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## **FOPI Ordinance on Combating Money Laundering (MLO FOPI)**

dated 24 October 2006

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*The Federal Office of Private Insurance hereby issues the following Ordinance based on Articles 16 (1) and 41 of the Swiss Money Laundering Act (MLA) of 10 October 1997<sup>1</sup>.*

### **Chapter 1: General provisions**

#### **Art. 1** Purpose

The purpose of this Ordinance is to:

- a. specify the obligations of insurance companies as per Chapter 2 of the MLA;
- b. define the legal framework for self-regulatory organisations of private insurance companies;
- c. substantiate the tasks and measures of the supervisory authority in combating money laundering.

#### **Art. 2** Scope of application

<sup>1</sup> This Ordinance applies to:

- a. insurance companies under the Insurance Supervision Act of 17 December 2004<sup>2</sup> that operate in direct life insurance or offer or distribute investment fund units;
- b. the self-regulatory organisations of private insurance companies.

<sup>2</sup> Swiss insurance companies shall ensure that their subsidiaries or group entities operating abroad in insurance adhere to the provisions of the MLA.

<sup>3</sup> They shall notify the supervisory authority if:

- a. adherence to the provisions conflicts with local regulations; or

<sup>1</sup> SR 955.0

<sup>2</sup> SR 961.01

b. such adherence places them at a serious competitive disadvantage.

<sup>4</sup> The above is subject to international agreements.

### **Art. 3** Definitions

<sup>1</sup> Politically exposed persons are defined as:

- a. persons holding prominent public positions aboard, specifically heads of state or of government, senior politicians at a national level, senior government, judicial, military or party officials at a national level, senior officers of state-owned enterprises of national importance;
- b. individuals or undertakings with close family ties or personal or business connections to the aforementioned persons.

<sup>2</sup> The beneficial owner is the person who actually pays the premium from an economic point of view (supplier of funds).

## **Chapter 2: Due diligence requirements of insurance companies**

### **Section 1: Identifying the contracting party**

#### **Art. 4** Determining amounts

<sup>1</sup> The insurance company must identify the contracting party in the following cases:

- a. when concluding a life insurance contract with a savings component, if the single premium or the regular premiums exceed the sum of 25 000 Swiss francs per policy within a period of five years;
- b. when depositing more than 25 000 Swiss francs into a premium account for the benefit of a single life insurance, if there has been no previous identification;
- c. when offering or distributing investment fund units.

<sup>2</sup> The insurance company is not obliged to identify the contracting party when contracting a group insurance contract within the framework of occupational pensions.

<sup>3</sup> The contracting party must be identified in all cases if there are any grounds for suspecting money laundering.

#### **Art. 5** Acceptable documents for identification of natural persons

<sup>1</sup> Natural persons shall be identified by means of:

- a. a valid official photo ID with a signature, issued by a government body, if the contracting party is in direct personal contact with a member of staff of the insurance company;

- b. a certified copy of a valid passport or valid ID card if the business relationship is conducted with no personal contact, i.e. by correspondence, telephone or e-mail, or via a broker independent of the insurance company.

<sup>2</sup> The insurance company shall have the contracting party's home address verified by postal delivery or another such manner if the business relationship is conducted without a personal meeting.

<sup>3</sup> Copies of ID documents may be authenticated by:

- a. a subsidiary, agency or group entity of the insurance company;
- b. a notary or another such official who normally confirms authenticity in such cases;
- c. a Swiss financial intermediary under Art. 2 (2) or (3) MLA or a foreign financial intermediary operating as per Art. 2 (2) or (3) MLA provided that it is subject to equivalent supervision and regulation with respect to money laundering.

<sup>4</sup> A member of staff under (1)a. above is defined as any natural person who is directly associated with the insurance company by means of an employment, sales representative or agency contract, or indirectly associated by means of a third-party agency contract, provided that the insurance company in question forms their main occupation. The employees of branch offices, agencies or group entities of the insurance company are classified as members of staff of the insurance company.

**Art. 6** Acceptable documents for identification of legal entities

<sup>1</sup> Legal entities are identified by means of an extract from the commercial register, no more than 12 months old, or an equivalent document if not listed in the commercial register. Publications in the Swiss Official Gazette of Commerce (SOGC) or in Zefix, the Central Business Names Index, are equivalent to an extract from the commercial register.

<sup>2</sup> The following are classified as equivalent documents:

- a. memorandum and articles of association;
- b. company by-laws;
- c. certificate of incorporation;
- d. the most recent auditor's certificate, provided that it is not over 12 months old;
- e. a licence to operate the business in question.

<sup>3</sup> In the case of a legal entity that is headquartered abroad or is not listed in the commercial register, the natural persons representing it must also be identified in accordance with Art. 5.

**Art. 7** Lack of identification documents

If a party does not have any of the identification documents specified in this Ordinance, other compelling documents may be permitted for identification purposes by way of an exception. The reason for any such exception must be noted in the file.

**Art. 8** Exceptions from the duty to identify

<sup>1</sup> There is no duty to identify the contracting party in the following cases:

- a. when modifying an existing insurance contract or concluding a new insurance contract if the contracting party has already been identified in concluding the previous insurance contract;
- b. if the contracting party is a legal entity listed on the stock market;
- c. if the contracting party has already been identified in accordance with the MLA within the insurance company's parent group;
- d. if the application for insurance coverage has been accepted by a financial intermediary subject to the MLA, provided that the latter has identified the contracting party and established the beneficiary.

<sup>2</sup> Should the insurance company decide not to identify the contracting party for one of the above reasons, it shall make a note of this in its files. In the cases outlined in (1)a., c., or d. above, copies of the documents used for identification purposes shall be enclosed in the files.

**Art. 9** Change in policyholder

If the policyholder of an existing contract with an insurance company is to be replaced by another policyholder, the latter shall also be identified in accordance with Articles 4 to 8 and, if applicable, the beneficiary established in accordance with Articles 10 and 11.

**Section 2: Establishing the beneficiary****Art. 10** Criteria

<sup>1</sup> Where the contracting party is not the beneficiary, or if there is any doubt in this respect, the insurance company shall have the contracting party provide a written declaration who is the beneficiary, in particular if:

- a. the contracting party is represented by an authorised third party;
- b. the contracting party is a domiciliary company;
- c. the sum to be insured or the transfer made is blatantly disproportionate to the contracting party's financial standing;
- d. the business relationship was initiated without any personal contact within the meaning of Art. 5 (1)b.

<sup>2</sup> Domiciliary companies under (1)b. above encompass companies, institutions, foundations (including family foundations), trusts or trust companies that do not conduct any trading or manufacturing business or any other form of commercial operations in the country in which their **Head Office** is located. Domiciliary companies also include companies that do not have business premises or staff of their own or only employ staff for purely administrative tasks.

<sup>3</sup> Domiciliary companies do not include legal entities or companies **with a Head Office** in Switzerland that **have been** established to safeguard the interests of their members on a cooperative basis or primarily for political, religious, scientific, artistic, charitable, entertainment or similar purposes, provided that they do not deviate from the purpose stated in their articles of association.

**Art. 11** Details required

The written declaration on the beneficiary shall provide the following details:

- a. name, address, domicile, date of birth and nationality, in the case of a natural person;
- b. company name, domiciliary address, country of domicile and date of foundation, in the case of a legal entity.

**Art. 12** Establishing the payee

<sup>1</sup> Furthermore, the insurance company shall have the policyholder provide a written declaration in accordance with Art. 10 and 11 concerning the payee if the insurance benefit to be transferred exceeds 10 000 Swiss francs.

<sup>2</sup> There is no need to establish the payee's identity if the insurance benefit is transferred to an account held with a bank subject to Swiss banking legislation or with the Swiss Post Office.

**Art. 13** Establishing the beneficiary

The insurance company shall establish the beneficiary after occurrence of the insured event at the time of paying out the insurance benefit. The declaration must contain the details specified in Art. 11.

### **Section 3: Special due diligence duties and measures**

**Art. 14** Renewed identification of the contracting party or establishing the beneficiary

<sup>1</sup> Should any doubt arise as to the identity of the contracting party or as to the beneficiary in the course of the business relationship, the insurance company shall check the identity of the contracting party or establish the beneficiary once again in accordance with Art. 4 to 11. In particular, it shall repeat this procedure if there are any doubts concerning:

- a. the accuracy of the details concerning the contracting party's identity;
- b. the fact that the contracting party is the beneficiary;
- c. the credibility of the contracting party's declaration on the beneficiary.

<sup>2</sup> Upon surrender of a policy, the insurance company shall once again establish the beneficiary if it is not the same as when the contract was concluded.

**Art. 15** Special duty of clarification required in the case of higher-risk business relationships

The insurance company shall seek special clarification if the economic background of the transaction or the interests of the beneficiary are not clear or plausible or if the conclusion of the contract appears unusual in any respect, particularly if:

- a. the contracting party wants to pay more than 25 000 Swiss francs in cash;
- b. the contracting party requires a level of discretion above and beyond that which is usual in the business;
- c. the business relationship is with an association of persons, trust or other financial entity for which no specific person is the beneficiary;
- d. the contracting party requests a declaration of guarantee in addition to the insurance policy;
- e. the business relationship is with a politically exposed person;
- f. there are grounds to suspect that the contracting party or the beneficiary belong to a terrorist or criminal organisation or has connections with individuals who belong to, support or are in any way associated with such an organisation;
- g. the business relationship or transaction relates to natural persons or legal entities resident or domiciled in countries whose anti-money laundering measures do not meet the provisions of the MLA.

**Art. 16** Details required

The special clarifications required under Art. 15 include, depending on the circumstances, the following details:

- a. purpose of the insurance contract;
- b. origin of the assets produced;
- c. professional or economic activity of the contracting party and of the beneficiary;
- d. financial situation of the contracting party and of the beneficiary;
- e. origin of the assets of the contracting party or the beneficiary;
- f. in the case of a legal entity, who controls it;
- g. in the case of an association of individuals, trust or other financial entity for which no specific person is the beneficial owner, the name of the founder.

**Art. 17** Responsibility of the senior management body

The senior management body or at least one of its members shall decide on:

- a. the initiation of business relations with politically exposed persons and any changes in this relationship;
- b. the ordering of periodic checks on all higher-risk business relationships.

**Art. 18** Duty of documentation

The insurance company shall compile its supporting documents on the conclusion of insurance contracts and also on identities checked and clarifications made as per Art. 4 to 16 in such a manner that external experts, specifically the supervisory authority, can at all times:

- a. form a reliable opinion on the insurance company's compliance with the MLA and the present Ordinance;
- b. identify the contracting party and establish the beneficiary.

**Art. 19** Document retention

<sup>1</sup> The insurance company shall retain the following documents for at least 10 years after the insurance contract has matured or been terminated:

- a. documentary evidence on the concludes insurance contracts;
- b. documentary evidence used to identify the contracting party;
- c. alternative documents and the note to file as per Art. 7;
- d. the files as per Art. 8 (2);
- e. the contracting party's written declaration as per Art. 10 and 11 above as well as Art. 4 MLA;
- f. documentary evidence used for establishing the payee and the beneficiary as per, respectively Art. 12 and 13;
- g. documentary evidence supporting the details required in clarifying higher-risk business relations as per Art. 16.

<sup>2</sup> Information related to a report under the meaning of Art. 9 MLA shall be stored separately and destroyed 10 years after being reported to the relevant body.

<sup>3</sup> The documents must be kept in a secure location in such a way that the insurance company can comply with any requests for information or sequestration by the prosecuting authority within the given period. They shall be accessible at all times to authorised persons.

**Art. 20** Delegation of due diligence duties to third parties

<sup>1</sup> The insurance company may delegate the identification of the contracting party and the establishment of the beneficiary as well as other clarification duties to other individuals and companies provided that:

- a. it ensures that the delegate meets the due diligence duties with the same care as it would itself;
- b. it gives the delegate instructions for its tasks;
- c. it ensures it is in a position to check that the task is carried out with due care.

<sup>2</sup> The delegate may not sub-delegate.

<sup>3</sup> The documentation as per Art. 18 must be available at the insurance company itself and retained as per Art. 19.

<sup>4</sup> The insurance company shall check the plausibility of the results obtained through special clarification.

<sup>5</sup> Delegation of due diligence duties to a third party does not release the insurance company from its responsibility to comply with its due diligence duties.

**Art. 21** Form of reports

<sup>1</sup> The reports as per Art. 9 MLA shall be made in writing, either by fax or by first-class post, on the form provided by the money laundering reporting office (Reporting Office).

<sup>2</sup> The insurance company shall notify the supervisory authority of the reports it sends to the Reporting Office whilst maintaining data protection.

**Art. 22** Internal body for anti-money laundering measures

<sup>1</sup> Every insurance company shall designate an internal body responsible for monitoring compliance with the MLA and this Ordinance and ensuring staff receive adequate training in anti-money laundering measures.

<sup>2</sup> The internal body shall draft a set of anti-money laundering regulations and distribute this among client account managers and the relevant staff. The regulations shall be submitted to the senior management body for approval.

<sup>3</sup> In particular, the regulations shall specify:

- a. implementation of the due diligence duties under this Ordinance;
- b. how the risks requiring special clarification as per Art. 15 are recorded, limited and monitored;
- c. the corporate policy on politically exposed persons;
- d. those cases in which the senior management body must become involved;
- e. those cases in which the internal anti-money laundering body must become involved;
- f. an outline of staff training;



- g. who is responsible for sending reports to the money-laundering reporting office.

<sup>4</sup> The internal anti-money laundering body shall produce an annual report for the supervisory body.

**Art. 23** Systematic risk monitoring

The insurance company shall ensure, through systematic, effective risk monitoring, that, when the amounts specified in Art. 4 are reached, the contracting party is identified and the risks requiring special clarification as per Art. 15 are ascertained.

**Art. 24** External due diligence audit

<sup>1</sup> The external auditor shall verify due diligence compliance in a separate inspection under Art. 29 (3) of the Insurance Supervision Act<sup>3</sup> at least once every four years.

<sup>2</sup> The costs incurred in conducting this external audit shall be borne by the insurance company.

<sup>3</sup> The external auditor shall provide with the supervisory authority with a report on due diligence compliance.

### Chapter 3: Self-regulatory organisations

**Art. 25** Recognition

The supervisory authority shall recognise self-regulatory organisations provided that they:

- a. have a set of rules and policies;
- b. ensure that their member insurance companies meet the duties set forth in Chapter 2.

**Art. 26** Regulations

<sup>1</sup> Self-regulatory organisations shall produce a set of regulations.

<sup>2</sup> These regulations substantiate the due diligence duties to be met by member insurance companies in accordance with Chapter 2 and governs their execution. Furthermore, they determine:

- a. the conditions under which insurance companies are permitted to join or are excluded from the self-regulatory organisation;
- b. how due diligence compliance is to be monitored;
- c. appropriate penalties. The maximum penalty may not exceed a fine of one million Swiss francs.

<sup>3</sup> SR 961.01

**Art. 27** List of members

<sup>1</sup> Self-regulatory organisations shall keep a list of all member insurance companies, indicating the name, address and internal anti-money laundering body of each member.

<sup>2</sup> Self-regulatory organisations shall provide with the supervisory authority with the list of members and all subsequent amendments.

**Art. 28** Duty to inform

Self-regulatory organisations shall submit an annual report on their activities to the supervisory authority in accordance with its guidelines.

**Chapter 4: Supervision****Art. 29** Tasks and areas of competence

<sup>1</sup> The tasks of the supervisory authority are as follows:

- a. It approves the self-regulatory organisations' regulations and their amendments.
- b. It ensures that the self-regulatory organisations enforce their regulations.
- c. It ensures that those insurance companies that are not members of a self-regulatory organisation meet the due diligence duties specified in Chapter 2.

<sup>2</sup> Specifically, it may conduct on-site inspections.

**Art. 30** Measures

In the case of a breach of this Ordinance, the supervisory authority may take measures in accordance with the supervisory legislation and measures according to Art. 20 MLA.

**Art. 31** Duty to report

The supervisory authority's duty to report is as specified in Art. 21 MLA.

**Chapter 5: Concluding provisions****Art. 32** Transitional provision

<sup>1</sup> The provisions of this Ordinance shall apply to contracts in existence at the time of it coming into force.

<sup>2</sup> The self-regulatory organisations shall have one year after this Ordinance comes into force to adapt their regulations accordingly.

<sup>3</sup> Those insurance companies not affiliated with any self-regulatory organisation shall have one year after this Ordinance comes into force to comply with the new requirements.

**Art. 33** Repeal of existing legislation

The FOPI Ordinance on Combating Money Laundering of 30 August 1999<sup>4</sup> is hereby rescinded.

**Art. 34** Entry into force

This Ordinance enters into effect on 1 January 2007.

24 October 2006

Federal Office of Private Insurance:  
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<sup>4</sup> AS 1999 3063