

The following text has been elaborated by the CAA for information purposes. The French version of this Circular letter is the only authentic version.

**Circular Letter 09/2**  
**of the Commissariat aux Assurances relating to the**  
**separate report to be provided by the approved**  
**auditor of reinsurance undertakings, as amended by**  
**Circular letters 13/5, 17/3, 19/4 and 20/4**

*(Consolidated version of 3 March 2020)*

In accordance with Article 94 of the law of 7 December 2015 on the insurance sector, as amended, every Luxembourg reinsurance undertaking is required to submit itself to an external accounting audit to be performed on an annual basis, at the undertaking's expense, by an approved auditor of companies (“Réviseur d’entreprise agréé”).

Article 95 of the same law involves the approved auditor in the prudential control to be exercised by the Commissariat aux Assurances.

It is for this reason that the approved auditor must produce for any reinsurance undertaking under Luxembourg law, in addition to the audit report on the annual accounts, a separate report to be sent to the audited undertaking with a copy to be sent directly to the Commissariat aux Assurances.

To facilitate its use by the Commissariat aux Assurances, as of financial year 2008, the separate report is divided into two distinct sections:

- Section 1 is an Excel file with a list of questions mainly of the yes/no type.
- Section 2 is a paper document signed by the approved auditor with additional explanations.

The modalities for transmitting the two sections are communicated on an annual basis to the reinsurance undertakings when the annual reporting files are to be transmitted.

Depending on the answer given to a question in Section 1, a message appears to indicate that further explanations should be given in Section 2. This does not mean that in the absence of such a message the approved auditor cannot provide comments in Section 2. Indeed, not only the approved auditor is always free to comment on a voluntary basis, but some questions are only dealt with in Section 2 without a corresponding question in Section 1.

The date of submission of the separate report is communicated each year when the reporting files are distributed.

The separate report should include the following chapters:

## **1. Assignment of the approved auditor**

Section 1 indicates the name and personal professional e-mail address of the approved auditor in charge together with the number of hours worked on the statutory audit of the annual accounts as defined in Note 1 of the IRE's opinion dated 15 February 2007 by breaking down the total between the number of hours worked by approved auditors and the number of hours worked by other professionals.

It should be noted that the other tasks covered by the IRE's opinion, such as «other insurance services» or «tax advisory services», are not covered. It is understood that the work of the approved auditor in relation to this separate report is part of the assignment regarding statutory audit of the annual accounts.

Section 1 also indicates whether the legal assignment includes intra-annual audits, the audit of the consolidation package or other work in connection with group consolidation instructions.

## **2. Audit report**

Section 1 the following questions will be answered:

- a) Has the audit report been completed and signed on the date of preparation of the separate report?
- b) If so, does the audit report contain any reservation (qualifications or "matters of emphasis")?
- c) If not, does the approved auditor intend to express any reservation (qualifications or "matters of emphasis") in the audit report?
- d) What is the date of the shareholders' meeting called to approve the audited financial statements?
- e) Does the management report include all the information set-forth in Article 85 of the law of 8 December 1994, as amended, on the annual and consolidated accounts of insurance undertakings (hereinafter "the Accounts Act")?

Regarding the above point e) the information to be provided by the approved auditor in the separate report goes beyond the provisions of Article 86 of the Accounts Act, which explicitly only refers to the certification by the auditor of the 'consistency of the annual report with the annual accounts'.

Section 2 will include where appropriate:

- explanations for delays in issuing the audit report,
- details concerning the reservations, including both qualifications and emphasis of matters, issued or projected,
- and a description of the nature of the breaches concerning the management report.

## **3. Publication of the accounts for the previous financial year**

Section 1 will indicate whether the undertaking has complied with all the obligations to publish its accounts for the previous financial year and whether the legal deadlines have been met.<sup>1</sup>

## **4. Valuation of the assets of items C II, III and IV**

---

<sup>1</sup> In accordance with Article 87 of the Accounts Act, the accounts, the annual report and the auditor's report must be submitted within one month of their approval and no later than 7 months after the end of the financial year.

In Section 1 the following questions will be answered:

- a) Are there depreciations on assets other than fixed-income securities that are not recognised given that said depreciations are not considered to be long-lasting?
- b) If so, what is the total amount of the corresponding unrecognised capital losses?
- c) Are there depreciations on fixed-income securities that are not recognised given that said depreciations are not considered to be long-lasting for reasons relating to the quality of the issuers?
- d) If so, what is the total amount of the corresponding unrecognised capital losses?

## Section 2

- deals with the criteria used by the undertaking to decide whether an unrealised loss in value is long-lasting or not, and
- will indicate whether these criteria have changed from the previous financial year.

The information under Section 2 shall be given irrespective of the existence or otherwise of such losses, except for undertakings that have a policy of systematically recording all the registered depreciations of value (lower of cost or market).

## 6. Breach of the principle of specialisation

In light of the principle of specialisation enshrined in the first indent of Article 49, paragraph 1, letter b) of the Law of 7 December 2015 on the insurance sector, Section 1 shall indicate whether the reinsurance undertaking carries on activities which are not directly related to the business of reinsurance within the meaning of Article 43, paragraph 28, letter a) of said law and to operations directly related thereto, excluding any direct insurance activity.

In case of a positive answer, Section 2 provides the corresponding details.

## 7. Verification of technical provisions

In Section 1 the following questions shall be answered:

- a) Do you confirm the amounts reported by the undertaking in the table of the report related to the verification of the technical provisions?
- b) Do you confirm the materiality of the facts which gave rise to the constitution of the reserves for claims incurred and reported; it being understood that this verification is supposed to be positive in the event of the existence of claims declarations made by the ceding companies?
- c) Has the provision for claims fluctuation been constituted in accordance with the articles from 11 to 15 of the Grand-Ducal Regulation of 5 December 2007 laying down the initial authorisation and operating conditions applicable to reinsurance undertakings?

Section 2 shall :

- in case of a negative answer to one of the 3 previous questions, provide further explanations,
- in the case of adjustments made by the undertaking in relation to the amounts notified by ceding undertakings, describe the method of calculation and valuation of the adjustments made by the undertaking for each item of technical provisions,

and, in particular

- indicate the technical interest rate as well as the mortality tables used in the event of adjustments made by the undertaking to the life assurance provision,
- describe the statistical or other method applied to establish the provision for incurred and unreported claims constituted by the reinsurance undertaking in addition to the one based on ceding companies' notifications,

## **8. Change in technical provisions**

Section 1 will report:

- a) if, for each of the items and sub-items of technical provisions shown in items C and D on the liabilities side of the balance sheet, the change in the profit and loss account is equal to the difference between the closing provisions of the previous year and the closing provisions of the year under review,
- b) if, in the event of a deviation, there are causes other than exchange rate differences.

In the event of a positive answer to the second question, Section 2 will indicate, provision by provision

- the difference due to exchange rate differences,
- as well as other differences with their respective explanations and accounting treatment

## **9. Investment policies including the policy on derivative financial instruments**

In Section 1 the following questions will be answered:

- a) With regard to the breakdown of all the investments held by the undertaking at the end of the financial year under review as indicated by the undertaking in the relevant table of the report, is said breakdown correct?
- b) Has an investment policy, dealing also with derivative financial instruments, been approved by the Board of Directors?
- c) Is a policy on derivative financial instruments documented in a set of written procedures?
- d) If there are specific procedures relating to derivative financial instruments, do said procedures provide for a definition of the derivative instruments at hand?
- e) with regard to the investment policy, dealing also with derivative financial instruments, how often checks to ensure compliance with said policy are made?
- f) Does the undertaking directly hold derivatives at the end of the financial year?
- g) Has the undertaking issued any derivative financial instruments?
- h) How much is :
  - the total of purchases in the financial year
  - the total of sales in the financial year
  - the market value of the instruments held at the end of the financial year
  - the market value of the instruments issued at the end of the financial year
  - the notional exposure for the instruments issued at the end of the financial year
  - the maximum notional exposure for the instruments during the financial year
- i) Is a potential expense resulting from the issuance of derivative instruments disclosed in the closing balance sheet?

- j) Is a potential expense resulting from the issuance of derivative instruments disclosed off-balance sheet?

The undertaking is free to adopt its own definition of the concept of derivative financial instrument, it being understood that these instruments must at least include all kinds of options on financial instruments, futures, swaps and swaptions, forward exchange contracts and repo transactions. At the end of the financial year, swaps are to be regarded as derivative instruments "held" if they constitute an asset for the reinsurance undertaking and as instruments "issued" if they constitute a liability, whether the asset or liability is recognised on or off the balance sheet.

This section as a whole applies only to derivative financial instruments held directly and not to those held by external funds in which the undertakings holds units or those underlying structured products issued by third parties.

## **10. Off-balance sheet commitments**

Section 1 will indicate whether there are any off-balance sheet commitments stated in the notes to the balance sheet other than those resulting from the rental of real estate, leasing of equipment and software used for own use, rental guarantees granted to the undertaking's employees and derivative instruments.

Section 2 shall indicate the nature and extent of these commitments.

## **11. Intra-group transactions**

In Section 1 the following questions will be answered:

- a) Does the undertaking have internal procedures enabling it to list all the transactions it carries out with the undertakings referred to in Article 89 of the CAA Regulation No. 15/03 of 7 December 2015 on insurance and reinsurance undertakings, as amended?
- b) If so, are these procedures considered adequate by the approved auditor?
- c) If the answer to question b) is in the affirmative, are these procedures applied in practice?

The term "intra-group transaction" is to be understood here in a broad manner and covers both balance sheet positions at any time during the financial year and transactions recorded in the profit and loss account or off-balance sheet commitments that existed at any time during the financial year under review.

Transactions to be taken into account include:

- loans (balance sheet) and the corresponding financial income and expenses (profit and loss account),
- deposits (balance sheet),
- transactions relating to solvency margin items (balance sheet),
- reinsurance and retrocession transactions (balance sheet and profit and loss account),
- the conventions for allocating overheads (balance sheet and profit and loss account),
- guarantees and off-balance sheet transactions.

Section 2 shall describe material intra-group transactions reported in the closing balance sheet or off-balance sheet or in the profit and loss account for the financial year between the reinsurance undertaking and the undertakings referred to in the aforementioned Article 89. Said description

- shall deal with the nature and volume of these transactions
- shall indicate whether said transactions have been carried out under normal market conditions
- and, if not, analyse the economic justifications for them.

Material transactions shall include all the above-mentioned transactions as well as all other transactions between the reinsurance undertaking and the undertakings referred to in the above-mentioned Article 89 which exceed in value:

- 2% of the balance sheet at the beginning of the year for transactions affecting balance sheet and off-balance sheet items
- 10% of gross premiums written for transactions affecting items in the profit and loss account.

For the application of the above numerical criteria, transactions of the same nature shall be taken into account for the cumulation of their value.

## **12. On-the-spot inspection**

In the event that Section 1 refers to an on-the-spot audit report sent within 24 months prior to the end of the financial year, Section 1 indicates whether all recommendations and injunctions of the Commissariat aux Assurances have been implemented in practice. The purpose is not to determine whether the undertaking has simply responded to the audit report by claiming to remedy the deficiencies reported, but to verify whether the commitments made have been fulfilled.

If the answer is no, Section 2 will give indications on

- the nature of recommendations and injunctions not yet implemented,
- the justifications put forward by the undertaking
- as well as the timetable for the - possibly residual - measures envisaged.

## **13. Obligations to the fight against money laundering and terrorist financing**

The answers to the questions under point 13 are not intended to replace the activities to be carried out by the approved auditor pursuant to CAA Regulation n° 13/01 of 23 December 2013 on the fight against money laundering and terrorist financing.

For reinsurance undertakings which do not accept «credit» or «suretyship» risks only answers to questions 13.1 and 13.8 will be required.

Reference should be made to:

- with regard to questions from 13.1 to 13.7, to the law of 12 November 2004, as amended, on the fight against money laundering and terrorist financing

and

- with regard to 13.8, to the law of 27 October 2010 on the implementation of United Nations Security Council resolutions and acts adopted by the European Union containing prohibitions and restrictive measures in financial matters against certain persons, entities and groups within the framework of the combat against terrorism. »

#### **14. Beneficial owners**

Section 1 will indicate whether the undertaking has informed and is up to date with the registration of its beneficial owners in accordance with the law of 13 January 2019.

If this question is answered in the negative, Section 2 of the separate report will provide details of the incorrect or missing information.

#### **Final provisions**

Although the preparation of the separate report is the responsibility of the approved auditor, reinsurance undertakings must fully cooperate with the approved auditor in this respect. Therefore, reinsurance undertakings are invited to prepare the statement on derivative instruments with the breakdowns required under the above point 9 and to prepare the statement on intra-group transactions.

Circular letter 02/2 of the Commissariat aux Assurances relating to the separate report to be provided by the auditor of reinsurance undertakings is repealed.

For the Directorate

Claude WIRION  
Director