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IVASS on AML again

DLA Piper

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Last 11 December, IVASS released a consultation document in matter of mitigation of AML risk, containing, among others, the dimensional or organizational requirements for insurance companies operating in Italy on a FOS service basis, being “established without a branch”.

The document, which will remain in consultation until 25 January 2020, is addressed to:

1. Branches of insurance companies with legal seat in another EU member state, or in a state part of the EEA or in a third country;
2. Insurance companies established without a branch on the Italian territory;
3. Insurance intermediaries; and
4. Insurance intermediaries established without a branch on the Italian territory,

and it is divided into 13 articles, which introduce the following:

Articles 1 and 2 contains, respectively, the reference to the normative sources and to the definitions; article 3 concerns the scope of the document, which includes branches of insurance companies established in another member state or in an EEA country or in a third country; insurance intermediaries; insurance companies and intermediaries established without a branch.

Article 4 provides the criteria in order to identify an insurance company established without a branch. Such criteria are:

- a) doing business in Italy in FOS in life insurance business, pursuant to article 2, para. 1, of the Private Insurances Code;
- b) distributing insurance products through insurance intermediaries registered in sections A, B, C or D of the RUI;
- c) collecting gross premiums over than 5,000,000.00 Euro.

The same article further clarifies that the document applies to intermediaries with legal seat or residence in another EU member State or in a EEA state, when they distribute life insurance policies in Italy under the freedom of services basis regime through intermediaries registered under section E of the RUI (the electronic register of intermediaries held by IVASS).

Pursuant to article 5, branches of insurance companies with registered office in another Member State or in a EEA Country, which distribute exclusively standardized products with low risk, could assign the tasks of the anti-money laundering function to:

a) the compliance function established at the company's headquarters, provided that at least one of the employees in this function (i) is seconded part-time to Italy; (ii) he/she is in any case domiciled for the office in Italy;

b) to one of the General Representatives, provided that the General Representative is not assigned powers that affect his autonomy.

Agents and brokers have to set an AML function when the following requirements occur jointly:

1. the number of employees or collaborators registered in section E of the RUI is equal or higher than 30; and
2. the total gross premiums intermediated (as resulting from the communication to IVASS by the insurance companies for which they operate) is higher than Euro 15 million.

In the above case, branches of insurance companies can appoint as responsible of the anti-money laundering function for the activity carried out in Italy the same individual appointed for the anti-money laundering function established in the headquarters, on condition that the appointed person:

a) if an employee of the head office, he/she is seconded part-time in Italy or,

b) in the other cases, he/she is domiciled for the office in Italy.

Agents and brokers who carry out distribution activities as sole entrepreneurs are not due to appoint a person in charge of the AML function. In this latter case, in fact, it is directly the agent or the broker to be responsible of the AML activities.

Under art. 7, insurance companies established without a branch must appoint a person responsible for reporting suspicious transactions relating to the activity carried out in Italy.

The appointed individual may be the same person appointed for reporting suspicious transactions of (i) the Italian branch; (ii) of the headquarters; (iii) of an insurance intermediary registered in section D of the RUI; (iv) of another insurance intermediary due to appoint an individual responsible for the AML function.

The audit function is governed by art. 8, which sets forth that branches of insurance companies with registered offices in another Member State of the European Union or in an EEA country must guarantee the compliance with anti-money laundering legislation by an independent audit function. For this purpose, it is allowed to assign the tasks to the homologous function established at the registered office as an alternative to the establishment of an internal audit function at the branch.

Article. 9 indicates the minimum frequency of part-time work to be indicated in the decision of seconding the appointed individual should branches of insurance companies with registered offices in another EU Member State or in an EEA country make use of the faculty to assign the relevant tasks to employees who have the same role at the head office.

Pursuant to article 10, the above mentioned requirements which are necessary to appoint an individual for the AML function and for the audit one, must be granted at least for two years.

Moreover, insurance companies established without a branch must communicate to IVASS and to each intermediary authorized to doing business in Italy personal data and address of the appointed person.

Insurance companies established without a branch and intermediaries must comply with the above stating from 1st January of the year following the publication of the document in the form of regulation.

Certain amendments to IVASS Regulation no. 44/2019 are furthermore included in the document regarding criteria for risk evaluation, risks associated to clients and annual report transmission to IVASS.

An attachment containing the methods to calculate the risks associated to clients (low, medium low, medium high, high) is attached to the document.

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