To: Financial Action Task Force (FATF)
Date: 17 August 2018
Subject: Comments of GFIA on the draft RBA Guidance for the Life Insurance Sector

To whom it may concern,

GFIA appreciates the opportunity to comment on the FSB's Draft Risk-Based Approach Guidance for the Life Insurance Sector. Insurers are pleased that the FATF has taken the time to update the risk-based guidance for our sector following similar exercises for the banking and money or value transfer services (MVTS) sectors. GFIA would also like to commend the FATF for including private sector representatives in developing the guidance. Ultimately, individual insurers provide input to national regulators in operationalising the FATF Guidance, and including industry at this earlier stage will result in a more pragmatic document for individual jurisdictions to apply.

Application of the Guidance to the Non-Life and Reinsurance Sectors

I. General Insurance

GFIA is of the view that the application of the guidance to the non-life sector is an aspect that should not be pursued. There is a recognition that the FATF Recommendations exclude non-life insurance and a statement that the annexes dealing with general (non-life) insurance and reinsurance are for information purposes only and are not intended to expand the scope of the Recommendations. Nevertheless, the FATF Guidance is authoritative and countries which do not currently include these categories of insurance within their AML/CTF regimes may take this as a signal of what is expected internationally.

There is, appropriately, a focus in the FATF Recommendations and Guidance on the risk-based approach. The Guidance recognises that there is very little risk that general insurance will be used for nefarious purposes. Supervisory and corporate resources should not be directed towards a sector where the risk of money laundering is, at best, peripheral. Accordingly, GFIA recommends removing Annex A, and ensuring that references to "insurance" in the document are clarified to indicate that they apply to the life sector only.

GFIA also submits that the examples in Annex A are flawed, which further illustrates that the level of ML/TF risk associated with general insurance is close to non-existent:

- Paragraph 148 cites the risk of overpayment of premiums followed by a refund request, but as recognised in paragraph 147, this typology can be used widely in virtually any sector of the economy.

- With respect to fraudulent claims (paragraph 148), insurers will have appropriate claims investigation procedures in place to prevent payment of losses which ultimately redound to the insurer. The fraudster risks losing both the insured property and the insurance premium.

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- Finally, paragraph 153 describes the situation where cargo insurance can include coverage for weapons of mass destruction, and the ability in this case for the insurer to detect “suspicious underlying insured activity”. While there may be very rare instances where a general insurer could become aware of suspicious activity, in most cases that will not be the case. It is unreasonable to place this burden on insurers, who are only indirectly involved in the transaction. Transporters and customs brokers are closer to the transaction and are much better placed to know if they are handling suspicious shipments. Primary responsibility should lie with exporters/importers and then, as a second line, with the shipper of the goods. Insurance companies are typically too far removed from the transaction to add value here.

GFIA is also concerned that group supervision could require the home jurisdiction to extend its AML/CTF rules in the life sector (which is relatively low risk) to apply in other jurisdictions. This is even more true in countries where general insurance is within scope for AML/CTF, since group supervision means foreign affiliates of locally-domiciled companies would be required to adhere to an AML/CTF framework (e.g. identification, source of funds, and reporting of suspicious activities) while their competitors in the host country would be exempt. Most of these requirements will be impossible to implement in the host country because of a lack of a legal framework and/or availability of basic infrastructure (e.g., a reporting process for suspicious activities). This will make it very difficult to interact with local customers and authorities, placing the company at a competitive disadvantage. If a global insurer implements group minimum standards based on the requirements in the 'strictest' jurisdiction, it faces alienating clients in jurisdictions where there are no legal/regulatory requirements for non-life business.

The FATF should consider that the insurance sector is extremely regulated in aspects such as the deadlines to respond to customers and mandatory/ compulsory insurance. Therefore, in a country with a different AML/CTF framework, for instance one which does not allow insurers to refrain from dealing with certain customers, the obligation to adopt AML/CTF requirements will only expose the company to fines by local authorities for non-compliance with local laws.

II. Reinsurance

As is the case with non-life insurance, GFIA is of the view that the Annex on reinsurance should also be excluded from the Guidance document. As noted in the draft Guidance, neither sector is covered by the FATF Recommendations.

Reinsurers are one step removed from the original insurance transaction. While it might seem innocuous to include them as “belts and suspenders”, many countries already have several layers of AML oversight, including licensed advisors and ceding companies, both of which are squarely within the ambit of AML regulation. The further an entity is from the original transaction, the more difficult it becomes to conduct due diligence (which, for example, makes it even more impractical for reinsurers to monitor marine shipments for weapons of mass destruction, as is suggested on page 47). Additionally, the fact that a financial entity chooses to diversify its risk portfolio should not trigger additional oversight obligations. The reinsurance transaction is not being initiated by the original customer, but rather by a regulated financial institution.

A home regulator which requires its reinsurers to have an AML program could put those companies at a competitive disadvantage to reinsurers in other countries.

III. Specific Items

In addition to the two issues noted above, GFIA would also like to comment on particular sections of the draft Guidance:

- While paragraph 5 makes it clear that FATF Recommendations do not cover non-life insurance, Footnote 8 notes that the IAIS Core Principles cover both life and non-life insurance activities. GFIA suggests removing references to the IAIS Core Principles, as they are currently undergoing review.

- In paragraph 5, GFIA recommends deleting the statement "with the exception of R. 6 and R.7 on targeted financial sanctions" as it is too generic and highly misleading. Very few financial sanctions target directly the non-life insurance sector and the applicability of assets freezes for designated persons is highly controversial for non-life insurance products such as health insurance and any other products which cover basic human needs and rights. In rare instances, courts in some countries have required insurers to pay medical and other claims to listed individuals. The general insurance sector is too complex to be considered in an FATF paper without a due and deep analysis performed jointly by the public and private sectors.

- In paragraph 10, GFIA agrees with the statement that, "Generally, the ML/TF risks associated to the life insurance sector is lower than that associated with other financial products." Some regulators mistakenly rank life insurance on par with those other financial products, which causes level playing field issues for companies operating in those countries. Where a country is an outlier in its ranking of risk associated with a particular sector, GFIA submits that it should engage in dialogue with authorities internationally to see why it is an outlier. It should also publish the local factors that cause its assessment to diverge from other international regulators.

- In paragraph 15, dealing with identification and verification work completed by international authorities, the reference to ensuring that an intermediary is a financial institution may be appropriate in some jurisdictions. In others, however, the intermediary may be a licensed insurance advisor (who themselves are caught by the AML framework) which is not a licensed financial institution.

- GFIA supports the notion in paragraph 27 that countries should consider mitigating measures already in place in determining how risky a product is and what further mitigating measures should be taken.

- GFIA supports the recommendation in paragraph 32 that countries should have mechanisms to provide appropriate information on the results of their risk assessments. GFIA would take this a step further and suggest that the methodology and inputs into those risk assessments also be shared (where such inputs are not classified or cannot be shared for law enforcement or national security reasons). Such disclosure would promote consultation between government and industry and would ensure that all factors are considered as part of the National Risk Assessment.

- In paragraph 44, supervisors are urged to work in conjunction with the industry in developing guidance. GFIA agrees that this would ensure that guidance remains workable and pragmatic.

- Paragraph 48 is unclear. Often the favourable tax treatment of insurance policies makes these investments more attractive generally even if there are some limitations that make the products less attractive for ML/TF purposes. Therefore, this feature should not be considered as a high-risk ML factor. If the concern is that the product should not be used to hide income and evade taxes, GFIA is supportive of the recommendation.

- Paragraph 59 suggests identifying the beneficiary before time of pay out, and using information on beneficiaries as part of the risk assessment. GFIA agrees that beneficiaries should be screened against sanctions lists before they receive payment, but do not think any due diligence should be conducted before that time. The compliance burden would be immense, particularly where a beneficiary designation can be changed over the life of the policy. Moreover, there is no relationship between the insurer and the beneficiary (the beneficiary does not control the policy and typically can't fund the policy), making CDD practically difficult. One compromise could be to require a less intrusive form of diligence where the policy owner is high risk. This would be more consistent with a risk-based approach.

- Paragraph 62 suggests termination of a business relationship where insurers cannot apply the appropriate level of CDD. GFIA suggests that a qualifier be added, "where such termination is permitted under local law".

- GFIA agrees with the approach in paragraph 63 that de minimus amounts should be eligible for simplified due diligence, but would argue that $2500 is too low an amount. The amount should be raised in this guidance document and also in the main FATF Recommendations.

- Paragraph 66 suggests that insurers should collect tax residency information. Collection takes place under the Common Reporting Standard. GFIA takes the view that tax residency information should be "reviewed" by insurers subject to local CRS collection requirements.

- GFIA strongly support paragraphs 101 and 102 and urges governments to work with their private sector to develop their National Risk Assessment. GFIA also agrees with the final 3 bullets in paragraph 102, which support evidence-based regulation.

- Paragraph 111 provides support for the risk-based approach and paragraph 112 supports a continuous evaluation of the insurance sector by supervisory authorities. GFIA agrees, and also thinks, that there should be dialogue amongst regulators to promote international consistency.

- GFIA supports the recommendation in paragraph 128 that regulatory expectations be communicated to insurers, which enhances the industry's understanding and promotes compliance. GFIA also takes the view that compliance is promoted by limiting the frequency and intensity of changes to the regulatory regime (including changing expectations). Insurers struggle in keeping abreast of rapidly changing legislation, regulation and guidance.

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- GFIA endorses the position in paragraph 130 that authorities be equipped to do a comparative analysis across insurers and evaluate differences in their RBA. GFIA also takes the view that this analysis could be calibrated across jurisdictions with more dialogue between national regulators.

- In paragraph 137, GFIA is of the view that supervisors should (rather than "could") consider issuing guidance which is proportional to different types of insurers and intermediaries taking account of their underlying risk due to complexity, size, and nature of their business.

- GFIA strongly supports the notion in paragraph 140 that, where more than one supervisor is responsible for a sector, relevant authorities should consider preparing joint guidance. The paragraph could go further by recommending joint examinations as well.

- The difficulty with the notion in paragraph 143 that insurers pay particular attention to voluntary tax compliance programmes is that they may not know about the existence of an amnesty, particularly if it is limited in scope. Accordingly, GFIA takes the view that tax authorities should be encouraged to support companies' AML efforts by informing financial institutions of the existence and scope of any programs. This would facilitate authentication of funds and isolate potential money laundering risks.

In summary, life insurers are very supportive of the draft guidance, particularly the reaffirmation of the risk-based approach. Using that approach, GFIA feels that non-life insurance and reinsurance should be excluded from consideration.

Thank you again for providing the opportunity to comment on this paper.

Kind regards,
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About GFIA

Through its 42 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 61 countries. These companies account for around 87% of total insurance premiums worldwide. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.