Internal organisational structure.

Money Laundering and Terrorist Financing Act.

APCAL PRACTICAL GUIDE – VIE

AML Handbook 2020

DISCLAIMER

The following text has been translated by APCAL via Deepl for information purposes. The French version of the text is the only authentic version.

This guide is in no way a substitute for the bespoke and objective documentation of each broker's controls and procedures.

These are guidance documents that have not been updated, unlike the AML procedures developed by external advisers, which are subject to a fee.

You will find all the documents and procedures available for purchase by our Members in the 'APCAL – Documents for Sale' section of our website.

Version : AML Life Insurance

Date : 31 October 2019

Authors : Bert Bouton & Sabine Lallier – APCAL

Revision 1 : 6 May 2019

Revision 2 : 31 October 2019

Revision 3 : 21 October 2020 Bert Bouton & Lorenzo Stipulante

Table of Contents

I. Overview of your Professional Obligations

Obligations	Amended Act 2004	RGD 1 February 2010	RCAA – 20/03
Obligation to carry out a comprehensive risk assessment	Art. 2-2.	Art. 1 (6)	Art. 3
Obligations regarding annual updates			Art. 3 (3)
Update obligations – *Triggering Event*			Art. 3 (4)
Client *risk scoring*			Art. 4
Obligations regarding procedures approved by the Broker's management body			Art. 5
Customer due diligence obligations	Art. 3	Art. 1	Articles 7 to 35
Acceptance of new clients	Article 3		Articles 7 to 10
Establishment of a business relationship	Definition 13		Article 11
Portfolio transfer			Art. 12
Identification measures and relationship *ratio*	Art. 3(2)		Articles 13 to 24
Retention of documents	Art. 3(6)	Art. 1(5)	Art. 25
Simplified due diligence obligations	Art. 3–1	Art. 2	Art. 26
Enhanced due diligence obligations	Art. 3 – 2	Art. 3	Articles 26a to 29
Duty of constant vigilance	Art. 3(2)(d)	Art. 1 (4)	Articles 30 to 33
Implementation of vigilance measures by a third party	Art. 3–3		Art. 34
Outsourcing	Art. 3–3		Art. 35
Obligation to maintain adequate internal organisation	Art. 4	Art. 7	Articles 36 to 44
Policies and procedures	Art. 4(1)		Art. 36
Group Policies and Procedures	Art. 4–1		Art. 36a
Head of AML versus *Head of Compliance*	4 (1) (b)		Articles 38 to 39
Duties of *the Head of Compliance*	Art. 4–1(1)(b)		Art. 40
Recruitment, training and awareness-raising for staff	Art. 4(1)(b)		Art. 43 and 44
Obligation to cooperate with the authorities	Art. 5	Art. 8	Art. 45 and 46

This guide applies to brokers who hold a VIE brokerage licence and/or who carry on business in NON-LIFE classes 14 (Credit) and 15 (Guarantee) , whether or not these activities are actually carried on .

Commenté [LS1]: The trigger is simply 'VIE licence' and 'Credit/Security'. Therefore, given that a general insurance broker selling a life insurance policy must hold a VIE licence, I would amend the text accordingly.

Disclaimers

This guide has been drawn up by APCAL to help its members maintain an overview of the professional obligations to be observed in the context of the fight against money laundering and terrorist financing. The guide does not in itself constitute an internal policy document or an AML/CFT procedure. APCAL is not liable for any failure by its members to comply with regulatory or legal obligations, whether or not this arises from a misinterpretation of this document.

II. Obligation to carry out a comprehensive risk assessment

II.1. The comprehensive risk assessment

You must assess the risks of money laundering and terrorist financing to which your business is exposed, taking into account, in particular, all relevant risk factors, before determining the overall level of risk and the level and type of appropriate measures to be applied to manage and mitigate these risks. For guidance, please consult, amongst other sources, the 'National Risk Assessment on Money Laundering and Terrorist Financing' available at the following link: http://www.caa.lu/uploads/documents/files/R_CAA_20-03_LBC_FT_du_30_juillet_2020.pdf

1. Identifying risks:

1.1.1. Develop a methodology to categorise these risks from very low to very high in accordance with the questionnaire in Circular 19/8:

- Product risk: characteristics and options of the insurance contract, nature of the underlying assets
- Client risk: use of intermediary corporate structures and arrangements
- Premium risk: **source of funds**, level and form of payment
- Country or geographical area risk
- Risk associated with transactions/operations carried out
- Risk associated with the distribution channel/type of relationship

Also to be considered:

- Risks associated with the services offered; risks associated with tax obligations
- Risks associated with atypical behaviour and public information

1.2. Update with documentation in the event of:

- Development of new products
- Development of new services
- Development of new business practices, including the use of new distribution channels
- The use of new technologies

1.3. References:

1.3.1. Use the classification system proposed by the CAA in its questionnaire. The aim will be to use this questionnaire to carry out a risk assessment of an individual client or case.

1.3.2. Assessment model proposed by the FSMA – BE.

2. Assessment of the identified risks:

2.1. Assign a severity score to each risk.

2.1.1. To determine the score, you may draw on your firm's experience and organisational capabilities. You may also flag risks that automatically result in a score leading to exclusion (i.e. non-acceptance of the client or case).

2.1.2. The highest score could result in exclusion. Incorporating such a score already constitutes a risk mitigation measure within the acceptance procedure: e.g. PEPs from non-EU countries, a contractual relationship with one of the countries on the FATF list, distance selling as such, certain particularly sensitive professions, etc. The scope of this exclusion score must be incorporated into the firm's AML Risk Policy.

3. Defining risk categories:

3.1.1. For example, create three categories based on the scores obtained (low, medium and high) plus one exclusion category.

3.1.2. Determine for each category the level of vigilance to be applied (simplified or enhanced).

II.2. Individual risk assessment

- Based on your overall risk assessment, you carry out an individual risk assessment for each case.
- This must be carried out prior to accepting the client/case.
- Identify the risks associated with the client/case in question: using the list of risk factors you have drawn up at practice level
- assign a severity score to each risk factor based on the specific details of the case
- assign a risk category to the client/case
- every transaction carried out by a client will be analysed in the light of the individual risk assessment and may lead you to reclassify the client into a different risk category. Similarly, if a client is classified in a particular risk category, this does not imply that all transactions they carry out will be examined and monitored in the same way or to the same extent.
- Record your assessment and its conclusion in writing, regardless of whether your firm has a *committee responsible* for *approving* new clients or contracts.

III. Customer due diligence obligations

You must define the process for accepting new clients. This must be carried out by an *approval body* appropriate to the size of your business.

APCAL therefore draws your attention to the ***point at which a business relationship commences,*** as defined in Article 11 of the CAA's AML Regulations No. 20/03.

⇨ **Any action taken by the broker on behalf of the client engages the broker's liability**.

For example: submitting an insurance proposal to the insurer therefore establishes, *de facto* and *de iure,* an implicit acceptance of the business relationship on the part of the broker vis-à-vis the insurer. Consequently, the broker's responsibility in relation to the fight against money laundering and terrorist financing is engaged by virtue of this submission. Whether or not the broker's internal procedures have been followed will certainly also be a matter of the broker's internal professional responsibility.

III. 1 Application of appropriate customer due diligence measures

- Identification and verification of third parties associated with the contract (policyholder, policyholder's representative, insured person, beneficial owner, policy beneficiary) by means of one or more supporting documents or reliable and independent sources of information. Documentation to be gathered and verified for legal entities => List the documents required in your procedures.
- Identification of all beneficial owners. Latest FATF guidance: https://justice.public.lu/fr/organisation-justice/crf.html
- Assess and document **the source of the funds or premium**
- Assess and document **the client's economic and financial background**
- Assess and understand the client's characteristics, and the intended purpose and nature of the business relationship or occasional transaction: Depending on the client's classification, you will apply a greater or lesser degree of information-gathering, investigation and documentation (supporting evidence): simplified, standard or enhanced due diligence.
    - In practice, insurers may ask you – based on their own risk assessment of the client or the case – to document the AML/CFT file in the context of a one-off transaction.

- Provide for two types of due diligence: **simplified and enhanced**:
    - Set out what you will do when applying the *simplified procedure* and
    - what you will do when applying an *enhanced due diligence procedure*.
- Note that the AML Regulation CAA 20/03 requires an *enhanced due diligence procedure* in the case of PEPs and transactions linked directly or indirectly to high-risk countries (the list is set out in Article 1(30) of the 2004 Act): refer to these situations in your internal

Commenté [LS2]: The terms 'more or less' have been removed as they are no longer appropriate in today's AML/CFT framework.
Similarly, the dialogue between the insurer and the broker regarding the categorisation of the client's AML risk is irrelevant, in that the broker must first, and on their own, do their job. The insurer then does theirs. There is no need here for the two to be aligned, unlike with the client's financial risk profile. Each determines their risk appetite according to their own criteria. I am therefore removing this part of the present paragraph.

procedures . Failing that, set them out as exclusion criteria in your *customer acceptance policies* in order to mitigate your exposure to AML/CFT risk.

III.2 Ongoing due diligence measures

Exercise ongoing vigilance with regard to business relationships:

- carry out a periodic review and verification of individual assessments to ensure they are up to date and relevant (in particular to incorporate any emerging ML/TF risks) in accordance with individual risk categories.
  - ⇨ Pay attention to the new concept of ***'appropriate time',*** which is discussed in more detail in our 'Miscellaneous – Special attention' section below.
- For example, following elections in a country: check the PEP risk in your portfolio.
- You should also ensure the relevance and effectiveness of the organisational measures you have adopted in accordance with the ^{second}step and improve them where necessary.
- Be aware of *private equity* in life insurance contracts (Article 32 of the AML CAA Regulation 20/03).

III.3 Processing and retention of data

- Obligation to have KYC/AML documents, transaction records and due diligence measures for all files available at all times.
- Data must be archived throughout the life of the file and for a minimum of 5 years after the file is closed.
- On any medium whatsoever, provided that the documents, as retained, meet the evidential requirements for a criminal investigation or proceedings.

IV. Obligation to have an adequate internal organisation

Any adequate internal organisation requires the brokerage firm to be registered with the online platform of the Luxembourg ***Financial Intelligence Unit***. In Luxembourg, this is the ***Financial Intelligence Unit*** (CRF for short), which is a judicial body under the administrative supervision of the Attorney General. The platform used is **goAML**. Ref. Art. 45(2) of Regulation CAA 20/03.

Link: https://faq.goaml.lu/manuels-dutilisation/acces-a-goaml/inscrire-un-nouveau-declarant/

This unit serves, on the one hand, as an important source of information for brokers and, on the other, as a tool *through which* they can fulfil their obligations.

It is indeed through this platform that the CRF communicates with operators, either generally or specifically.

Brokers can register *online* via the CRF's website:

https://justice.public.lu/fr/organisation-justice/crf.html

IV.1 Establishing appropriate governance

You must appoint an ***AML/CFT Compliance Officer*** and provide their contact details to the CAA using form FP_3. Please note that this role must be held by a full member of the management team, i.e. ***a member of the Board of Directors*** or ***a Managing Director/Co-Managing Director*** of the brokerage firm.

Similarly, you must appoint a ***Compliance Officer*** who will be responsible for monitoring compliance with AML/CFT standards. In this case, this role may be held by a person who is not a member of the Board of Directors or the Management Board of the brokerage firm.

- ⇨ Depending on the scale of the brokerage firm's operations, these two roles may be held by the same person (^{first}possible case of delegation).
- ⇨ We suggest that you document your decisions in a *resolution* passed by the brokerage firm's management body.

Document 1:

- which sets out the AML/CFT rules within the entity -> ***AML/CFT Compliance Officer,***
- who monitors compliance with the AML/CFT rules defined by the AML/CFT Officer within the entity -> ***Compliance Officer,*** whose duties are set out in Article 40 of Regulation CAA 20/03.

If these officers also perform other functions within your company, care must be taken to avoid any (potential) conflict of interest.

The role of *Compliance Officer* may be delegated (^{2nd}case of possible delegation).

IV.2 Defining the appropriate organisational framework

Your organisational framework consists of your policies, procedures and internal control measures that will enable you to mitigate and manage the identified risks and which are approved by senior management and/or the *Board of Directors*.

The comprehensive risk assessment is an essential starting point for justifying the organisational framework (see Step 2) that you will put in place to mitigate and manage the AML/CFT risks you have identified. It will enable you to group together, within a single risk category, those situations that require the same due diligence measures (standard, enhanced or simplified due diligence).

- AML/CFT acceptance and ongoing monitoring policy, including the roles of functions within the organisation;
- AML/CFT procedure for the recruitment of staff;
  Administrative procedure that appropriately describes the procedures for establishing business relationships, including the procedure to be followed in the event of a suspicion or indication of money laundering or terrorist financing where contact with a potential customer is not successfully established;
- Administrative procedure that appropriately describes the procedures for preparing a subscription form
- An administrative procedure that adequately describes the procedures for preparing a request for an administrative amendment to the contract
- An administrative procedure that appropriately describes the procedures for processing a request for a partial or full surrender.

You must ensure that these written procedures describe in detail your practical working methods and incorporate measures for identifying, assessing, monitoring, managing and mitigating AML/CFT risks.

- A description of your internal control measures (second-level controls) that enable you to ensure the defined procedures are effectively followed. For example, for a 'small' firm, the application of the 'four-eyes' principle (maker/checker) is incorporated into the administrative procedure and/or the AML/CFT manager validates all files before they are submitted to the insurer. For a larger firm, add a *retrospective* control measure, carried out, for example, on a quarterly basis or at varying intervals depending on the risk categories assigned to the files (*Low AML Risk*, *Medium AML Risk* or *High AML Risk*).

- Procedure relating to the management of procedures:
  - Criteria set out in writing that indicate when a procedure needs to be updated or amended, or when a new procedure needs to be drawn up.
  - These must be set out in writing and kept up to date at all times.

- Accessibility of procedures for staff

IV.3 Induction training

- Internal communication and training.
- Ensure that **members of the executive management** (*Board of Directors*, *Management Board*, etc.) also undertake these AML/CTF training and awareness programmes, even if they are not directly involved in insurance distribution.
- Take care with training programmes abroad: ensure they are adapted to Luxembourg standards! Art. 44(4) of the AML CAA 20/03 Regulations.

V. Obligation to cooperate with the authorities

V.1. Information and cooperation with the CRF

Procedures must set out the conditions, deadlines and stages for the submission of reports by the account manager to ***the Compliance Officer***. The analysis and the resulting decision must be recorded in writing and made available to the competent authorities.

It is essential to comply with the procedure set out by the CRF: since[1]January 2017, the CRF has been using the 'goAML' programme to receive all reports of suspicious transactions or activities pursuant to the Act of 12 November 2004 on combating money laundering and terrorist financing.

The submission of reports, as well as communication with the CRF, is now carried out entirely electronically:

- Practical information: www.faq.goaml.lu
- Access to the training environment: https://justice.public.lu/fr/organisation-justice/crf/goaml/entrainement.html

With regard to the response deadlines to be observed, please refer to the CRF Guideline in force since 1 November 2018.

https://justice.public.lu/dam-assets/fr/legislation/circulaires/declarations/2018-10-31-declaration-d-operations-suspectes-version-2-0.pdf

Any *feedback or requests for information* will be sent to you via goAML's internal messaging system.

V.2. Failure to execute a transaction

- ⇨ Any operator who has doubts about a *suspicious activity* or *transaction* must refrain from participating in that activity or carrying out that transaction.
- ⇨ Furthermore, a business relationship that has been the subject of a suspicious activity report to the CRF must be monitored by the professional with *heightened vigilance* and, where appropriate, reviewed on the basis of your individual *risk-based approach*. For the sake of consistency, the APCAL nevertheless suggests that all cases reported to the CRF be classified as *'High AML Risk',* at the very least. It is up to the broker to document any contrary opinion.
- ⇨ Should new evidence emerge, professionals must supplement the information in the initial report by *providing further details*.
- ⇨ Once (and if) the case has been closed by the CRF, you must submit a new report of *suspicious transactions* or *activities* should new evidence emerge.

V.3. Prohibition on disclosure to clients and third parties

VI. Miscellaneous – Particular attention

The broker must pay particular attention to certain new provisions of the CAA AML Regulation No. 20/03, as well as to a note concerning outsourcing. Therefore:

A. ***Appropriate time*** **(Art. 33 CAA Regulation 20/03)**

For the first time, a provision uses the term 'appropriate time' to define a point in time triggering further scrutiny by the broker.

Such moments include, for example, (partial or total) surrenders not envisaged at the time the insurance contract was taken out, a portfolio transfer, a substantial change to KYC standards, etc.

- ⇨ At such times, the broker must, **without delay**, **verify and update** their client's **risk profile** (KYC and AML documents and information).
- ⇨ You must set out in advance, in an internal document, any cases in which you are unable *to fulfil your obligations* to update this information (Art. 33(6) of the AML Regulation CAA 20/03). The APCAL strongly recommends that such exceptions be duly justified and, above all, kept to a minimum.

B. **Purchase/Sale of a portfolio (Art. 12 of Regulation CAA 20/03)**

When purchasing a portfolio, the purchaser must document their due diligence on the transferor's AML/CFT policies and procedures, including the audit reports for the last three years.

C. Outsourcing (Art. 35 CAA Regulation 20/03)

Commenté [LS3]: I am including here the APCAL's opinion on the subject.

In order to determine the scope of outsourcing, the APCAL considers that this is directly linked to the scope of your clients' personal data held by the third-party service provider.

Thus, if you provide your customers' personal data to your supplier so that they can carry out identity checks and verify against economic sanctions lists, you may well find yourself in an outsourcing arrangement.

The situation would be different if, in return for a fee, you were to use a third-party system made available to you, but where you alone hold the customers' personal data. This would constitute a form of 'provision' of a tool to be used by the broker, at the broker's premises. In this case, you would therefore not fall within the scope of Article 35 of Regulation CAA 20/03.

On this subject, please also bear in mind the aspects relating to your professional secrecy under Article 300 of the Insurance Sector Act of 7 December 2015, as amended, and your personal data processing policy (GDPR).

D. Remote relationship (Art. 27 CAA Regulation 20/03)

Please note that it is now possible to carry out customer identification remotely without this constituting a negative factor in your customer risk assessment (see *Risk-Based Approach*).

To do so, you must comply with the conditions set out in Regulation (EU) No 910/2014.

VII. Toolbox

- AML Policy including "Overall Risk Assessment"
- Risk assessment grid by client/file
    - Identification checklist & verification: supporting documents required for the files of natural persons, legal entities and beneficial owners
    - List of sensitive professions
    - List of cases requiring enhanced vigilance

- A World Check-type subscription or a list of links to carry out the necessary checks (blacklists, PEPs, FATF country lists, etc.).
- AML administrative procedures compliant with GDL legislation
- Customer acceptance policy
- Appendix to the staff employment contract
- Procedures for cooperation with authorities: www.faq.goaml.lu
- Training register, AML directory accessible to staff