

Luxembourg, 10 December 2024

Circular letter 24/13 on the verification of good repute of insurance agents and sub-brokers

Article 285-3 of the law of 7 December 2015 on the insurance sector, as amended, (hereinafter "**LSA**") requires

- a. insurance undertakings to regularly check the good repute of their insurance agents, and
- b. brokerage firms and individual brokers to regularly check the good repute of their sub-brokers.

It should be noted that Article 32, paragraph 1, point 15, of the LSA defines good repute as "*professional or extra-professional reputation assessed on the basis of both criminal records and any other element which may establish that the person concerned has a good reputation and provides the guarantee of irreproachable management*".

During 2023, the Commissariat aux Assurances (CAA) carried out specific investigations on market practices relating to checks on the good repute of insurance agents of insurance undertakings with a large network of local insurance agencies.

These investigations, as well as the cases that the CAA dealt with in 2023 and 2024, led to the following observations:

- Not all insurance undertakings have a formalised procedure for good repute checks of their insurance agents;
- Not all insurance undertakings collect all the documents required by Article 49 of the *Commissariat aux Assurances Regulation N° 19/01 of 26 February 2019 on insurance and reinsurance distribution, as amended* (hereinafter "**RCAA N°19/01**"), or there is uncertainty as to the documents that must be collected;
- Not all insurance undertakings systematically notify the CAA of any offences recorded on criminal records when checking the good repute of their insurance agents;
- In the event of negative findings being communicated to the CAA, not all the insurance undertakings indicate whether they intend to maintain or withdraw the person's licence as an insurance agent in the light of the result of the good repute check;

In view of the above, and given that brokerage firms, individual brokers and insurance undertakings (hereinafter "**Mandating entities**") incur liability in the event of non-compliance with Article 285-3 of the LSA, the CAA considers it essential to recall and clarify the legal and regulatory framework applicable to the verification of the good repute of insurance agents and sub-brokers (hereinafter "**Agents**" ("**mandataires**")), as well as to provide further details.

The CAA therefore expects Mandating entities to adopt a procedure in such field.

This circular letter explains the main points that must be covered in the procedures of the above-mentioned Mandating entities.

A. Collection

Article 49 of RCAA N°19/01 lists the documents to be collected by the Mandating entities for the persons referred to therein.

With regard to the extract from the Luxembourg criminal record, as required in the aforementioned Article, it is specified that the record no. 3 must be provided.

It should be noted that Article 49 of RCAA N°19/01 requires the collection of an extract from the Luxembourg criminal record and an extract from the criminal record or similar document of the State of residence of the Agent (“mandataire”) concerned, if different from the Grand Duchy of Luxembourg.

Article 49 of RCAA N°19/01 provides for the possibility of requesting authorisation from the CAA to replace the documents listed in such Article with other probative documents. Such authorisation is granted by the CAA only in exceptional cases and when justified by specific circumstances. Generally speaking, a properly reasoned request must be sent to the CAA by the Mandating entity, detailing:

- the detailed reasons why it is impossible or difficult to obtain these documents. These reasons must be specified for each (category of) person(s). The CAA does not consider a general request (e.g. covering all insurance agents of an insurance undertaking) to be sufficiently justified;
- a proposal for alternative(s) by (category of) person(s) in relation to one or more documents that cannot be collected.

B. Frequency

It should be noted that the 1st paragraph of Article 49 (1) and (2) of RCAA N° 19/01 provides that the verification of the good repute of the Agents (“mandataires”) and the collection of the relevant documents must be carried out at the beginning of each reference period referred to in Article 40 of the same regulation with the exception of the first reference period.

It is specified that the “beginning” of a reference period means the first 3 months of the calendar year concerned.

It should be remembered that the three-year reference period begins on the first day of a calendar year, and that the first reference period begins on 1st January of the year following the entry into office.

It should be noted that the reference period continues to run where an Agent (“mandataire”) has given up an authorisation as an insurance intermediary and obtains a new authorisation as an intermediary (in the same or another category).

It should also be noted that the verification of the good repute of Agents (“mandataires”) must be carried out when a person holds an active licence for the Mandating entity, and does not depend on whether the person actually carries out distribution activities for said entity.

C. Good repute check

Article 49 of RCAA N°19/01 states that the documents listed therein must be submitted to the Mandating entity for a good repute check.

In the event of entries in a criminal record (or the foreign national equivalent) and/or the declaration of honour¹ (hereinafter the “**Entry**”), the Mandating entity must therefore assess their impact on the continuation of the business relationship with the Agent (“mandataire”).

In order to be able to make such an assessment, the CAA expects each Mandating entity to adopt a procedure that specifies the way in which this assessment is carried out and which, ideally, draws a red line beyond which the Entry is of such gravity that the Mandating entity no longer wishes to be represented by the person concerned and requests the withdrawal of the agent's or sub-broker's authorisation.

For example, this procedure may provide for an assessment that is

- “automatic”, i.e. by providing a list of offences, categories of offences or specific circumstances and attaching a consequence for the authorisation of the person in question thereto;
- on a “case-by-case basis”, i.e. providing for a case-by-case analysis of the Entry, f.i. by an internal committee of the Mandating entity;
- a combination of both, i.e. “automatic” for certain Entries and on a “case-by-case basis” for other Entries ;

If the Mandating entity opts, even partially, for a case-by-case assessment, the procedure must at least

- specify the assessment criteria to be taken into account or the guidelines to be followed by the Mandating entities when verifying good repute, and
- specify the level of importance given to the various assessment criteria used in the procedure.

In order to guide Mandating entities in establishing their procedure, it should be noted that Article 32, paragraph 1, point 15, of the LSA defines good repute as “ *professional or extra-professional reputation assessed on the basis of both criminal records and any other element which may establish that the person concerned has a good reputation and provides the guarantee of irreproachable activity*”, as already specified above.

It is also recalled that Recital 30 of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (hereinafter the “**IDD**”) states that “*the requirements relating to integrity contribute to a sound and reliable insurance sector and to the objective of the adequate protection of policyholders. Those requirements include having a **clean criminal record or any other national equivalent in relation to certain offences such as offences under legislation on financial services, offences concerning dishonesty, fraud or financial crime and other offences under company law, bankruptcy law or insolvency law**”*. These principles are repeated in Article 10, paragraph 3, subparagraph 1, of the IDD, which states that “*natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue insurance or reinsurance distribution shall be of good repute. As a minimum, they shall have a **clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law***”.

Whatever evaluation method is chosen, it is important that the assessment is carried out in the light of the above legal provisions.

¹ The term “Entry in the declaration of honour” refers to declarations of honour containing one or more unchecked boxes and/or on which an entry is made under the heading “*Other remarks or explanations by the undersigned on the above-mentioned points, in particular if one of the points cannot be confirmed by the undersigned*”.

Finally, following this assessment, the Mandating entity must decide whether it intends to maintain the business relationship and, consequently, the concerned intermediary's authorisation on its behalf.

D. Communication

It should be noted that articles 284-1 and 283-2 of the LSA, relating to the conditions of approval and operation applicable to insurance agents and sub-brokers, state that, in order to meet the conditions of operation imposed on him, the Agent ("mandataire") must, in particular, constantly provide proof of his good repute.

An Entry may call into question continued compliance with the above condition of operation.

Therefore, when Mandating entities become aware of an Entry and they wish to maintain the business relationship with the person concerned, they shall forward the document(s) containing the Entry to the CAA in due course so that the latter can properly carry out its supervisory powers in the context of its consumer protection mission.

E. Availability

In order to provide evidence of compliance with their obligation to verify the good repute of their Agents ("mandataires"), the Mandating entities shall draw up and keep an anonymised version of minutes containing the following information, in tabular form:

- a. the number of Agents ("mandataires"), as defined in this circular letter, for whom the Mandating entity must collect the documents listed in article 49 of RCAA N°19/01, in accordance with article 285-3 of the LSA;
- b. the number of Agents ("mandataires") for which the Mandating Entity has succeeded in collecting all the documents listed in article 49 of RCAA N°19/01;
- c. the number of Agents ("mandataires") whose criminal record no. 3 includes an Entry ;
- d. the number of Agents ("mandataires") whose declaration on honour includes an Entry ;
- e. the number of Agents ("mandataires") for whom the Mandating entity requests the withdrawal of authorisation in view of the seriousness of the Entry noted, or because of the failure to provide the documents;

The minutes must also be validated no later than the last Friday in March by a person with signing authority to represent the Mandating entity in question, whose surname, first name and function are specified in the minutes. Mandating entities are required to keep a copy of these anonymized minutes available for at least three years after said validation.

In the light of the above, Mandating entities are asked to:

1. establish a procedure for checking good repute in accordance with this circular letter **and**
2. inform the CAA when such a procedure has been put in place,

by 31st March 2025 at the latest.

The Executive Committee