



All you need to know about the recent evolutions to the AML/CTF framework in the insurance sector

Helena Finn

Senior Associate
Insurance and Reinsurance
Banking and Financial Services

Pierre-Michaël de Waersegger

Partner
Insurance and Rensurance
Banking and Financial Sevices

Speakers



Pierre-Michaël de Waersegger

Partner,
Arendt & Medernach

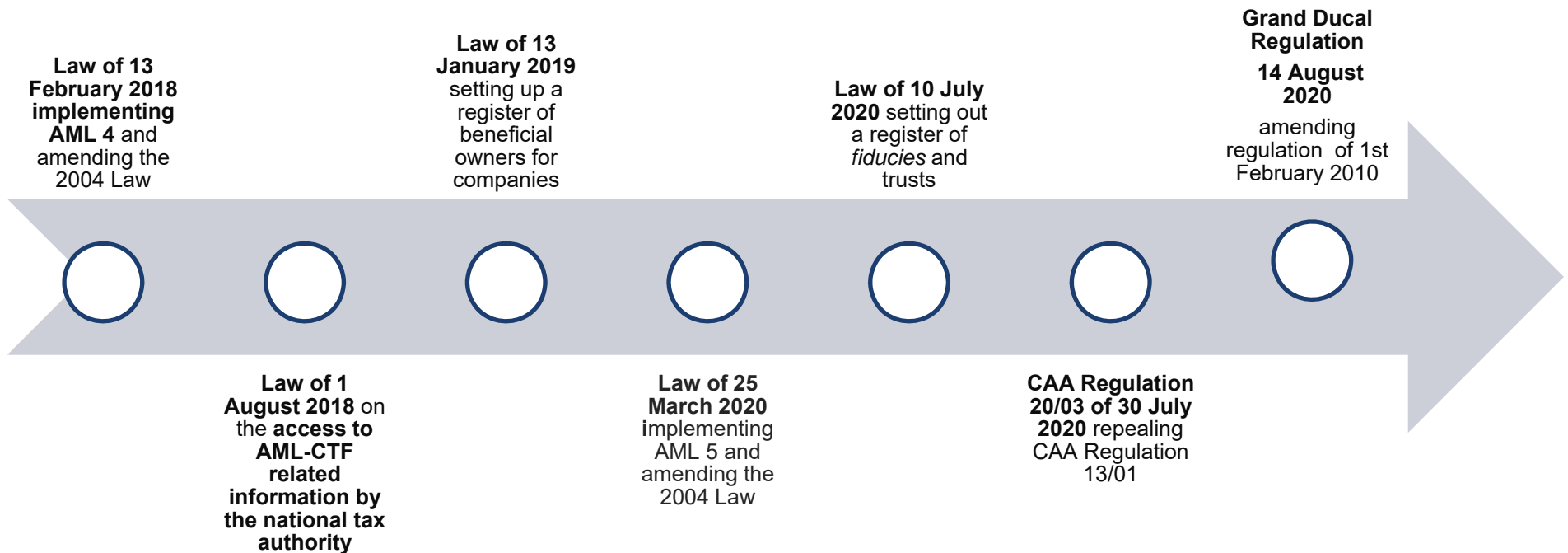


Helena Finn

Senior Associate,
Arendt & Medernach

Introduction

Context and recent evolutions



Introduction

- Objective of CAA Regulation No. 20/03 of 30th July 2020 (the **“Regulation”**)
- The Regulation has mainly impacted the following components of the AML/CTF obligations
 - The scope of application of the AML/CTF obligations
 - The risk-based approach
 - The customer due diligence measures
 - The group-wide policies
 - The compliance function

I. Scope of application of the AML/CTF obligations

■ Application to all professionals within the meaning of the 2004 Law

- Insurance undertakings, reinsurance undertakings and intermediaries authorised to conduct
 - Life insurance
 - Classes 14 (credit) and 15 (surety) of non-life insurance

→ In relation to co-insurance, the obligations fall on the leading insurance company

- Pension funds
- Professionals of the insurance sector for their activities falling under the supervision of the CAA

I. Scope of application of the AML/CTF obligations

- **In addition to the general scope of the Regulation, the latter also applies to**
 - Activities of Luxembourg entities whether carried out in Luxembourg or abroad
 - Luxembourg branches of foreign professionals, and professionals of foreign countries providing services into Luxembourg on a cross-border basis
 - Application also in the situation referred to in Article 4-1 of the 2004 Law
 - Obligation to apply at least equivalent measures to branches and majority-owned subsidiaries located abroad

I. Scope of application of the AML/CTF obligations

■ Important reminder regarding the sanction regime

- Additional obligations relating to States, natural and legal persons, entities and groups subject to restrictive measures in financial matters
 - Articles 31, 37 (2) and (3) of the Regulation
 - Law of 23rd December 2020
- Obligation incumbent on all natural and legal persons subject to the supervision of the CAA not only those subject to AML/CTF obligations

II. The risk-based approach

■ Risk assessment at the level of professionals

- Article 2-2 of the 2004 Law
- The assessment must be based on ML/TF risk appetite
 - To be put into place and approved by the management and communicated to staff members by the Compliance Officer in accordance with their level of involvement in AML/CTF
- All sources to be taken into account
 - E.g. supranational risk assessment, national risk assessment, European guidance, subsector risk assessment
- The professional's organisation must enable to respond to a questionnaire from the CAA in due time

II. The risk-based approach

■ Risk assessment in relation to customers

- Article 3(2bis) of the 2004 Law
- Professionals shall take into account the beneficiary of a life insurance contract as a relevant risk factor
- Reference to Annexes III and IV, and all other risk factors that professionals deem relevant
- Where professionals deem a business relationship to present a low risk of ML-TF and apply SDD measures, they must be able to justify and demonstrate this to competent authorities
- Risk assessment does not enable professionals to waive the EDD measures prescribed by law (PEP, high risk countries, etc.)

III. Customer Due Diligence measures

- **New requirements and clarifications relating to the identification and verification of the customer's identity**
 - Definition of the term “customer” – distinction between insurers / reinsurers / intermediaries
 - Documents dated less than 3 months between the entry into business relationship and the conclusion of the insurance contract
 - New provision relating to portfolio transfers
 - Measures in relation to insured persons having active powers in group life insurance contracts

III. Customer Due Diligence measures

■ Customer acceptance procedure

- Clarification of the concept of entering into a relationship
- Acceptance of a new customer submitted for authorisation to a professional body specifically authorised for this purpose or the Compliance Officer
- Acceptance on the basis of an automated acceptance process which does not involve the intervention of a natural person at the level of the professional
 - Conditions
 - Process configured and tested
 - Reviewed on a regular basis
 - In line with the professional's AML/CTF policies and procedures
 - Process previously authorised by the CAA
- Additional measures for the acceptance of potentially high-risk customers

III. Customer Due Diligence measures

- **Identification and verification of identity in non-face to face relationships/electronic identification**
 - Non-face to face relationship to be considered as higher risk where adequate guarantees are not taken to mitigate the fact that the professional will not be meeting the customer in person
 - Article 3 (2)(a) of the 2004 Law
 - Type of electronic means authorised
 - Electronic identification means
 - Regulation (EU) 910/2014
 - Any other secure, remote or electronic identification process that is regulated, recognised, approved or accepted by the relevant national authorities

III. Customer Due Diligence measures

- **Identification and verification of the identity of the beneficial owners**
 - Article 3 (4) & Article 1(7) of the 2004 Law
 - Distinction between the beneficial owner and beneficiary of the insurance contract
 - Obligation to use the central registers within the meaning of Article 30(3) and Article 31(3a) of Directive (EU) 2015/849
 - The sole use of central registers does not constitute a sufficient means of complying with the due diligence requirements
 - Specifications regarding the identification of BOs
 - Beneficiaries identified by classes
 - Case of a total or partial transfer

III. Customer Due Diligence measures

- **Obtaining information and documentation on the nature and purpose of the envisaged relationship**
 - Article 3(2) of the 2004 Law
 - Includes information on the origin of the customer's funds
 - Geographical and economic origin of the premiums
 - In case a third party pays the insurance premiums, obligation to identify and verify such person's identity
 - Includes the obligation to obtain supporting documentation

III. Customer due diligence measures

■ Timeline for carrying out CDD measures

- Professionals must review and update the information on the customer at a frequency and to an extent consistent with the risk-assessment
- Annually for high risk relationships ? Parallel to be made with CSSF Regulation 12-02?
- Every 7 years at the least

III. Customer Due Diligence measures

■ Simplified customer due diligence measures

- List of concrete examples of measures which may be applied
- Reference to list in Annex III of the 2004 Law as *de minimis* list of potentially lower risk factors to which the professional may apply simplified due diligence measures
- Obligation to verify whether the conditions enabling to apply simplified customer due diligence measures are still applicable

III. Customer Due Diligence measures

■ Enhanced due diligence measures

- Politically exposed persons (PEP)
 - Article 3-2 (4) of the 2004 Law
 - Obligation to take reasonable measures to determine if the beneficiary(ies) or beneficial owner(s) of life or other investment-related insurance policies are PEP
 - List of concrete measures to be taken

- Business relationships and operations involving high-risk countries
 - Article 3-2 (2) of the 2004 Law
 - Definition of high risk countries in the 2004 Law
 - List of concrete measures to be taken

III. Customer Due Diligence measures

- **Requirements relating to the conduct of ongoing due diligence of the business relationship**
 - Article 3(2) of the 2004 Law
 - Detection of complex and unusual operations and transactions
 - Use of filtering tools
 - Focus on insurance contracts having securities or instruments not listed on a regulated market as underlying assets

IV. AML/CTF requirements at group level

■ Obligation to set-up policies and procedures at group level

- Article 4-1 of the 2004 Law
 - Professionals shall implement a group-wide AML/CTF policy and procedures relating to the fight against money laundering and terrorist financing
- Coordination of the policies with branches and subsidiaries in Luxembourg and abroad
 - Additional measures required where the law of a country does not enable the implementation of such policies
- Monitoring and review by the Compliance Officer

V. Internal organisation: the compliance function

- **Split of competence between the person Responsible for Compliance and the Compliance Officer**
 - Article 4 (1) of the 2004 Law
 - Appointment of a person responsible for compliance with AML/CTF professional obligations at the level of the management
 - Appointment of a compliance officer in charge of the control of compliance with AML/CTF professional obligations
 - Delegation of the functions is possible

Contact us:



Pierre-Michaël de Waersegger

Partner,
Arendt & Medernach

Pierre-michael.deWaersegger@arendt.com

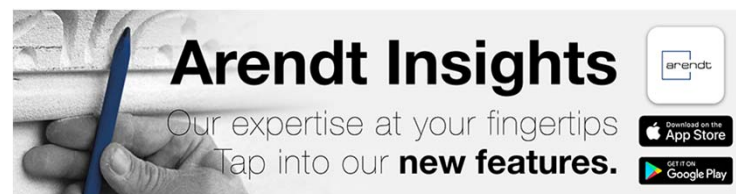


Helena Finn

Senior Associate,
Arendt & Medernach

Helena.finn@arendt.com

Listen to **Arendt Podcasts** and install the **Arendt Insights App** to never miss a beat with the latest legal, tax and business developments in Luxembourg.



Important Notice and Disclaimer: Whilst a best efforts approach has been taken to ensure the accuracy of the information provided in this presentation, as at the date thereof, this information is only designed to provide with summarised, and therefore non complete, information regarding the topics covered. As such, this presentation does not constitute legal advice, it does not substitute for the consultation with legal counsel required prior to any undertakings and it should not be understood as investment guidelines. If you would like to receive a legal advice on any of the issues raised in this presentation, please contact us.