Q&A on the Sanctions Act for non-life insurance companies

Some parts of this information are no longer current and will be amended.
Please see Sanctions screening (dnb.nl).

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Introduction and Q&A

As a non-life insurance provider you are required to comply with the Sanctions Act of 1977 and related rules and regulations (Sanctiewet). The effectiveness of national and international sanctions depends in part on the financial sector's compliance with them. You are expected to act as a gatekeeper.

In the course of examinations conducted by De Nederlandsche Bank N.V. (DNB) into the sector's compliance with sanctions regulations, several non-life insurance companies have asked questions about the Sanctions Act. We will answer most of these questions in this Q&A, grouped in four sections: structure and awareness (section 2), customer acceptance (section 3), control and screening (section 4), and payout (section 5).

This Q&A is intended specifically for non-life insurance companies as a supplement to:

- General Guidance on the Anti-Money Laundering and Anti-Terrorist Financing Act (Wet ter voorkoming van witwassen en financieren van terrorisme – Wwft) and the Sanctions Act, issued by the Ministry of Finance (Dutch only).[1]
- DNB Guidance on the Anti-Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act. Preventing abuse of the financial system for money laundering or terrorist financing and managing integrity risks.[2]

The purpose of the guidance and this Q&A is to explain the various requirements arising from the Sanctions Act and to provide recommendations for their implementation. These documents should therefore be read in conjunction.

This Q&A is not a legally binding document or policy rule issued by DNB within the meaning of Section 1:3(4) of the General Administrative Law Act (Algemene wet bestuursrecht) and does not have or intend to have legal effect. It does not replace any legislation or any policy, supervisory or other regulation on this topic. The examples presented in this guidance note are not exhaustive and will not suffice in all cases. Rather, they aim to help you interpret and implement the statutory requirements.

This unofficial English translation is provided solely for information purposes. In case of differences, the Dutch text will prevail.

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Structure and awareness

2.1 As a non-life insurance provider, am I required to include the topic of sanctions in my institution's systematic integrity risk analysis (SIRA)?

Yes, we expect non-life insurance companies to include the topic of sanctions in their SIRA. All institutions are required by law to prepare an integrity risk analysis. The legal basis applicable to insurance companies is Section 10 of the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft – Bpr).

1 http://www.rijksoverheid.nl/ministeries/fin/documenten-enpublicaties/richtlijnen/2011/02/21/algemene-leidraad-wet-ter-voorkoming-van-witwassen-enfinancieren-van-terrorisme-wwft-en-sanctiewet-sw.html.

2 http://www.toezicht.dnb.nl/4/6/50-204770.jsp. Zie ook de pagina 'Wegwijs in sanctieregelgeving' op Open Boek Toezicht: http://www.toezicht.dnb.nl/2/50-221960.jsp.

2.2 Am I required to include the Sanctions Act in my institution's internal audit programme even if the risk of non-compliance is low?

Yes, we expect non-life insurance companies to include the topic of sanctions in their SIRA. All institutions are required by law to prepare an integrity risk analysis. The legal basis applicable to insurance companies is Section 10 of the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft – Bpr).

Abuse of non-life insurance for terrorist financing purposes

The Financial Action Task Force (FATF) recently drew attention to non-life insurers' risk of involvement in terrorist financing. Research in Spain revealed a link between the growing number of fraud cases in the non-life insurance sector and the growing number of terrorists leaving the country to join terrorist organisations like ISIL. These individuals typically need funds quickly and, as opposed to fraudsters aiming to launder money, do not require anonymity. Trumping up bogus claims is a relatively simple and fast way to obtain cash.

Source: FATF, Emerging Terrorist Financing Risks (October 2015), p. 16.

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Customer acceptance

The Sanctions Act defines the term 'customer' ['relatie' in Dutch] very broadly as any party involved in a financial service or financial transaction. This includes at any rate policyholders, insured persons and beneficiaries. In the context of business customers, it also includes representatives and ultimate beneficial owners (UBOs) (see also the DNB Guidance on the Anti-Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act). Insurers have asked us the following questions on this topic.

3.1 As an insurer, am I required to verify my customers' identity?

All insurers must identify their customers. However, the Sanctions Act does not stipulate that insurers are required to verify their customers in the sense that they must check whether the information received from insured persons is correct. You must record the identification so that it can be reproduced. The data you record will enable you to perform an effective check against the sanctions lists. In practice, we find that insurance companies verify the identity of their customers to the extent possible on the basis of a passport or identity card, reducing the risk of entering into a relationship with a person who in reality turns out to be someone else.

3.2 Upon acceptance, am I required to identify and screen co-insured persons as well?

Identifying and screening all co-insured persons as and when they are added to an insurance policy is, in principle, not a requirement. Insurers are, however, required to verify any beneficiary's identity upon payout.

Several regulations imposing sanctions (e.g. Council Regulation (EC) No 2580/2001 and the Dutch Regulation on sanctions for the suppression of terrorism (Sanctieregeling terrorisme) 2007-II) prohibit the provision of insurance and insurance-related services to persons or entities included in a sanctions list. In that context, insurers are required to identify and screen co-insured persons against the sanctions lists whenever they are added to an insurance policy or in the event of a change. In respect of particular policies, this calls for additional measures to check changes, which implies that you should be able to identify the policies that are governed by the regulations referred to above.

3.3 In identifying and screening parties, are insurers allowed to rely on due diligence investigations performed by third parties, e.g. intermediaries or banks?

No, you are not allowed to simply rely on third parties for sanctions screening purposes upon accepting new customers. Doing so may be acceptable for payout purposes, provided that the inherent risk is demonstrably low, for instance if the payment is made into a Dutch bank account.

Outsourcing sanctions screening to for instance an intermediary is permitted only on the basis of explicit arrangements or agreements laid down in writing by the insurance company. For more information, consult the guidance note issued by the Dutch Association of Insurers.[3]

3.4 As an insurer, how am I required to deal with intermediaries and agents?

Your dealings with intermediaries are subject to the same requirements as your own organisation. You must ensure that intermediaries and agents carry out all required checks, also when referring customers. It is your ultimate responsibility to ensure compliance with the applicable laws and regulations. An intermediary's involvement in potential violation of the sanctions legislation affects the assessment of the sound and ethical nature of its operational management under the Financial Supervision Act (Wet op het financieel toezicht – Wft).

3.5 How are insurers required to carry out UBO investigations upon acceptance?

In the case of business customers, you must identify the UBOs to be able to check them against the sanctions lists. Sanctions regulations define a UBO as a person who holds 50% or more of the ownership rights to or has control of the entity in question.[4] This is why you are required not only to identify UBOs but also to record their data.[5] If you fail to do so, you will not be able to establish on a regular basis whether these customers are included in a sanctions list, which is in violation of the Sanctions Act.

Your efforts will allow you to demonstrate that the UBO is not subject to sanctions. It may be difficult to establish the identity of the UBO, for instance in the case of foreign legal entities or UBOs, foundations or non-profit organisations.

UBO investigations at non-profit organisations

Several national and international organisations refer to the terrorist financing risks facing foundations and other non-profit organisations. Although humanitarian aid organisations can be of vital importance in providing relief in for instance conflict regions, these foundations are sometimes abused (or set up) for terrorist financing purposes. Financial institutions have a hard time establishing the identity of UBOs at foundations and other non-profit organisations. Some institutions even turned out not to establish the identity of UBOs at all in certain cases, which constitutes a violation of the regulations. For non-profit organisations you are expected to identify the individuals exercising control, which typically are directors or representatives. However, in situations involving high-risk customers (to be determined on the basis of type of activity, among other things), you may need to verify whether other policymakers having control carry out activities for the organisation.

For more information, see http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf.

3 Association of Insurers, Guidance note on compliance with the Sanctions Act (Dutch only), 2014, p. 4.

4 The DNB Guidance on the Anti-Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act states the following: Assets are made available indirectly in the event that a person in a structure holds 50% or more of the ownership rights to or has control of an entity (in which context the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy define the term 'control' very broadly). If a person holding 50% or more of the ownership rights to or having control of an entity is included in a sanctions list, the assets of that entity must also be frozen and no funds may go to it. In actual practice, institutions have the option to also identify UBOs in the event of ownership percentages up to 50%. Institutions are advised to use the definition of ultimate beneficial owner in the Wwft, which implies that they know all UBOs holding 25% or more ownership rights. This is also bearing in mind that institutions are prohibited from making assets available to persons or entities under the control of a sanctioned person. Control of an entity does not require ownership of 50% or more of its shares.

5 Some insurers outsource these activities, in which case the outsourcee is responsible for recording the data. It is your ultimate responsibility to ensure and verify compliance with the applicable laws and regulations.

In situations involving foreign entities, insurers may decide to use systems specialising in investigations of foreign UBOs. Moreover, many insurers use UBO statements they ask their customers to complete.

We draw your attention to the fact that using UBO statements alone may increase the risk of fraud. It is good practice for insurance companies to conduct an in-depth investigation of UBOs based on these forms. Corruptible customers in particular will have reason to conceal UBOs. For foundations and other non-profit organisations it is crucial to identify those in control, which typically are directors or representatives.

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Control and screening

4.1 Against which sanctions lists am I required to screen my customers?

If your insurance company operates in the Netherlands, you must screen your customers against the Dutch sanctions list and against the sanctions lists based on EU regulations. You may also be required to screen them against foreign sanctions lists (for instance, we strongly recommend checking the sanctions list published by the Office of Foreign Assets Control (OFAC) if you have operations in the United States). Be sure to use the most recent sanctions lists, also if you outsource the screening activities.

4.2 How often am I required to screen my customer base?

The Sanctions Act stipulates that you must be able to detect at any time whether your customers or your services and transactions are affected by any sanctions regulations. If you find a hit, you must notify us without delay (see also the DNB Guidance on the Anti-Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act, p. 41).

This implies that you must check your customer base against the sanctions lists on a regular basis, more specifically at a risk-based frequency. You may, for example, decide to screen low-risk customers less frequently than customers with a high-risk profile. It is good practice for insurers to screen low-risk customers at least once every three months.

4.3 Am I required to ask UBOs for information at regular intervals?

As your customers may change UBOs over time, it is important for you to regularly check whether the information submitted or investigated upon acceptance is still up to date. If you use a substantiated customer risk classification, a customer's risk profile may serve as a 'sell-by date' for the relevant UBO information. We believe that requesting UBO information from high-risk customers every year and from medium- and low-risk customers every second year is an acceptable frequency. When paying out claims, you must always conduct a due diligence investigation of the UBO (unless the exception referred to in section 3.3 applies).

4.4 Am I required to carry out an ad hoc screening whenever new names are added to the sanctions lists?

Yes, you are. You must carry out an ad hoc screening whenever new names are added to the sanctions lists to check whether the added names are found in your own accounting records. Whether or not an ad hoc screening is

Good practice: risk classification

Our examinations show that institutions classify risks by customer type (e.g. private, business, type of activity), insurance type (e.g. goods-in-transit, transport, liability) and payment type (e.g. domestic, customer-direct, third-party). This allows them to select suitable controls for aspects including screening frequency, the frequency with which UBO information is updated and the level of detail in investigations of insured goods. We believe it is good practice for insurance companies to classify risks this way.

required depends on the type of regulation. Most sanctions rules prohibit the provision of assets to sanctioned parties, in which case screening upon payment (i.e. claims payout) will suffice, in any event in the case of low-risk customers. This is on condition that you screen sufficiently frequently (it is good practice to screen every three months). However, some sanctions regulations prohibit institutions not only from making assets available but also from providing specific insurance services, in which case you are required to carry out a screening immediately upon any change in the sanctions lists.

4.5 As an insurer, am I allowed to set my sanctions screening system to yield 100% matches only?

Insurers can organise their screening systems to include non-perfect name matches up to a certain percentage (referred to as fuzzy matching). Allowing fuzzy matches between 70% and 85% is a standard in the sector.

Although the matching percentage is at your discretion, we believe it is bad practice to set it at 100%. By doing so, institutions run the risk of not investigating potential matches because the system does not recognise them (for instance due to a typing error or incorrect date of birth), which may cause actual hits to remain undetected. For more information, consult the guidance note issued by the Dutch Association of Insurers.[6] If you choose to take action only in the event of 100% matches, we may demand that you make your risk appetite more explicit.

4.6 As a transport insurer, how am I required to handle goods-in-transit insurance policies in which context it is unclear who the insured and the beneficiary customer (party arranging carriage) will be and what type of goods will be shipped where?

This type of insurance carries an inherently increased risk of violation of the sanctions regulations. It therefore calls for additional measures, in which context at any rate the following four questions are relevant:

- What is the nature of the goods/services to be insured?
- What is the final destination of the goods to be insured?
- Who is the end user of these goods?
- For what purposes will the goods to be insured be used?

Obviously, you must properly document the answers to these questions (to the extent known) and use them in your risk assessment.[7]

In the event of uncertainty, you can take the following additional measures:

- Run an extra check of the beneficiary and the insured upon payout.
- Specify in your file on the customer that the type of goods it exports is known and verify the required export licences to obtain any missing information.
- Upon payout, match the payments to the information in the customer file.

Failing to ask the questions listed above or to verify payments on payout constitutes a breach. You are permitted to provide risk-based answers, classifying the associated risks based on for instance type of insurance (area of cover) and type of product to be insured. We also strongly recommend including a sanctions clause.

4.7 If I sell transport insurance policies excluding cargo, am I required to know what the shipped goods are, with a view to possible sanctions?

Transport insurers often insure only the means of transport (vehicles or vessels). Liability insurance can be taken out for the cargo, which does not cover the cargo itself but rather the carrier's liability in the event of loss or damage (up to a maximum amount). Hence the cargo is insured by another insurance company.

It is, in principle, the latter's responsibility to know what the shipped goods are. However, if there are reasonable grounds (for instance clear signs that a shipping is potentially subject to sanctions regulations), the transport insurer may be required to obtain detailed information from the goods-in-transit insurance policyholder. The four questions provided in section 4.6 can be used for this purpose.

6 Association of Insurers, Handreiking naleving Sanctiewet (guidance note on compliance with the Sanctions Act, available in Dutch only), 2014, p. 11.

7 We emphasise that insurers are not expected to conduct on-site inspections.

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Payout

5.1 As an insurer, am I allowed to apply a threshold amount for performing checks under the Sanctions Act?

In principle you are not permitted to perform risk-based checks. The application of a threshold amount for claims payouts should never imply that certain individuals or UBOs are not screened. In our opinion, threshold amounts are admissible only in combination with other factors which demonstrate with certainty that the risk is very low. Examples of such situations include payouts to private individuals holding a Dutch bank account and payouts to Dutch government institutions.

5.2 Am I required to screen outgoing payments to individuals holding a Dutch bank account number?

In principle you are not permitted to perform risk-based checks. Insurance companies must be able at all times to establish whether natural persons or legal entities and any UBOs are included in any sanctions list. In view of the very low risk, we can understand that you refrain from screening payouts to individuals holding a Dutch bank account if they constitute domestic payments in the Netherlands. We cannot pronounce on domestic payments by Dutch branch offices located abroad.

5.3 When paying out claims to third parties, am I required to screen the policyholder?

If you pay out directly to a third party having suffered loss or damage, you effectively pay 'on behalf of your customer', i.e. the policyholder. In other words, by making that payment – effectively releasing your customer from its obligation to pay compensation – you make assets available to your customer. Upon payout, you are therefore required to screen not only the recipient but also the customer on whose behalf you make payment (unless you recently screened that customer in the context of a regular check).

5.4 When paying out claims to injured legal entities, am I required to identify and screen the injured party's UBO?

You are prohibited from directly or indirectly making assets available to sanctioned persons, including through a legal entity of which they are the UBO. In other words, if you pay funds to a third party that is a legal entity, you must verify whether that legal entity is controlled or owned by a person included in any sanctions list.

5.5 If claims are paid out abroad, the payments are sometimes made by intermediaries that do not perform checks against the sanctions lists. How am I required to go about this?

Our examinations showed that in particular for claims involving damage to motor vehicles abroad, payouts are made by agencies issuing international motor insurance certificates, also referred to as green card bureaus (similar to the Dutch Motor Insurers' Bureau) and subsequently set off. As yet, these green card bureaus do not perform checks against the sanctions lists. Considering that this route is open to potentially high-risk payments, we find this alarming. We have no supervisory powers with respect to such bureaus but keep a close tab on the developments at European level. At present, there are no additional requirements for insurance companies in this respect.

5.6 In the context of co-insurance, are following insurers permitted to rely on leading insurers?

As a co-insurer, you are dealing with other insurance companies and a broker. If it is clear (e.g. from a commitment to a protocol or system) that the required checks have been carried out (e.g. by the broker or the leading insurer), there is no need to re-perform the same checks.