regards the prevention of money laundering and terrorist financing and it shall include, in that respect:

- an analysis of money laundering and terrorist financing risks incurred by the branches and subsidiaries;
- a description and assessment of the risk management in the branches and subsidiaries;
- the verification of the implementation of and compliance with the undertaking's AML/CFT policy in the branches and subsidiaries.

³ RCAA 19/4 of 26 February 2019

⁴ RCAA 19/4 of 26 February 2019

⁵ RCAA 19/4 of 26 February 2019