

Luxembourg, 19 May 2011

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 11/7 of the Commissariat aux Assurances amending circular letter 11/2 on the assessment of risks of exposure to money laundering and terrorist financing and on prevention measures

Ladies and Gentlemen,

The Act of 27 October 2010 extended the scope of application of the provisions on the fight against money laundering and terrorist financing contained in the amended Act of 12 November 2004 on the fight against money laundering and terrorist financing (hereinafter the "LC/FT Act"), in particular to non-life insurance and reinsurance undertakings carrying out credit and surety operations.

As Circular Letter 11/2 initially applied only to life insurance undertakings, a subsequent extension to non-life and reinsurance undertakings covered by the LB/FT Law was announced.

As this activity is very different from that of life insurance, a specific questionnaire for the credit and surety insurance branches is introduced by this amending circular letter.

The extension of the scope of Circular Letter 11/2 also calls for the following changes in the body of that Circular Letter :

1. The 5th paragraph is replaced by the following text :

"The scope of application of this circular letter extends to life insurance undertakings as well as to non-life insurance undertakings and reinsurance undertakings when they carry out "credit/guarantee" operations and which, in application of the new law of 27 October 2010 on the subject, are also subject to the requirements of the fight against money laundering and terrorist financing. »

2. In the first indent of the eighth subparagraph, the words "for each new contract" are deleted.

3. After the eighth paragraph, two paragraphs are inserted as follows:

"In view of the fact that "credit/guarantee" insurance and reinsurance contracts differ from life insurance contracts in terms of the risk covered, the purpose of the contract, the type of customer, their marketing and management methods, and their specific features inherent in non-life insurance, such as the principle of compensation for the damage suffered as opposed to lump-sum coverage in life insurance, the duration of the contracts, the absence of redemption or other exit opportunities prior to maturity, and the amounts involved, the Office decided to take a slightly different approach to the production of the harmonized BC/FT risk assessment forms to be used by non-life insurance companies as compared to life insurance companies.

While life insurance undertakings must complete such a questionnaire for each new contract, non-life insurance and reinsurance undertakings engaged in "credit/guarantee" operations must produce a relevant analysis of the BC/FT risks of their activities for their portfolio as a whole. »

4. The title of point 1 is amended as follows :

"« 1. BC/FT Harmonized Risk Assessment Forms".

5. The first subparagraph of point 1 is replaced by the following :

" - for life insurance:

Annexes Ia), Ib), Ic), Id) and Ie) must be completed by life insurance undertakings for each new contract. »

6. Point 1 of the circular letter shall be supplemented by the following wording :

"for "credit/surety" insurance and reinsurance :

Annex III - Part 1 to this circular letter is to be completed by non-life insurance and reinsurance undertakings, for their portfolio as a whole.

If this monitoring shows that there has been a change in the BC/FT risk profile, the company must make the necessary and proportionate adjustments to its BC/FT policy and to the measures for managing this risk. At least once a year, the insurance and reinsurance undertaking must carry out a review of the risk analysis relating to its business, the result of which must be communicated to the decision-making body within the insurance and reinsurance undertaking.

As for life insurance, the results obtained on the basis of the questionnaire in Annex III must be communicated regularly to the Insurance Commissioner's Office. In order to enable the latter to carry out an objective categorisation of insurance and reinsurance undertakings, it is essential that the data be collected by means of uniform criteria. This means that only the results of the application of all the criteria developed by the Office of the Commissioner in the questionnaire should be communicated to the Office of the Commissioner. These criteria may not be modified under any circumstances and their application is mandatory for the company.

However, the Office of the Insurance Commissioner encourages companies subject to this circular letter to add additional criteria to the evaluation forms to better identify their individual level of BC/FT risk. These additional criteria are intended for purely internal company use and are not to be communicated to the Commissariat aux Assurances. »

7. Point 2 is amended as follows

"« 2. The qualitative questionnaire on OC/FT prevention measures (Annexes II and III - Part 2)

In order to enable the Commissariat to objectively assess the level of measures put in place to prevent BC/FT risk, a questionnaire relating to the internal organisation of the insurance and reinsurance undertaking and its AML/CFT policy was developed.

It was decided to propose two questionnaires, one relating to Life insurance (Appendix II) and the other relating to "Credit/Guarantee" risks (Appendix III - Part 2), which differ only slightly but which take into account the specific features of both activities, particularly the lack of "Credit/Guarantee" repurchase possibilities.

The respective questionnaires must be completed by the person responsible for AML/CFT and returned to the Commissariat aux Assurances by life insurance undertakings before 15 March 2011 and by non-life insurance and reinsurance undertakings before 15 July 2011, by e-mail and in paper form duly signed by the person responsible for AML/CFT and by the authorised officer of the insurance or reinsurance undertaking, in the event that they are not the same person. »

8. Point 3 is amended as follows

"« 3. Collection of quantitative data

Aggregated data obtained from the harmonised forms (Annexes Ia), Ib), Ic), Id) Ie) and III - Part 1) will be collected by the Commissariat aux Assurances by 31 January each year at the latest.

The format of the statistics to be reported will be defined at a later stage.

The first data collection carried out by the Commissariat aux Assurances as of January 31, 2012 relates to life insurance for the period from 1 April to December 31, 2011 and for "credit and surety" insurance or reinsurance on the portfolio situation as of December 31, 2011. For subsequent years, the abovementioned companies must submit data for the entire previous calendar year by 31 January of each year at the latest. »

9. Circular letter 11/2 is supplemented by an annex III as follows:

This circular letter is complementary to and modifies circular letter 11/2 of the Commissariat aux Assurances.

For the Management Committee,

Victor ROD  
Director

## Annex III :

### Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Questionnaire for the benefit of insurance and/or reinsurance undertakings engaged in the credit/guarantee business

#### Instructions :

- This questionnaire is to be completed by the person responsible for the fight against money laundering and terrorist financing within the company. It must be countersigned by the authorised manager of the insurance/reinsurance undertaking (if different).

- The questionnaire refers only to credit/guarantee business, the percentages requested must be estimated on the basis of the volume of business in these branches and the situation of the portfolio in progress (cumulative stock and production for the year).

#### Definitions applicable to surety insurance :

policyholder = borrower = the one paying the premium / beneficiary = lender = the one receiving the indemnity

#### Definitions applicable to credit insurance :

policyholder = beneficiary = the one who pays the premium and receives the indemnity

#### Definitions applicable to reinsurance :

lessee = beneficiary = transferor company

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### Part I: Portfolio Risk Assessment corporate

#### NAME OF THE INSURANCE OR REINSURANCE UNDERTAKING

Do you practice the credit/guarantee branches?

(If the answer is no, please return the questionnaire not completed, but nevertheless duly signed by the authorised officer).

Name of the AML/FT manager:

To whom (hierarchical position) the manager reports  
AML/FT within the company?

Does the AML/FT manager perform other tasks  
within the company?  
Which ones?

Have you already set up a compliance function  
within your company?

If Yes: Name of the person responsible for this function:

Signature of the AML/CFT Officer:

Signature of the authorised officer:

## A. Geographic risk

1. a) What is the percentage of contracts in the portfolio for which the **policyholder (customer)** is resident in an EEA country?
- b) Does the company verify whether there is an apparent geographical link between the residence of the policyholder (customer) and the country of the banking institution through which the premiums are paid?
2. a) What is the percentage of contracts in the portfolio for which the **beneficiary a** is the resident of an EEA country?
- b) Does the company verify whether there is an apparent geographical link between the residence of the beneficiary and the country of the banking institution of the account with which the compensation is to be paid?
3. What is the percentage of premiums paid through an account from a country with a substantial and strategic AML/CFT regime deficiencies or a country with an AML/CFT regime that is considered unsatisfactory (as reported by the FATF)?
4. What is the percentage of contracts for which the intermediary is resident in another State (except Luxembourg) than the policyholder (customer)?
5. Does the company have rigorous verification procedures in place when there are frequent and unexplained movements of funds from different banking institutions or countries?
- Comments (if "No, I haven't had to face this situation yet"):
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## B. Takers (clients) / Beneficiaries

1. What is the proportion of contracts for which the **policyholder (customer)** is a legal person?
- a) - of the number of contracts :
  - b) - % of premiums written :
- (c) What percentage of "legal person" policyholders (customers) are listed companies (in terms of number of contracts)?
- (d) What percentage of policyholders (customers) who are 'legal persons' are financial institutions within the meaning of the AML/CFT Act (in terms of the number of contracts)?
2. What is the exact number and percentage of portfolio contracts for which the policyholder (client) is a PEP within the meaning of the AML/CFT Act?
- a) - Number of contracts :
  - b) - Percentage of contracts :
3. Are there any policyholders (clients) with whom the company or its intermediary has no direct link (the link is made by a lawyer, notary, tax consultant, ... )?
4. What is the proportion of contracts for which the **beneficiary** is a legal person?
- a) - of the number of contracts :
  - b) - % of premiums written :
- (c) What percentage of the beneficiaries that are "legal persons" are listed companies (in terms of number of contracts)?
- (d) What percentage of the "legal person" beneficiaries are financial institutions within the meaning of the AML/CFT Act (in terms of the number of contracts)?
5. What is the exact number and percentage of contracts in the portfolio for which the beneficiary is a PEP within the meaning of the AML/CFT Act?
- a) - Number of contracts :
  - b) - Percentage of contracts :
6. What is the percentage of contracts in which the **lessee (client) or beneficiary** is a legal person with a complex legal structure (trust or similar legal arrangement, NPO or offshore company)?
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### C. Methods of payment

1. a) Does your company accept payment of premiums in cash or by cheque?
- Does your company accept premium payments from third parties?
- b)
- In the event of a claim, does your company agree to pay the indemnity in cash or
2. a) by bank cheque?
- b) In the event of a claim, does your company agree to pay the indemnity in a currency other than the original currency of the contract (contracts issued in countries whose currency has in the meantime switched to the euro are not to be considered)?
3. What percentage of the premiums is collected directly by the company (and not e.g. through intermediaries)?
4. What percentage of periodic premium contracts are paid by direct debit?
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### D. Distribution network

1. What is the distribution (in percentages) of the company's distribution network according to its collections?
- a) - Agent:
- b) - Broker :
- c) - Bank :
- d) - Direct sales :
- e) - Other: **Total : 0,00%**
2. Does the company have a policy for accepting intermediaries?
3. During the cooperation with the intermediary, does the company check the validity of the authorisation?
4. Is the AML/FT procedure available to the network?
5. Is the third party introducer responsible for collecting and verifying on behalf of the undertaking information relating to the identity and knowledge of the lessees (customers) and/or beneficiaries?
- Comments (if answer = "Not applicable") :
6. Does the third party make the identification and knowledge of the policyholder (customer ) and/or beneficiary available to the undertaking without delay on request?
- Comments (if answer = "Not applicable") :
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- The questionnaire refers only to credit/guarantee business, the percentages requested must be estimated on the basis of the volume of business in these branches and the situation of the portfolio in progress (cumulative stock and production for the year).

#### Definitions applicable to surety insurance :

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policyholder = beneficiary = the one who pays the premium and receives the indemnity

#### Definitions applicable to reinsurance :

lessee = beneficiary = transferor company

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## Part II: Internal measures put in place for AML/CFT corporate

### NAME OF THE INSURANCE OR REINSURANCE UNDERTAKING

Do you practice the credit/guarantee branches?  
(If the answer is no, please return the questionnaire not completed, but nevertheless duly signed by the authorised officer).

Name of the AML/FT manager:

To whom (hierarchical position) the manager reports  
AML/FT within the company?

Does the AML/FT manager perform other tasks  
within the company?  
Which ones?

Have you already set up a compliance function  
within your company?

If Yes: Name of the person responsible for this

function: Signature of the AML/FT manager:

Signature of authorized officer:

## E. Internal Organization

1. How many people make up the company's AML/CFT team?

2. The AML/CFT procedure within the company:

a ) - is in progress?

b ) - is a written procedure? c )

- is a single document? d ) - is

accessible to all?

e ) - is published via ?

Please specify the mode of publication (if answer = "Other") :

3. a) When was the AML/CFT procedure last updated?

b) Are existing contracts being brought into line with the current procedure?

Has your company ever been internally audited? In what year

4. a) was the last internal audit carried out?

b) Was the AML/FT domain included?

c) Are there any AML/CFT recommendations?

d) If recommendations have been made, has your company already taken steps to

e) meet those recommendations?

Comments :

5. a) Does your company have an acceptance committee? What is it made of? (names and functions)

c) What is his area of expertise? (Describe briefly)

The Committee shall be competent to decide on the:

- d) - contracts from the following amount (in EUR):
- e) - lessees (customers) / new beneficiaries
- f) - existing policyholders (customers) / beneficiaries (e.g. 2nd contract)
- g) - endorsements significantly increasing the contract's cover
- h) How often does this committee meet?
- i) Are minutes taken of these meetings?

What is the number and percentage of applications rejected by the acceptance committee in the first six months of 2011?

- j) - number of cases :
- k) - % of cases :  in relation to the number of applications accepted over the first 6 months of 2011

6. Is there a separate committee that is competent to analyze subscription applications from an AML/CFT perspective?

7. If there are other procedures/controls applicable to acceptance, describe them:

## F. AML/CFT Policy and Procedural Analysis

1. **a)** Does your AML/FT procedure follow a risk-based approach? The criteria applied are:
- b)** - lessees (customers) / beneficiaries (with at least criteria related to the geography and activity)
- (c)** - the products
- (d)** - marketing methods
- )** - transactions
- (e)** - others
- (f)** Please specify any other criteria :
2. Since 27.10.2010, how many searches has your company already been subjected to?
3. How many suspicious activity reports has your company already submitted since 27.10.2010?
4. What is the percentage of participation in AML/CFT courses since the 27.10.2010 according to the different categories of personnel of the company?
- a)** - Chartered Executive Officer
- b)** - Members of the Acceptance Committee (if any)
- c)** - Compliance / Legal
- d)** - Commercial
- e)** - Others
5. When contracts are issued, does your AML/CFT procedure include specific provisions on the verification of
- a)** - of the lessees (customers)?
- b)** - of the beneficiaries?
- Are these audits documented
- c)** - for the lessees (customers)?
- d)** - for the beneficiaries?
6. Does your AML/CFT procedure provide for specific controls in the event of a change of lessee (client) or beneficiary?
7. Does your AML/CFT procedure include a list of indicators that should lead to increased vigilance (NCPTs, sensitive activities, etc.)?
8. Does your AML/CFT procedure provide for the retention of documents for at least 5 years after the end of the relationship?
9. Does your AML/CFT procedure include specific provisions to combat terrorist financing?
10. Do you carry out analyses that go beyond the identification of your policyholder (customer) / beneficiary (e.g. in the case of surety insurance, an analysis of the amount of claims to be covered in relation to the personal economic situation)?

11. a) How often are existing lessees (clients)/beneficiaries checked (due diligence obligations) as required by the amended Act of 12.11.2004 Art.3?
- b) Are these audits documented?
12. What is the basis for the verification of lessees (customers) / beneficiaries?
- a) - Lists of the Public Prosecutor's Office
- b) - European Union Regulations
- c) - UNO Resolutions
- d) - Local Press
- e) - International Press
- f) - Worldcheck
- g) - Internal list of sensitive occupations/activities
- h) - Others
- Please specify "Other" if applicable:
13. a) Does the AML/CFT Officer carry out annual sample checks on the application of the AML/CFT procedure to the existing contract portfolio?
- How many contracts are included in the control sample?
- b)

### G. Assessment of the AML/FT manager

1. Does the AML/CFT Officer believe that the AML/CFT procedure is being fully followed?
2. Does the AML/CFT Officer feel that the records are adequately documented?
3. Does the AML/CFT Officer consider that the number of people working in the AML/CFT area within the company is commensurate with the company's activity?
4. In the opinion of the AML/CFT Officer, what is your company's exposure to AML/CFT risk and the following criteria?
- a) - Type of tenants (customers) / beneficiaries
- b) - Country of origin of funds
- c) - Type of transactions
- d) - Type of products
- e) - Internal organization of the company
- f) - Distribution networks
5. In the opinion of the AML/CFT Officer, are the measures put in place sufficient to mitigate this risk?