Guide to Financial Sanctions

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Revised: 21 January 2021.
Applicable to: All life and non-life insurance brokers.

DISCLAIMER

The following text has been translated by APCAL 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 are not kept up to date, unlike the AML procedures developed by external consultants, which are subject to a fee.

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

Introduction

This guide is a summary of the Code of Conduct drawn up by the Ministry of Finance concerning:

- the implementation of financial restrictive measures against third countries, entities or individuals; and
- the implementation of financial sanctions against certain persons, entities, organisations and groups as part of the fight against the financing of terrorism.

It is not a substitute for the legislation in force and is intended to outline certain practical aspects of the implementation of international financial sanctions.

Financial sanctions are restrictive financial measures imposed on certain States, natural or legal persons, entities or groups with the aim of bringing about a change in policy (domestic or foreign) or activity on the part of the designated States or persons.

Legal and regulatory framework and competent authorities

As part of the fight against the financing of terrorism, Luxembourg distinguishes between three sources of restrictive measures regimes:

(i) At UN level: United Nations Security Council (UNSC) resolutions

APCA LUXEMBOURG ASBL
("APCAL asbl")
Non-profit association
3, rue des Foyers
L-1537 Luxembourg
Luxembourg Trade and Companies Register F9338
Email: info@apcal.lu
Website: www.apcal.lu

(ii) At European level: Common Foreign and Security Policy (CFSP) decisions
(iii) The Act of 19 December 2020 on the implementation of restrictive financial measures[1]
(iv) Information note from the CAA dated 5 January 2021, No. 21/1, concerning the Act of 19 December 2020 on the implementation of restrictive measures in the financial sector.

The ***Ministry of Finance*** is the competent authority for dealing with the matters concerned.

Ministry of Finance – Directorate for Multilateral Affairs, Development and Compliance

3, rue de la Congrégation - L-2931 Luxembourg

+352 24782656 – sanctions@fi.etat.lu

The Act expressly confers on ***the Insurance Commission***, in a complementary capacity to *the Ministry of Finance*, supervisory and sanctioning powers in the context of the implementation of the Act of 19 December 2020. These powers are similar to those provided for in the amended Act of 12 November 2004 on combating money laundering and the financing of terrorism. For the purposes of enforcing economic measures, the CAA will therefore ensure effective monitoring of the implementation of financial restrictive measures and will take the necessary steps to this end, in particular under Article 31 of CAA Regulation 20/03: sanctions@caa.lu

The Insurance Commission emphasises in its Information Note 21/1 relating to the Act of 19 December 2020 that the measures laid down in Circular Letters 20/12 and 11/9 remain in force for the purposes of applying the Act.

The text of the Act is available on the *Insurance Commission's* website.

Our obligations as insurance brokers

Although there are many similarities between AML/CFT legislation and financial sanctions (FS) legislation, it is important to bear in mind that these pieces of legislation are not identical.

[1] The Act of 19 December 2020 on the implementation of restrictive financial measures (the 'Act') in the A Series of the Mémorial, No. 1072 of 23 December 20201, replaces and repeals the Act of 27 October 2010 on the implementation of United Nations Security Council resolutions and acts adopted by the European Union containing financial prohibitions and restrictive measures against certain persons, entities and groups in the context of combating the financing of terrorism.

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Financial sanctions legislation imposes specific obligations and applies to any natural or legal person residing in Luxembourg or operating from Luxembourg[2] :

1. Understanding the various restrictive measures to be applied:
    - the prohibition or restriction of financial activities of any kind;
    - the seizure of movable and immovable property, and **the freezing** of **funds**, assets or other economic resources held or controlled, directly, indirectly or jointly, by a person, entity or group covered by the law, or by a person acting on their behalf or on their instructions; or
    - the prohibition or restriction on providing **financial services**, technical assistance, training or advice in relation to a person, entity or group subject to economic sanctions.

2. Establish procedures for implementing the restrictive measures imposed by law:
    - Subscribe to the *Ministry of Finance*'s newsletter,
    - Select and use a *screening tool* (Article 31(2) of CAA Regulation No. 20/03) with up-to-date financial sanctions lists.

    On this matter, the APCAL advises its members to contact their screening tool provider and to obtain confirmation that the tool does indeed include automatically updated lists -> document their due diligence (Article 31(2) of CAA Regulation No. 20/03)

    - Screening must cover all clients, including authorised representatives, beneficial owners and beneficiaries of life insurance or reinsurance policies.
    - Screening must also cover all its suppliers (insurers, reinsurers, business introducers or any other partner or service provider, etc.)
    - Document the searches carried out, including in cases where they do not yield any positive results
    - Please note that if the broker does not use a screening tool, they must carry out a manual check of their contacts against these lists (Article 31(2) of CAA Regulation No. 20/03) and document their searches.

The lists of designated entities and individuals are made available by

- the European Union: https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/search/site/consolidated%20list_en
- United Nations: https://www.un.org/securitycouncil/fr/content/un-sc-consolidated-list

[2] This includes any professional operating from Luxembourg (including, but not limited to), see Article 3 of the Act of 19 December 2020.

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- The Ministry's Financial Sanctions newsletter: https://mfin.gouvernement.lu/fr/dossiers/2018/sanctions-financiaires-internationales.html
- CAA *Information Notes* and *Circulars*

3. Cooperating with the Authorities

Notify the *Ministry of Finance* **without delay** of any transaction or contact with persons or entities subject to economic sanctions, in order to implement the sanctions required by the regulations, with a copy to the CAA:

- sanctions@fi.etat.lu
- sanctions@caa.lu (Article 31(3) of CAA Regulation No. 20/03).

4. Education

Raise staff awareness of financial sanctions in an appropriate manner, taking into account the type of product being brokered and the geographical origin of clients.

In accordance with Article 42 of the *Insurance Commission* Regulations No. 19/01, it is the responsibility of the Training Manager to decide whether or not to validate the training undertaken on these topics as part of our *continuing professional development* obligation[3] or *refresher training*[4] .

Miscellaneous

- If you come into contact with a person featured on the sanctions lists relating to the financing of terrorism[5] , you are required to report this to the CRF via the GoAML platform.
    - In accordance with the Anti-Money Laundering and Counter-Terrorist Financing Act of 12 November 2004, the CRF has the power to freeze assets held by financial institutions without the exercise of this power requiring a prior report of a suspicious transaction.

[3] Article 39 of CAA Regulation No. 19/01.
[4] Article 48 of CAA Regulation No. 19/01.
[5] This is a matter that is certainly very closely related to economic sanctions but remains distinct from them.

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- If a European Regulation allows for an exemption from financial sanctions, you must first inform and obtain authorisation from *the Ministry of Finance* before applying the exemption.

When implementing anti-money laundering measures, operators are required to prevent the circumvention of financial sanctions which would result in funds or economic resources being made available to a designated person, entity or body. The funds in question may therefore originate from an entirely legitimate activity.

It is sufficient for at least one of the parties involved in the transaction (beneficiary, payer, agent, intermediary, bank used in the transaction, etc.) to have a link with a country subject to sanctions or to be listed for the transaction to become problematic

> **=> In this case, check whether the restrictive regime in place requires an application for authorisation to be submitted to *the Ministry of Finance* prior to the transaction being carried out.**
>
> **=> If the outcome is positive: follow the Ministry of Finance's instructions,** freeze the assets or funds, and provide the authorities with all relevant information on, amongst other things, the frozen accounts, the identity of the designated persons, any credits on these accounts, attempts to circumvent the financial sanctions regime, cases of homonymy, etc.

It is essential to consult the applicable legislation regularly (as this is a constantly evolving area) and to comply with legal and regulatory provisions.

> (Attempting to) circumvent or facilitate the circumvention of financial restrictive measures in any way exposes you to very severe criminal penalties. Please note that failure to comply with the obligations under the Act of 19 December 2020 may expose the broker to the risk of criminal sanctions (imprisonment for a term of between eight days and five years and a fine of between 12,500 euros and 5,000,000 euros, or one of these penalties alone) and/or administrative sanctions (The powers of the CAA are the same as those granted to it by the Anti-Money Laundering and Counter-Terrorist Financing Act of 12 November 2004).

The APCAL recommends that its members subscribe to the *Ministry of Finance*'s newsletter.
https://mfin.gouvernement.lu/fr/support/newsletter.html

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