

Response to IAIS consultation on draft revised Application Paper on Combatting Money Laundering and Terrorist Financing

Paragraph 1

The Global Federation of Insurance Associations (GFIA) welcomes the opportunity to express its views on the topic of anti-money laundering and combatting the financing of terrorism (AML/CFT).

GFIA strongly believes that international guidance is important to properly address AML/CFT issues, which are often international. GFIA notes that many sets of guidelines for life insurance already exist at international, regional or national level. Such a multiplicity of standards, which are at the same time very close and slightly different, may create a very complex international environment.

It is therefore crucial to carefully articulate the work of the different international bodies to avoid excessively complexifying the international regulatory environment and to avoid duplicative or even contradictory standards.

In addition, with regard to the scope of the application paper, GFIA would stress that ICP 22 has been designed for the life insurance sector — only taking into account AML/CFT risk for the life insurance sector — so the paper sets out recommendations that are not suitable for non-life products.

Paragraph 3

As stated in its recently released position paper on the application of AML to general insurance, GFIA wishes to highlight the need for the strict application of a risk-based approach. It is essential to focus on tackling possible risk areas and to avoid placing a significant compliance burden on insurers at low or no risk. AML/CFT requirements should thus remain focused on life insurance.

As stated in paragraph 13 of the Application Paper, generally, money-laundering/terrorism-financing (ML/TF) risks associated with the life insurance sector are lower than risks associated with other financial products (eg, loans and payment services) or other sectors (eg, banking, gambling, precious stone and metal dealers). Indeed, many life insurance products are not sufficiently flexible to be the first vehicle of choice for money launderers.

The Financial Action Task Force (FATF) did not include non-life insurers in the definition of “financial institution” in its recommendations and most countries have also not included them in their local AML/CFT regime apart from the suspicious activity reporting requirements. Non-life insurance is generally considered a very low risk for ML/TF. In view of this, GFIA thinks that this sentence should be removed. At the very least, GFIA suggests amending the last sentence as follows to reflect the fact that in reality this is unlikely to happen: “*Where, following a national risk assessment, a jurisdiction has determined that the ML/TF risks in its non-life sector are sufficiently*

high to be included within the local AML/CFT legislation then the jurisdiction may consider and apply any relevant parts of ICP 22.”

Paragraph 4

As mentioned above, GFIA strongly believes that international guidance is important to properly address ML/TF issues, which are often international. GFIA believes it is crucial to carefully articulate the work of the different international bodies to avoid an excessively complex international regulatory environment and avoid duplicative or even contradictory standards. It is of primary importance to clearly specify that insurers are first bound by national regulators and FATF guidelines.

Paragraph 6

GFIA notes that the examples included in annex 1 and 2 are about both life insurance and non-life insurance.

The Application Paper and ICP 22 are based on the FATF Recommendations, which have only life insurance in their scope, not non-life insurance. The paper does not identify any vulnerabilities in the non-life sector (paragraph 14). Therefore, GFIA questions the importance of non-life case studies.

In paragraph 3, there is no explicit content linking the guidance in the application paper to the non-life sector. For this reason, GFIA takes the view that non-life case studies could be confusing for insurers and intermediaries and suggests removing those case studies to be consistent with paragraphs 6 and 14. Inclusion of non-life case studies may encourage some supervisors and legislators to extend the scope of AML regulation or expectations to non-life businesses, which is not in the spirit of the FATF Recommendations.

Given the complementary nature of the IAIS guidance, which was reiterated during the public session of 2 June 2021, and considering the extensive guidance in place in many jurisdictions such as those in the EU, GFIA would suggest adding at the end of the paragraph: “... *where the available jurisdictional guidance is insufficient to adequately support life insurers and intermediaries.*”

Paragraph 12

While compliance with sanctions is indeed absolute and not risk-based, how it is achieved can be risk-based. This includes the nature, frequency and method of name screening, for which there is no defined legal/regulatory standard.

It should also be noted that ICP 22 itself does not elaborate on targeted financial sanctions (TFS) related to proliferation financing (PF), so it is surprising to find this topic covered in the paper.

GFIA suggests adding beneficial owners to the sentence “*Where particular individuals or organisations are the subject of sanctions on TF or PF, the obligation on companies to comply with such targeted financial sanctions*



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(TFS), including screening of customers, beneficiaries and beneficial owners on an ongoing basis, is not subject to a RBA.”

Section 2.1

GFIA notes there are no ML/TF vulnerabilities listed in this section, which is inconsistent with the inclusion of non-life case studies later in the paper.

Paragraph 13

GFIA welcomes this new draft of paragraph 13; adding the comparison of ML/TF risks in the insurance sector to those in other financial service sectors is a significant improvement.

GFIA believes that adding a statement at the end of paragraph 13 linking the development of an insurer’s risk-based approach to AML/CFT with the lower ML/TF risk associated with the life insurance sector would strengthen the focus of insurers on developing systems, controls and processes for the actual ML/TF risks to which they are exposed. GFIA suggests the following addition: *“When developing their risk-based approach to AML/CFT, insurers should design systems, controls and processes aligned to the lower ML/TF risks associated with the life insurance sector.”*

Paragraph 14

Many product features listed in this paragraph are very common in life insurance products (eg, single premium, policy loans, cash value accumulation/withdrawal, etc.). Instead of focusing on these product features and making virtually all products “high-risk”, GFIA suggests focusing on monitoring for unusual transaction patterns (repeated policy loan and repayment, withdrawal of large amounts of cash value, policy cancellation immediately after policy issuance). Similarly, “products with provisions that allow a policy to be cancelled within a stipulated timeframe and the premiums paid to be refunded” is a legal/regulatory requirement in many jurisdictions.

In addition, GFIA would appreciate further clarification on the definition of an insurance industry “customer”.

Example: FINRA Rule 3310 defines a customer account relationship as a *“formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities, securities loaned and borrowed activity, and the holding of securities or other assets for safekeeping or as collateral.”* It further clarifies that there are two exclusions from the definition of “account”, which are: (a) an account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; and (b) an account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974 (“ERISA”).

It is important for the insurance industry to clarify who to include in the identification measures, customer risk rating and due diligence, since the insured, the owner and the payer may not always be the same person.



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Example: A customer is defined when a policy has been issued and accepted by the policyholder. Identification measures should be performed on the insured, owner and payer. It excludes policyholders/contractholders through acquisitions, mergers, etc. In that case, the risk rating would be lower and insurance firms would not have to waste time, efforts and resources in conducting due diligence.

Paragraph 16

GFIA wishes to point out that insurers may not be aware of such use and it should thus be clarified that insurers should request explanations “as soon as they learn about this use”.

Paragraph 17

It is not the responsibility of reinsurers to assess the AML/CFT-compliance of the cedants with such obligations. GFIA is not aware of any legal or supervisory requirement under which this audit would be mandatory. The wording (“should”) rather suggests a recommendation. Such a recommendation would not be entirely unproblematic, especially for internationally active reinsurance companies, because not all countries in the world have the same requirements with regard to the prevention of ML/TF. But even the general recommendation to check the existing (or non-existing) AML/CFT measures of a cedant or to have them presented would be a considerable administrative effort. GFIA thus suggests replacing “should” with “could”.

Section 4

Section 4 is generally consistent with insurers’ approach and supports the need for periodic financial crime risk assessments.

However, if the proliferation topic is raised — though it is not mentioned in ICP 22 — this section could benefit from including more on assessing PF risk, especially how this is done in insurance to align with the latest FATF Recommendations.

Paragraph 35

“*Country of origin*” and “*nationality*” have been included as indicators of customer risk. While some jurisdictions require the nationality of customers to be collected, this can also be interpreted as inappropriate racial profiling and is not consistent with FATF, EBA or EU provisions that focus on customer location rather than origin or nationality.

GFIA suggests replacing the term “nationality” with “citizenship” and clarifying that ML/TF mitigation measures should not be based on racial or gender profiling.

Paragraph 36

GFIA would highlight that, in most jurisdictions, the result of the risk-based approach (RBA) would not in itself justify the termination of a life insurance product. Insurers are bound by the life insurance product and cannot decide whether or not to continue the business relationship. GFIA suggests removing “or continue”.

Paragraph 39

GFIA wishes to highlight that the beneficiary can change over the course of the relationship; national requirements may stipulate customer due diligence (CDD) at the time of payout. Consideration of the beneficiary of a life insurance policy as a risk factor is introduced, but there is no explanation of how that risk will manifest itself (eg, “the relationship between the beneficiary of a life insurance policy and the policyholder/life insured”). GFIA would like the IAIS to elaborate on why the beneficiary of a life insurance policy should be included as a relevant risk factor.

In addition, GFIA would stress that life insurance may involve infrequent transactions. For this reason, the scarcity of transactions/operations is not necessarily a relevant criterion by itself.

Paragraph 42

The revised text suggests that insurers operate “accounts” — generally this is not the case.

Paragraph 44

According to the RBA, verification measures have to be commensurate with the risk.

GFIA suggests adding that some jurisdictions consider that the entities with AML/CFT obligations can verify the beneficial owner’s identity by consulting their registers.

Paragraph 45

There may be situations in which the level of ML/TF risk means that verification could additionally occur when the beneficiary is identified.

Paragraph 46

The beneficiary may change several times, but the risk-checking associated with the beneficiary is mainly relevant at payout.

Paragraph 47

The revised text suggests that insurers operate “accounts” — generally that is not the case.

In addition, not completing transactions or terminating relationships are not always possible in the insurance context (eg, benefit payouts or payments to a beneficiary). GFIA suggests making the first and second bullets “and/or” instead of “and”.

Furthermore, CDD must always be performed and this should therefore not tip off a customer. On the other hand, enhanced CDD could indeed tip them off. Performing the transaction when it is not possible to refrain from it is crucial to allow the authorities to follow the money flow and seize it when appropriate (especially for incoming money flows).

Paragraph 48

Again, GFIA would highlight that this measure does not seem to be an RBA, as it requests systematic further due diligence. An RBA would be to apply additional due diligence only in situations where insurers or intermediaries have a doubt about a relationship (for example when a trigger event leads the insurer or intermediary to obtain further information).

Furthermore, this section is vague on the underlying justification for “*referencing generally available information*” and what the expectations are in practice in line with data protection restrictions and the principles of risk based due diligence. GFIA suggests replacing the word “generally” with “publicly”.

Paragraph 50

GFIA is not aware of any legal or supervisory requirement under which this audit would be mandatory. The wording (“should”) rather suggests a recommendation. Such a recommendation would not be entirely unproblematic, especially for internationally active reinsurance companies, because not all countries in the world have the same AML/CTF requirements. Even the general recommendation to check the existing (or non-existing) AML/CFT measures of a cedant or to have them presented would be a considerable administrative effort.

GFIA thus suggests replacing “should” with “could”.

Paragraph 55

GFIA would warn against detailing too much personal information in this list. Indeed, most of the entities with AML/CFT obligations do not have this information today, as they are not required by some local rules, some of which are not relevant. Furthermore, some information could raise issues with labour law or data protection law.

For example, information on nationality is illegal in some jurisdictions and can be considered discriminatory. In addition, information on occupation and name of an employer is not collected today. Occupation is not considered a feature of identity (it may be relevant for the source of wealth, but does not contribute to an individual's identity).

Relevant information would be the socio-professional category, which is most often collected by the entities with AML/CFT obligations. In addition, GFIA has some doubts about the “specimen signature of the individual” given that e-signatures are more and more widely used.

Therefore GFIA suggests:

- deleting “nationality” from the paragraph
- deleting the following bullet points: “occupation and name of employer (if self-employed, the nature of the self-employment)”; and “specimen signature of the individual”.
- Including a more up-to-date definition of identity, taking account of digital and biometric identifiers.

Country/ies of tax residence must be obtained as per CRS requirements and are very useful for AML/CFT purposes.

Paragraph 58

While digital penetration varies between markets and socio-economic groups, the suggested approach to document validation is outdated in a digital world. The certification of authenticity is neither required nor appropriate in many jurisdictions. GFIA suggests a more up-to-date definition of identity, taking account of digital and biometric identifiers.

Paragraph 61

With regards to other types of legal arrangement, the requirement mentioned is not practical for widely-held trusts.

Paragraph 70

Insurers have controls in place to address specific product, service, transaction or delivery channel risks.

GFIA believes that the example of non-face-to-face business relationships or transactions as situations of higher risk is not relevant if there are adequate safeguards to mitigate the risks of identity fraud. According to the FATF, non-face-to-face sales, such as online, postal or telephone sales, “*without adequate safeguards to mitigate the risks of identity fraud*”, contribute to a higher risk (FATF Guidance for a Risk-Based Approach in the Life Insurance Sector).

Depending on the jurisdiction, distance selling may no longer be considered as a higher risk, especially given the electronic means of identification allowed by some regulation. For instance in the eIDAS Regulation in the EU, an electronic means of identification with “substantial” certification is considered equivalent to a face-to-face identification.

In addition, GFIA notices that this paragraph is not consistent with paragraph 59, which recognised the significant recent advances in digital ID technology, architecture and processes, and the emergence of consensus-based

open-source digital ID technical standards. Insurers and intermediaries may consider the adoption of independent digital ID systems complemented by appropriate risk mitigation measures as part of their CDD processes and solutions.

Finally, GFIA would like to stress that the world is moving towards increased digitalisation. This trend has been accelerated by the pandemic. Non-face-to-face business relationships or transactions will increasingly become the norm that will need to be implemented to meet the needs of customers.

Paragraph 85

GFIA would highlight that insurers or intermediaries may not be allowed to “freeze” a contract when they cannot successfully conduct CDD measures because of the rules of the local jurisdiction. Therefore, and similar to the comment on paragraph 47, requiring the completion of CDD as a condition for benefit payouts is not always possible in life insurance. GFIA suggests rephrasing with the following sentence: “*Insurers or intermediaries should identify and verify identity before a benefit is paid and/or file a STR.*”

Paragraph 88

The designation of beneficiaries is sometimes indicated in a document held by a lawyer or a solicitor.

Furthermore, GFIA would highlight that insurers may not be notified of the use of a policy as collateral/security.

Paragraph 91

This could be a separate paragraph as it relates to transaction monitoring.

Paragraph 94

This paragraph should better reflect the FATF recommendation on senior management approval of politically exposed person (PEP) relationships, not just being informed before the payout.

Paragraph 110

It is unlikely that an insurance intermediary will be able to allow an insurer to have access to their CDD database for IT and data protection reasons. Requiring the insurer to “*provide the relevant information in a timely manner*” would more accurately reflect the reliance on third-party obligations.

Paragraph 122

Considering the volume of information to be dealt with, GFIA believes it is important to specify in this paragraph that the compliance officer has the possibility to delegate this responsibility.

Paragraph 123

As mentioned above, the compliance officer should be able to delegate. GFIA suggests clarifying the paragraph and rephrasing the following sentence: *“there is a clear procedure for staff to report suspicions of ML/TF without delay to the compliance officer, or to the person specifically designated by him/her.”*

Paragraph 129

As this paragraph seems to be inconsistent with labour and data protection laws, GFIA suggests removing the end of this paragraph: *“In order to meet the FATF Recommendations staff should have the level of competence necessary for performing their duties. Insurers and intermediaries should ascertain whether they have the appropriate ability and integrity to conduct insurance activities.”*

Paragraph 134

GFIA suggests adding “relevant” before “staff of insurers”.

Annex 1

As stated in relation to Section 2.1, there should not be any non-life case studies, given that no vulnerabilities have been identified. In any event, most of these case studies appear to be fraud events and the suspicious elements are not linked to the insurance services provided.

Should these be maintained, each case study should identify a type of ML/TF involved (eg, “placement of criminal funds”) rather than the control impacted (eg, “CDD at onboarding”) and include more detail on the specific ML/TF vulnerabilities — as opposed to fraud vulnerabilities — that they are intended to illustrate.

Non-life – case study 20. Intermediary oversight

GFIA suggests deleting this case study.

Non-life – case study 21. Agent oversight, early cancellation

The wording *“to purchase insurance policies from his wife”* is not clear. There is no mention of early cancellation, but rather of (banking?) multiple withdrawals. GFIA suggests removing this case as it is not a relevant suspicious transaction example.

Non-life – case study 23. Suspicious transaction

GFIA suggests deleting this case study.

Non-life – case study 24. Suspicious transaction

This case would appear not to be based on real-life examples, as it is easy to verify the existence and ownership of an ocean-going vessel.

Non-life – case study 25. Suspicious transaction

This is not a clear suspicious transaction case but a related-party issue that is not linked to the insurance services or products. GFIA suggests removing this case as it is not a relevant suspicious transaction example.

Annex 2

Non-life – case study 4. Suspicious claim

This case appears to be fraud and the potential high-risk transaction is not linked to the insurance services provided. GFIA suggests removing this case as it is not a relevant suspicious transaction example.

Contacts

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About GFIA

The Global Federation of Insurance Associations (GFIA), established in October 2012, represents through its 41 member associations and 2 observer association the interests of insurers and reinsurers in 65 countries. These companies account for 89% of total insurance premiums worldwide, amounting to more than \$4 trillion. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.