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Luxembourg, 17 March 2020



Circular letter 20/7 amending circular letter 17/4 of the Commissariat aux Assurances on the reporting of brokerage firms and individual insurance brokers

Article 4, point a), of the Law of 7 December 2015 on the insurance sector, as amended, (hereinafter the "Law") foresees that the Commissariat aux Assurances (the "CAA") issues instructions with regard to accounting and other documentation to be forwarded to the CAA by those natural and legal persons of the insurance sector which are approved in the Grand Duchy of Luxembourg. Point b) of the same article provides that the CAA may request natural and legal persons approved in the Grand Duchy of Luxembourg to provide any information and documentation deemed useful or necessary for the exercise of its supervision.

Article 8-2 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, (hereinafter the "AML/CFT Law") provides that the CAA is vested with all the supervisory and investigatory powers which are necessary to exercise their functions as defined in Article 2-1 of the AML/CFT Law, including the right to access any documentation in any form whatsoever, and to receive or take a copy of it and the right to request information from any person subject to their supervisory powers.

Article 4, point 3, of 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 grants the CAA the prudential supervision of all those natural and legal persons falling within its competence for the purposes of the implementation of this Law.

In view of the numerous legislative and regulatory changes in the area of AML/CFT, the CAA has deemed appropriate to make some amendments to Circular Letter 17/4 in order to adapt the terminology to that used in the AML/CFT Law and to improve the statistical exploitation of data provided by individual insurance brokers and brokerage firms (hereinafter together referred to as "brokers").

Thus, the brokers' report has been amended as follows:

- point 4 of Module FR_A
 - o The various terms used have been adapted to be consistent with the terminology used in the AML/CFT Law.
 - o Four additional questions have been added in order to:
 - determine which brokers are engaged in activities relating to classes of insurance listed in Annex I to the Law, including guarantees under classes 14 (credit) and 15 (suretyship), considering that these activities fall within the scope of the AML/CFT Law;

- verify that brokers who fall within the scope of the AML/CFT Law have up-to-date written procedures;
 - verify that brokers falling within the scope of the AML/CFT Law have carried out an assessment of the money laundering and terrorist financing risks to which they are exposed ;
 - determine, for brokers who fall within the scope of the AML/CFT Law, the number of new contracts subscribed during the reference financial year that involve certain risk factors that should lead brokers to classify these contracts as "high risk". It should be noted that the factors listed are not exhaustive, as other factors may lead brokers to classify contracts as "high risk" in terms of money laundering and terrorist financing risks.
 - A question was added concerning the implementation of financial sanctions in the fight against terrorist financing. This question is addressed to all brokers regardless of the nature and size of their activities.
- point 5 of Module FR_A
 - Brokers are now asked to break down the number of contracts subscribed during the reference financial year between life and non-life business.
 - In order to optimise cooperation with other Luxembourg competent authorities, brokers are requested to indicate the activities that are subject to approval, authorisation, recording or registration with an authority other than the CAA, while specifying the nature of these activities and the competent authority concerned.
- Module TBL_A
 - A drop-down menu has been included in the "rest of the world" column in order to select the State(s) concerned.
- Module TBL_C1A
 - A drop-down menu has been included in order to select Luxembourg insurance companies.

Brokerage firms are now also required to provide the CAA with the following documents when submitting the annual reporting:

- a group chart which shall be up-to-date on the date of submission of the annual reporting, dated and signed by the approved executive and showing the direct and indirect shareholders of the brokerage firm up to the beneficial owner(s) and its holdings and branches, if any,
- an up-to-date extract from the commercial register (less than 3 months old) and
- an up-to-date extract from the register of beneficial owners (less than 3 months old).

Accordingly, circular letter 17/4 of the Commissariat aux Assurances on the reporting of brokerage firms and individual insurance brokers is amended as follows:

1. GENERAL

- Point 1.6 paragraph 2 relating to the documents to be submitted with the paper version of the annual reporting now reads as follows:
 "The paper version of the annual reporting must be accompanied by the following documents:
 - a) Final annual accounts for the financial year under review (or, failing that, draft annual accounts) (cf. 1.5.) ;
 - b) Minutes of the general meeting of shareholders/partners that approved these annual accounts ;
 - c) For all approved executives of a brokerage company and for all individual insurance brokers: a declaration on honour concerning
 - the address of the private residence; and

- the absence or existence of criminal convictions in the territory of the European Union ;
- d) If the articles of association were amended during the reference year, a copy of the minutes of the relevant extraordinary general meeting of shareholders/partners and the latest consolidated articles of association ;
- e) A group chart which shall be up-to-date on the date of submission of the annual reporting, dated and signed by the approved executive and showing the direct and indirect shareholders of the brokerage firm up to the beneficial owner(s) and its holdings and branches, if any ;
- f) An up-to-date extract from the commercial register (less than 3 months old);
- g) An up-to-date extract from the register of beneficial owners (less than 3 months old) ;
- h) The certificates relating to anti-money laundering or anti-terrorism training, indicated in module FR_A ;
- i) If not previously provided to the CAA, a copy of the broker's certificate of professional indemnity coverage issued by the insurance undertaking covering that risk and valid on the day the report is submitted.”

2. EXPLANATIONS RELATING TO THE DIFFERENT MODULES OF THE REPORTING

- In point 2 of Section 2.1. (Module FR_A), the reference to Directive 2002/92/EC on insurance mediation has been replaced by Directive (EU) 2016/97 on insurance distribution.
- Point 4 of Section 2.1 (Module FR_A) has been amended as follows :

"Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

The name of the AML/CFT compliance officer ("AML/CFT Compliance Officer") and his contact details must be those up-to-date at the time of the submission of the reporting.

Such person must be appointed at the management level of the brokerage firm, even if he delegates the exercise of his function in accordance with the legal and regulatory provisions.

For individual insurance brokers the AML/CFT Compliance Officer is the broker himself, even if the latter delegates the exercise of his functions in accordance with the legal and regulatory provisions.

The number of suspicious transaction reports as well as the number of persons trained in AML/CFT matters are those for the reference calendar year.

The "nombre de personnes ayant suivi une formation en matière de LBC/FT" (number of persons trained in AML/CFT matters) includes all persons active in insurance brokerage for the broker, whether bound to it by an employment contract or not, who received AML/CFT training during the reference year.

Brokers who fall within the scope of the Law of 12 November 2004 on the fight against money laundering and terrorist financing (AML/CFT Law), as amended, are requested to:

- confirm that they have written procedures in place that comply with legal and regulatory requirements on the day the reporting is submitted. In view of the numerous legislative and regulatory changes in the area of AML/CFT, the CAA stresses the importance of reviewing these on a regular basis and at least annually. The same applies to the assessment of the AML/CFT risks to which brokers are exposed.
- answer five questions relating exclusively to contracts concluded during the reference calendar year/financial year.

In answering these questions, the following definitions shall apply:

- “politically exposed person” means any person as defined in Article 1, paragraph 9, of the AML/CFT Law
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- “beneficial owner” means any person as defined in Article 1, paragraph 7, of the AML/CFT Law
- “investment of his premium in unlisted instruments in excess of 50% of the issue of unlisted securities” means any investment enabling the client to exercise a right of control over the unlisted instrument (shares, corporate units, etc.).

All brokers are required to put in place adequate arrangements to implement United Nations Security Council resolutions and acts adopted by the European Union containing prohibitions and restrictive measures in financial matters in respect of certain persons, entities or groups in the fight against terrorist financing.”

- A new paragraph has been added in point 5 of Section 2.1. (Module FR_A)
"Under "Activités au Grand-Duché de Luxembourg" (Activities in the Grand Duchy of Luxembourg) all other activities of the broker which are subject to approval, authorisation, recording or registration with an authority other than the CAA are to be indicated."
- The last paragraph of Section 2.7 (Module TBL_A) has been amended as follows:
" Any amounts indicated under "Rest of the world" must be broken down by country. A drop-down menu has been included in order to select the State(s) concerned."
- The last paragraph of point a) of Section 2.9 (Module TBL_C1A) has been amended as follows:
" Brokers are requested to provide the full names of the insurance companies. For Luxembourg insurance undertakings, a drop-down menu has been included to enable brokers to select the undertaking(s) concerned.»

A consolidated version of Circular Letter 17/4 is available on the CAA website.

The provisions of this Circular Letter are applicable for the first time for the annual reporting of the financial year 2019.

For the Directorate,

Claude WIRION
Director