

## ICP 22 Anti-Money Laundering and Combating the Financing of Terrorism

**The supervisor requires insurers and intermediaries to take effective measures to combat money laundering and the financing of terrorism. In addition, the supervisor takes effective measures to combat money laundering and the financing of terrorism.**

### *Introductory Guidance*

- 22.0.1 Money laundering is the processing of criminal proceeds to disguise their illegal origin. Terrorist financing is the wilful provision or collection of funds by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part:
- to carry out a terrorist act(s);
  - by a terrorist organisation; or
  - by an individual terrorist.
- The insurance sector and other financial services sectors are potentially at risk of being misused, knowingly or unknowingly, for money laundering (ML) and the financing of terrorism (FT). This exposes them to legal, operational and reputational risks.
- 22.0.2 This ICP and related standards and guidance on anti-money laundering (AML) and combating the financing of terrorism (CFT) apply at a minimum to the supervision of those insurers and intermediaries underwriting or placing life insurance and other investment-related insurance.
- 22.0.3 The supervisor should have a risk-based approach towards the measures that it takes as well as towards those required of insurers and intermediaries.
- 22.0.4 The supervisor should, on the basis of an analysis of the risk of ML/FT, consider whether or not and to what extent this ICP and related standards and guidance should apply to the non-life sector.
- 22.0.5 The IAIS Application Paper on combating money laundering and terrorist financing<sup>75</sup> provides instructive information on what the Financial Action Task Force (FATF) requires by way of law and enforceable means, and provides information on how insurers and insurance intermediaries can meet the FATF's AML/CFT requirements.

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<sup>75</sup> This Application Paper is intended to provide specific information for insurance supervisors and the insurance sector in tailoring AML/CFT standards to the specific practices and features of the insurance sector. The ICP and the Application Paper do not replace the FATF's requirements.

### *The FATF Recommendations and the IAIS approach*

- 22.0.6 The FATF is an inter-governmental body, established to set international standards for AML/CFT. The FATF has developed recommendations on AML/CFT (collectively referred to here as “FATF Recommendations”), some of which are applicable to the insurance sector.
- 22.0.7 The FATF Recommendations apply at a minimum to the underwriting and placement of life insurance and other investment-related insurance. In addition, where the non-life sector, or part of that sector, is assessed by a jurisdiction as posing a ML/FT risk the FATF standards require that the jurisdiction considers applying the FATF standards to that sector.
- 22.0.8 The FATF requires jurisdictions to designate a competent authority or authorities to have responsibility for ensuring that financial institutions (including insurers and intermediaries) adequately comply with the FATF Recommendations to combat ML/FT. The AML/CFT competent authority is often designated by a jurisdiction’s legislation. There may be jurisdictions where several authorities have AML/CFT responsibilities for the insurance sector.
- 22.0.9 Insurance supervisors are not always designated as the competent authority for AML/CFT in their jurisdiction. Other competent authorities could include law enforcement agencies, and a financial intelligence unit (FIU) which serves as a national centre for receiving and analysing information (such as suspicious transaction reports) and disseminating information regarding potential ML/FT. However, while the insurance supervisor may not be the designated competent authority, this does not absolve it from understanding the risk of ML/FT to the insurance sector and taking steps to help combat ML/FT.
- 22.0.10 Therefore the standards and guidance related to this principle are divided into two parts. Part A applies where the insurance supervisor is a designated AML/CFT competent authority or acts on behalf of a designated competent authority. Part B applies where the insurance supervisor is not a designated AML/CFT competent authority for the insurance sector. To demonstrate observance of this ICP the supervisor must meet the requirements of the standards in either part A or part B according to the circumstances of the jurisdiction.

**Part A: Where the insurance supervisor is a designated AML/CFT competent authority**

**22.1 The supervisor has a thorough and comprehensive understanding of the ML/FT risks to which insurers and intermediaries are exposed, and uses available information to assess the ML/FT risks to the insurance sector in its jurisdiction on a regular basis.**

*Understanding ML/FT risks*

22.1.1 The supervisor should have a thorough and comprehensive understanding of the ML/FT risks to which insurers and intermediaries are exposed arising from the activities undertaken and products and services offered by insurers and intermediaries.<sup>76</sup>

22.1.2 The following features may increase the ML/FT risk profile of an insurance product/service:

- acceptance of payments or receipts from third parties
- acceptance of very high value or unlimited value payments or large volumes of lower value payments
- acceptance of payments made in cash, money orders or cashier cheques
- acceptance of frequent payments outside a normal premium policy or payment schedule
- allowance of withdrawals at any time with limited charges or fees
- acceptance to be used as collateral for a loan and/or written in a discretionary or other increased risk trust
- products with features that allow loans to be taken against the policy (particularly if frequent loans can be taken and/or repaid with cash)
- products that allow for high cash values
- products that accept high amount lump sum payments, coupled with liquidity features
- products with cooling off provisions<sup>77</sup> where the request is made to send the refunded monies to an unrelated third party, a foreign financial institution, or to an entity located in a high risk jurisdiction
- products that allow for assignment without the insurer being aware that the beneficiary of the contract has been changed until such time as a claim is made
- the extent and nature of cross-border activity.

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<sup>76</sup> The Financial Action Task Force has published a paper: Risk-Based Approach: Guidance for the Life Insurance Sector (October 2009). The IAIS expects this paper to be revised after 2013.

<sup>77</sup> Provisions that allow a policy to be cancelled within a stipulated timeframe and the premiums paid to be refunded (in some jurisdictions these are known as “free look”).

It should be noted that some of the above features can be expected over the course of a long-term insurance contract and are not necessarily inherently suspicious.

- 22.1.3 Examples of how ML/FT can occur in insurance are provided in the IAIS Application Paper on combating money laundering and terrorist financing.

*Assessing ML/FT risks*

- 22.1.4 The supervisor should use available information to assess the main ML/FT risks<sup>78</sup> to the insurance sector in their jurisdiction and address them accordingly. Such risk assessments may provide for recommendations on the allocation of responsibilities and resources at the jurisdictional level based on a comprehensive and up-to-date understanding of the risks. These are not static assessments. They will change over time, depending on how circumstances develop, and how risks evolve. For this reason risk assessments should be undertaken on a regular basis and kept up to date.
- 22.1.5 The supervisor should consider the potential ML/FT risks alongside other risk assessments (including governance and market conduct) arising from its wider duties and be aware of the relevance of ML/FT to the duties it carries out in respect of other ICPs and standards.
- 22.1.6 When a jurisdiction-wide risk assessment has been conducted, the supervisor should have access to it and take account of it. The supervisor should participate in such an assessment to inform the assessment and also to improve its understanding of the risks.<sup>79</sup>

## 22.2 The supervisor:

- **issues to insurers and intermediaries enforceable rules on AML/CFT obligations consistent with the FATF Recommendations, for matters which are not in law;**
- **establishes guidance that will assist insurers and intermediaries to implement and comply with their respective AML/CFT requirements; and**
- **provides insurers and intermediaries with adequate and appropriate feedback to promote AML/CFT compliance.**

- 22.2.1 Whilst the FATF requires the basic obligations of customer due diligence, record keeping and the reporting of suspicion to be set in law, the more detailed elements for technical compliance may be set in law or enforceable means.<sup>80</sup> For the purpose of

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<sup>78</sup> For the purposes of this ICP 'risk' encompasses the concepts of vulnerabilities and threats.

<sup>79</sup> In February 2013 the FATF published guidance on National Money Laundering and Terrorist Financing Risk Assessment.

<sup>80</sup> The FATF's Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems refers to "law", which is any legislation issued or approved through a Parliamentary process or other equivalent means provided for under the country's constitutional framework, which imposes mandatory requirements with sanctions for non-compliance; and "enforceable means", which are regulations, guidelines, instructions or other documents or mechanisms that set out enforceable requirements in mandatory language with sanctions for non-compliance.

this standard these “enforceable means” are described as “enforceable rules”.

- 22.2.2 Enforceable rules are a document or mechanism that sets out enforceable AML/CFT requirements in mandatory language with sanctions for non-compliance and which are issued or approved by the supervisor.
- 22.2.3 The supervisor should require insurers and intermediaries to take appropriate steps to identify, assess and understand their ML/FT risks (for customers, jurisdictions, countries or geographic areas; and products, services, transactions or delivery channels). The supervisor should also require insurers and intermediaries to manage and mitigate the ML/FT risks that have been identified.
- 22.2.4 The supervisor should promote a clear understanding by insurers and intermediaries of their AML/CFT obligations and ML/FT risks. Examples of ways to achieve this are to engage with insurers and intermediaries and to provide information on supervision. This might include the supervisor providing guidance which gives assistance on issues covered under the relevant FATF Recommendations, including, as a minimum, possible techniques and methods to combat ML/FT and any additional measures that insurers and intermediaries could take to ensure that their AML/CFT measures are effective. Such guidance may not necessarily be enforceable but will assist insurers and intermediaries to implement and comply with AML/CFT requirements.
- 22.2.5 Examples of appropriate feedback mechanisms by supervisors may include information on current ML/FT techniques, methods and trends (typologies), sanitised examples of actual ML/FT, examples of failures or weaknesses in AML/CFT systems by insurers and intermediaries and lessons to be learned. It may be appropriate for the supervisor to refer to guidance or contribute to feedback from other sources, for example industry guidance.

### **22.3 The supervisor has an effective supervisory framework to monitor and enforce compliance by insurers and intermediaries with AML/CFT requirements.**

- 22.3.1 The supervisor should take account of the risk of ML/FT at each stage of the supervisory process, where relevant, including the licensing stage.
- 22.3.2 The supervisor should have adequate financial, human and technical resources to combat ML/FT, including resources needed to be able to impose sanctions effectively in relation to complex cases where supervisory action is resisted by insurers or intermediaries.
- 22.3.3 The supervisor should subject insurers and intermediaries to supervisory review (off-site monitoring and/or on-site inspection) of their compliance with the AML/CFT requirements and, on the basis of the information arising from such

monitoring and any other information acquired, assess the ML/FT risk profile of the insurer or intermediary.

22.3.4 The frequency and intensity of supervisory review should be based on:

- the ML/FT risks and the policies, internal controls and procedures of each insurer and intermediary, as identified by the supervisor's assessment of their risk profile;
- the ML/FT risks present in the jurisdiction;
- the characteristics of insurers or intermediaries, in particular their number and diversity and the degree of discretion allowed to them under the risk-based approach.

22.3.5 Staff of the supervisor should be appropriately skilled and provided with adequate and relevant training for combating ML/FT, including the necessary skills and knowledge to assess the quality and effectiveness of firms' AML/CFT systems and controls.

22.3.6 The supervisor should require insurers and intermediaries to undertake AML/CFT assessments and develop risk profiles of their customers, business relationships, distribution channels, products and services and to put in place risk management and control measures to address identified risks.

22.3.7 The supervisor should have the power to take appropriate corrective, remedial and enforcement action where insurers and intermediaries do not implement AML/CFT requirements effectively.

22.3.8 The supervisor should also require insurers and intermediaries to provide relevant training in AML/CFT to Board Members, Senior Management and other staff as appropriate.

**22.4 The supervisor regularly reviews the effectiveness of the measures that insurers and intermediaries and the supervisor itself are taking on AML/CFT. The supervisor takes any necessary action to improve effectiveness.**

22.4.1 The review should include an assessment of the effectiveness of implementation of AML/CFT requirements and of the supervisory approach, including but not limited to the extent to which the supervisor's actions have an effect on compliance by insurers and intermediaries.

22.4.2 This review could cover aspects such as:

- the risks of ML/FT in the insurance sector and whether these are adequately addressed by the risk-based approach of the supervisor;
- the adequacy of the supervisor's resources and training;
- whether the number and content of on-site inspections relating to AML/CFT measures is adequate;
- whether AML/CFT off-site supervision is adequate;

- the findings of on-site inspections, including the effectiveness of training and implementation by insurers and intermediaries of AML/CFT measures;
- action taken by the supervisor against insurers and intermediaries;
- input from other authorities on the insurance sector, such as the number and pattern of suspicious transaction reports made by insurers and intermediaries, and ML/FT prosecutions and convictions in the insurance sector;
- the number and nature of requests for information from other authorities concerning AML/CFT matters;
- the adequacy of the requirements, guidance and other information provided by the supervisor to the sector;
- the number and type of ML/FT prosecutions and convictions in the insurance sector.

Such reviews should enable the supervisor to identify any necessary actions which need to be taken to improve effectiveness.

- 22.4.3 The supervisor should maintain records on the number of on-site inspections relating to AML/CFT measures and on sanctions it has issued to insurers and intermediaries with regard to inadequate AML/CFT measures.

**22.5 The supervisor has effective mechanisms in place which enable it to cooperate, coordinate and exchange information with other domestic authorities, such as the financial intelligence unit, as well as with supervisors in other jurisdictions for AML/CFT purposes.**

- 22.5.1 Mechanisms of cooperation, coordination and exchange of information should normally address:

- operational cooperation and, where appropriate, coordination between the FIU, law enforcement agency and supervisors; and
- policy cooperation and, where appropriate, coordination across all relevant AML/CFT competent authorities.

Effective prevention of ML/FT is enhanced by close cooperation among supervisors, the FIU, law enforcement agencies, other competent authorities, and insurers and intermediaries.

- 22.5.2 Where a supervisor identifies suspected ML/FT in insurers and intermediaries, it should ensure that relevant information is provided to the FIU, any appropriate law enforcement agency and other relevant supervisors.

- 22.5.3 The supervisor should take all necessary steps to cooperate, coordinate and exchange information with the other relevant authorities. There should be contact by the supervisor with the FIU and appropriate law enforcement agency to ascertain any concerns it has and any concerns expressed on AML/CFT

compliance by insurers and intermediaries, to obtain feedback on trends in reported cases and to obtain information regarding potential ML/FT risks to the insurance sector.

22.5.4 The supervisor should consider appointing within its office a contact for AML/CFT issues and to liaise with other AML/CFT competent authorities to promote an efficient exchange of information.

22.5.5 The exchange of information is subject to confidentiality considerations. These are discussed in ICP 3 Information Exchange and Confidentiality Requirements.

#### **Part B: Where the insurance supervisor is not a designated AML/CFT competent authority**

### **22.6 The supervisor is aware of and has an understanding of ML/FT risks to which insurers and intermediaries are exposed. It liaises with and seeks to obtain information from the designated competent authority relating to AML/CFT by insurers and insurance intermediaries.**

22.6.1 Where another body is the AML/CFT designated competent authority,<sup>81</sup> the supervisor should consider what effect this may have on its ability to ensure that insurers and insurance intermediaries meet supervisory requirements.

22.6.2 The supervisor should have an understanding of the ML/FT risks to which insurers and intermediaries are exposed arising from the activities undertaken and products and services offered by insurers and intermediaries.

22.6.3 The supervisor is able to make a more informed evaluation and judgment on the soundness of insurers and intermediaries by receiving information from the AML/CFT designated competent authority. Such information may be relevant to the risk profile of the insurer or intermediary or to the effectiveness of risk management by the insurer or intermediary. The contents of this information may include the level of ML/FT risks to which insurers and intermediaries are exposed, and the designated competent authority's views on the risk management, corporate governance and internal control measures of supervised entities relevant to AML/CFT.

22.6.4 The AML/CFT designated competent authority may have information on breaches of AML/CFT requirements that should be taken into consideration by the supervisor in its supervisory activities, such as when evaluating the Board, Senior Management and Key Persons in Control Functions on the basis of suitability requirements including when reviewing licence applications.

### **22.7 The supervisor has effective mechanisms in place which enable it to cooperate, coordinate and exchange information with other**

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<sup>81</sup> Including where more than one body is designated as a competent authority for AML/CFT.

**domestic authorities, such as the financial intelligence unit, as well as with supervisors in other jurisdictions for AML/CFT purposes.**

- 22.7.1 Mechanisms of cooperation, coordination and exchange of information should normally address operational cooperation and, where appropriate, coordination between the FIU, law enforcement agencies and other supervisors. Effective prevention of ML/FT is enhanced by close cooperation among supervisors, the FIU, law enforcement agencies, other competent authorities, and insurers and intermediaries.
- 22.7.2 Where in the course of exercising its supervisory responsibilities the supervisor becomes aware of information on ML/FT risks, it should provide relevant information to the designated competent authority. Where a supervisor identifies suspected ML/FT in insurers and intermediaries, it should ensure that relevant information is provided to the FIU, appropriate law enforcement agency and any other relevant supervisors.
- 22.7.3 As part of its cooperation with the AML/CFT designated competent authority, the supervisor should provide input into the effectiveness of the AML/CFT framework. This may help the designated competent authority in its consideration of effectiveness.
- 22.7.4 The exchange of information is subject to confidentiality considerations. These are discussed in ICP 3 Information Exchange and Confidentiality Requirements.