**memorandum**

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| From | Nicolò Juvara/Salvatore Iannitti/Pietro Altomani | Date | 22 January 2016 |
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| To | **The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs)** |  |  |

Dear Sirs,

Consultation on Guidelines on risk factors and simplified and enhanced customer due diligence(Consultation on Guidelines on risk factors and simplified and enhanced customer due diligence( JC 2015 061))

With reference to the above mentioned document, the undersigned lawyers of Norton Rose Fulbright Studio Legale submit herewith their comments, as follows:

* in relation to paragraph 19 of the draft joint guidelines, enterprises controlled by a public administration should be considered equivalent (for the purposes of the risk factors assessment) to the public administration controlling it
* in relation to paragraph 20 of the draft joint guidelines and in relation to the risks associated to a customer, focus should be put on crimes which may have a connection with AML or TF (while other types of crimes should generally not be relevant to the assessment). Guidance should furthermore be given in relation to those cases were the customer was accused but not condemned (in light of the 2presumption of innocence”, stated by certain Constitutions), or the customer (initially convicted) was finally declared innocent by a Court
* in relation to paragraph 26 of the draft joint guidelines, when assessing the risk associated with a product, the intermediary should consider:
* whether the product excludes the accumulation of a capital or the payment of an indemnity at the end of a defined term, as it is the case with regard to the pure life insurance products;
* with reference to the existence of multiple insured parties, whether such designation is ordinary and justifiable (e.g. where the insured designed his children as beneficiaries);
* in relation to paragraph 29 of the draft joint guidelines (consistently with paragraph 30), if the intermediaries are subject to the supervision of a regulator and/or to the applicability of AML legislation, such circumstance should be considered as lowering the risk of AML and/or TF
* in relation to  paragraph 50 and 57 of the draft joint guidelines, we suggest somehow describing the definition of family members (to be possibly extended to cohabitations producing legal effects)
* in relation to chapter 7 (sector Guidelines for life insurance undertakings):
* generally, clarifying the relevance of the insured party (when this is a person other than the policyholder, the beneficial owner and/or the beneficiary, with or without the power to designate beneficiaries, with or without the power to redeem the capital or completing other transactions with regard to the insurance policy);
* with regard to paragraph 177: all of the life insurance contracts provide (due to a mandatory provision of Italian law) for a free look period. The existence of such a clause may therefore not be considered an higher risk factor, unless for example the policyholder requires the return of the premium on a third party’s bank account. Similarly, under the Italian Civil Code, all life insurance contracts allows  the early surrender of a life insurance contract and this provision may therefore not be considered an higher risk factor;
* with regard to paragraph 178: group policies should be considered lower risk products, at least where the policy is entered into by a subject of good reputation (e.g. an association), having an interest in stipulating a policy for a material number of person (e.g. the members of the association);
* with regard to paragraph 181: we assume that long chain of intermediaries include more than 3 intermediaries passing over the information relating to the customer.

We herewith authorize disclosure of our comments, in any form whatsoever.

Kind regards,  
  
  
  
  
Nicolò Juvara/Salvatore Iannitti /Pietro Altomani